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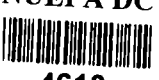
ADMINISTRATIVE REFORMS COMMISSION

REPORT OF THE STUDY TEAM

ON

CENTRE-STATE RELATIONSHIPS

VOLUME I



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LETTER OF TRANSMITTAL

NEW DELHI,
Dated the 9th of October, 1967

Dear Shri Hanumanthaiya,

I forward with this letter the report of our Study Team on "Centre-State Relationships".

2. Shri R. Gupta, Member, could not attend the final meeting of the team and sign the report as he was taken ill at the last moment. He has, however, intimated by letter his complete approval to the report, the draft of which was seen by him before the concluding meeting.

3. Our report necessarily traverses a wide area although it is only a part of the entire area covered by the Commission's terms of reference. The Commission's report to Government, based on our present report, will, in the normal course, undergo segmented examination by a number of agencies both in the central and the state governments. Considering that such an effort will consume a great deal of time and will not ensure an integrated view of the report, we have made a suggestion towards the end of our report regarding the manner in which the report may be processed. Specifically we have recommended that the report may be considered by an Inter-State Council, the establishment of which we have recommended in Chapter XIX. Because of its role in the processing of this report, we feel that a decision on our recommendation concerning this Council should be taken first. You might like to bear this in mind while forwarding the Commission's own report on the subject.

4. I would like to take this opportunity of expressing our appreciation of the work done by the officers of the Department of Administrative Reforms who provided us with our secretariat. They worked like a team and did not grudge the long hours they had to put in. Our thanks are due to Sarvashri Mohinder Singh, Surinder Singh, Malu Ram, O. P. Khanna, Kumari Prakash Mallick, steno-typists and H. B. Khurana, stenographer; to Sarvashri D. S. Dham, J. K. Kalra, Bhajan Singh, Investigators; to Sarvashri P.C.

Dhir, P. N. Anantaraman, K. P. Nair, V. D. Seth, A. S. Ayyar, Research Assistants (the last named taking on himself a considerable load of administrative work in addition to his normal duties as Research Assistant); to Shri N. S. Sankaran, Section Officer; to Analysts I. C. Bhatia, C. W. Mirchandani, K. V. Mahalingam, B. K. Dey and, in particular, B. M. Rao of whose thorough and painstaking work I would like to make a special mention; to Shri Harbans Singh, Under Secretary and to Shri P. K. Kathpalia, Deputy Secretary who ably supervised and co-ordinated the work of this group.

Yours sincerely,
M. C. SETALVAD
Chairman,
Study Team

Shri K. Hanumanthaiya, M.P.,
Chairman,
Administrative Reforms Commission,
New Delhi.

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INTRODUCTION

Relations between the centre and the states range over a wide area. They cover, but are not confined to, the entire field of administration and in fact overstep it into that of politics. Politics and administration are inseparable in the sense that administration is meant to give effect to politically determined programmes and policies. But politics concerns itself also with the pursuit of power, an activity that stretches beyond the legitimate confines of administration. Of late the term "centre-state relationships" has often been used to connote the attitudes, actions and interaction of the parties in power at the centre and in the states. There is, however, a well-defined distinction between party and government and strictly speaking the term denominates relationships between governments and not between parties.

2. Centre-state relationships even in this sense can have a political nexus the nuances of which are not derived from the Constitution. This is an aspect that has assumed an acute form since the last general elections, with the eclipse in several states of the party that rules at the centre. And yet, although the dimensions have changed, the problem, basically one of the relationship of the political leadership at the centre with the political leadership in the states and of its influence on centre-state administrative relations in their widest sense, is not new. It is well to recognise that the political facts of the Indian scene have played a major role in the development of attitudes. Where a single party has control over affairs at the centre as well as in the states an alternative and extra-constitutional channel becomes available for the operation of centre-state relationships. In practice this channel has been very active during Congress Party rule and has governed the tenor of centre-state relationships. The political network connecting central and state leadership was used amply to resolve conflict and ease tension or even to postpone consideration of inconvenient issues. In the process the Constitution was not violated, at least not

deliberately or demonstrably, but was often by-passed. Besides, political rather than administrative considerations determined decisions and the centre's relationship with a particular state depended very much on the personality of its political leaders and their equation with the central leadership. Constitutional provisions went into disuse and disputes were settled in the party rather than aired through open constitutional machinery. Party prestige and party discipline worked out party rather than governmental or constitutional solutions. A strong central leadership made such discipline possible. This discipline was, to an extent, offset by the creation of linguistic states and the gradual dependence of the central ministers on local leaders for political support, thereby shifting the actual centre of power somewhat. Whether dominated by the centre or by the states, or by some of the states, all these factors combined to weave a pattern of centre-state relationships in which the political process came to play a major part.

3. From the constitutional angle the situation was abnormal. As a result of by-passing normal constitutional processes a habit of settling issues through extra-constitutional means grew and sufficient experience and a proper climate for settling them through the regular process were not developed. The emergence of non-Congress governments in the states has accordingly forced the problem to the forefront for the earlier political devices are no longer available. The problem has acquired an edge because of this peculiar background and it can be expected to wear out with time when the polity becomes accustomed to different parties ruling in the centre and the states. The Constitution is clearly meant to be worked even in a multiparty situation which should be seen not as a problem of centre-state relations but as a normal background for their interplay. We are, therefore, not concerned in this report with the immediate political impact created by the return to power of different ruling parties at the centre and in the states. In a few years, as this experience is assimilated, the difficulties presented by its sheer unprecedentedness should be gradually solved by

proper adjustments in responses from the body politic. The federal machinery could then be expected to adapt itself to a changing configuration of parties in power in the different seats of government and to demonstrate that stability which the Constitution was designed to provide and which uni-party rule has provided till lately. Our report has in view a stable situation of this nature in which centre-state relationships will operate more on constitutional than on party lines. Our interest, therefore, is in seeing whether the overall administrative arrangements devised are such as to promote efficiency and national integration. What the political responses actually governing decisions should be is not our concern in this report.

4. The starting point for any examination of centre-state relations, even if its focus is only on administrative reform, must be the character of the constitutional structure within which the interplay of administration and politics takes place. This character is not easy to define. No label describes it perfectly and when, for the sake of convenience, one is applied there is a risk of ascribing to the Constitution characteristics associated with that label which the Constitution may not possess. Thus lawyers and constitutional pundits have debated at length whether India is a "unitary state" or a "federation" or a "quasi-federation". Whatever label one accepts it is important not to endow our polity with false attributes as a result or to infer from it powers for the centre, or for the states, they are not meant to possess.

5. The Indian polity is federal in form but lacks much of the substance of a classical federation. The ingredients of a federation classically are:—

(i) a compact between independent and sovereign units to surrender partially their authority in their common interest and vest it in a Union;

(ii) the retention of residual authority with the constituent units;

(iii) a separate constitution for each constituent unit to govern all matters not surrendered to the Union;

(iv) the supremacy of the Constitution and its consequent immutability except with the concurrence of the component units;

(v) the distribution of powers of the Union and the units each in its sphere, co-ordinate and independent of the other, the basis being the entrustmemt of matters of national importance to the Uniom and of local importance to the units;

(vi) the supreme authority of the courts to interpret the Constitution and to invalidate action violative of the Constitution, and to resolve conflicts, as provided for in the Constitution, between one unit and another and between a unit and the Union.

In our Constitution only the last named attribute is present in full measure. The first three are completely absemt,, and of these the absence of the first is of more than merre historical interest for it must dispel all notions of the autonomous sovereignty of the states. The term "sovereignty" presents some difficulties of interpretation and tends to lbee used with different shades of meaning. Scholars have triecd to distinguish between "political sovereignty" and "legail sovereignty". The first is said to vest neither in the centtre nor in the states but in the people of the country. What is significant here is that it vests in the people of the counttry as a whole and not, in any measure, in the people of tthe individual units. The units had no sovereignty to part wiitlh and it would be incorrect to import any such concept ncow as an appendage to the term "federation".

6. "Legal sovereignty", in the sense of law makiing power unrestricted by any legal limit, can, in theory, vest only in the Constitution. In practice it can be said to vest in the legislatures created by the Constitution provided there is equality between these legislatures (of the Union and tthe states) and the powers of each are co-ordinate and indepiem-dent of the other. But those of the state legislatures are not co-ordinate and independent of Parliament in every respect.

7. The division of powers, which is at the heart of the matter, does indeed make the polity partake of the federal character but the substance of this division dilutes this character in many significant ways. The fact that the Seventh Schedule itself is heavily weighted in favour of the centre need not detract from the idea of the supremacy of the states in the limited sphere left to them. But when restrictions operate even in this limited sphere a rigid concept of autonomy becomes difficult to sustain. Article 249, for instance, empowers Parliament to legislate on any matter in the State List provided the Council of States by a two-thirds majority authorises it to do so. The Council of States does, in a way, represent the opinion of the states, but the important point to note is that the autonomy of individual states is subject, even in the state field, to the collective wishes of the other states. The character of this provision is thus utterly distinguishable from that of Article 252 under which Parliament may legislate for any two or more states with their agreement.

There are next the emergency powers of the centre to be assumed when the security of the country is threatened, when there is a failure of the Constitution in a state or when there is a threat to the financial stability of any state. The Union in such events can function as a unitary state. National peril creates centralisation of authority in all federations but the emergency powers of the Union extend beyond security situations and give an overseeing role to the centre that is incompatible with traditional ideas of federalism.

There are, further, Articles 200 and 201 under which the Governor—a Presidential appointee—may reserve a bill passed by the state legislature for the consideration of the President who may veto it without assigning any reason.

There is finally the extraordinary position that there is nothing permanent or sacrosanct about the identity of the states. Their boundaries can be altered and, indeed, the existence of individual states can be brought to an end by Parliament at will. Units whose political identity can be obliterated by Parliament can hardly be considered sovereign in any

sense of the term. It is true that the powers of a state cannot be altered by this means, but this only stresses the functional role of a unit, not its inherent autonomy.

8. The autonomy implicit in the division of powers, on which basically the federal character of the Union rests, can thus be seen as a functional devolution rather than as a conferment of sovereign rights.

This functional arrangement represents the will of the people and was found necessary as an administrative convenience. A country as large in size and as diverse in population as India could not be governed effectively from a central point and could experience stability only in a governmental system in which local initative was blended with strong central control. The arrangement had to be built into the Constitution to give it legal force.

9. It is clear that the framers of the Constitution have deliberately given the country a strong centre. In any federation the main task is to reconcile the conflicting claims of national "sovereignty" and state "sovereignty", and to harmonize these is the function of a federal constitution. Where exactly the balance is struck varies from federation to federation. In India, the Constitution-makers declared their intention at the very outset that "the Constitution would be federal with a strong Centre" and in their epoch-making work followed this principle with firm consistency. The chief sources of strength for the centre are the wide range of subjects allotted to it for legislative and executive functioning (including residuary matters) and a financial division which gives it sources far more diverse and with a higher potential than those given to the states.

10. The centre has accordingly the duty cast upon it to determine and devolve resources to the states to enable them to meet their obligations. It also has a lending relationship which has consistently added to its dimensions. Since the states are heavily dependent on the centre for finances the latter can and does take a lively and indeed decisive interest in development activities which constitutionally fall within

the states' sphere. In fact, it is through the purse strings and not by resort to any legislation on "economic and social planning", a subject in the Concurrent List, that the centre has chosen to influence development policy in the states.

11. But it is well to remember that, however strong a centre the Constitution may have provided for, the polity is federal and not unitary in structure. It was open to the makers of the Constitution to give India a unitary arrangement. They did not and, subject to certain provisions regarding central intervention—unusual no doubt and therefore to be employed in unusual circumstances—left the states normally with full powers to act in the legislative or executive fields falling within their jurisdiction.

12. It will thus be seen that the makers of the Constitution were not influenced by any doctrinaire ideas about federalism. The Constitution became what it is on pragmatic considerations.

13. Two conclusions follow. First, a functional arrangement of this kind cannot subserve the purposes underlying it unless it becomes an operational reality. Secondly, where the arrangement is a reality but is found to be deficient, it should be possible to consider alterations without being inhibited by any doctrinaire ideas. It is, therefore, important to see how far practice has conformed to constitutional provision and purpose, what major deviations have occurred and with what justification, and which of the existing provisions and procedures have proved inadequate.

14. Centre-state relationships cover almost all aspects of administration. They come into play even in areas falling in List I and squarely entrusted to the centre. The problem of the setting up and location of public enterprises, dramatised by the steel plant agitation and the affairs of the Paradeep port, furnishes an instance. So large and complex is the field of administrative action entrusted by the Constitution to the centre and so interdependent are the functioning of the Union and the units that almost any activity will involve a centre-state relationship or an inter-state relationship in which the

centre may be required to act as umpire or broker, as the situation requires. All situations are not provided for by the law or the Constitution and a relationship has to grow, therefore, on the basis of healthy attitudes and a willingness to co-operate.

15. For delimiting the area of study the different facets of centre-state relationships could be classified as follows:—

(a) legislative relationships
(b) financial relationships
(c) administrative relationships, which in turn could be categorized as:
    (i) relationships in the sphere of planning and development; and
    (ii) relationships in spheres other than planning and development.

As our enquiry concerned itself with administrative reform and not with basic constitutional and political reform we did not consider it appropriate to include legislative relationships within the scope of this study. One approach to our task could have been to subject the three lists in the Seventh Schedule to a review. That we have not done so is not only because we consider those lists to have been drawn up admirably well but also because this was not our view of our task. We do not consider the time ripe or in any other way appropriate for a general review of this nature. Our interest has been in the other two items, both of which are within our ambit, the second one by specific entrustment under the terms of reference of the Commission and the first—financial relationships—because it cannot be separated from the second.

16. Is it possible to discern an overall approach, in the centre and the states, covering the gamut of centre-state relationships? The answer must be that there is no clear and consciously thought out approach. During the last many years the lines of decision-making have often been political or party, and not governmental or constitutional except in form. Considerations holding sway, therefore, have also been mixed, in which the personal and political was not scrupulously

separated from the official and constitutional. Therefore, no well-understood or well-articulated strategy on centre-state relationship is observable. To the extent, however, that practice gives an indication such an approach has consisted of two main elements:—

(i) the maximum possible control over the states in the plan world of administration, using the financially stronger position of the centre to impose central thinking (considered synonymous with national thinking); and

(ii) the minimum possible involvement in the affairs of the states on the non-plan side.

It has been our endeavour to subject this approach to a fresh scrutiny. The relationship between the centre and the states must subserve vital national objectives and interests and the first task must be to identify these. To our mind, and we do not think there can be any serious difference of opinion here, the two objectives requiring stress are to keep the country united and to forge ahead in the field of economic and social development. To what extent has the approach adopted so far helped in attaining these objectives? The country has remained united and has also gone ahead with development with considerable success but it appears to us that the polarization of the two attitudes in this strategy has prevented the right balance from being maintained. A perusal of the report will reveal the weaknesses in the existing strategy. We have been impressed by the need to enable the states to become full, efficient and responsible partners in the task of development. Conversely, the objective of national integration and uniformity of standards of administrative efficiency needs to be secured through measures enabling more purposeful central involvement in selected sectors of administration and we have not hesitated to recommend the establishment of links between the states and the centre where they should exist but do not, or their fortification where they exist but anaemically.

17. Our effort thus has been to suggest measures to correct the existing imbalance in centre-state relations. We

have not in this study taken up questions of substantive policy in individual spheres even though these may involve centre-state relations in an intimate way. Thus issues concerning language or the procurement and distribution of food have been considered inappropriate for study by us. These undoubtedly have a decisive impact on the life of the people and on the tenor of centre-state relationships but it is not for a body enquiring into the need for administrative reforms to go into such substantive questions. To do so would be appropriating the functions of Government.

18. We have proceeded within the basic constitutional framework the rationale of which has not been questioned. To the extent, however, that our study of administrative relationships made the examination of constitutional provisions inevitable we have not hesitated to examine them and to recommend marginal changes, but in the main we have proceeded on the assumption that the basic constitutional fabric must remain intact. We may add that nothing in our enquiry shows the basic fabric to be inadequate for administrative purposes. So perceptively does the Constitution avoid rigidities that it can work successfully irrespective of who holds power, provided those working it mean it to work.

19. For facility of discussion, the report has been divided into three sections which lend themselves to segmented discussion. The first section deals with financial relationships, the second with relationships in the realm of planning and development and the third with relationship in fields other than finance and planning. The scheme of the report broadly is that the first chapter in each section scans the total perspective of that section, identifies the problems therein and indicates the broad approaches for coping with them. The subsequent chapters in that section deal in detail with the specific items identified for discussion in the governing chapter. Thus, the first chapter in each section purports to have the breadth of sweep to give the necessary perspective while each chapter following has a detailed discussion of individual items to furnish the necessary depth.

20. Although divided into three sections, the main proposals in this report must be read together. Any section read by itself would be liable to be construed as one-sided, as either encouraging fissiparous tendencies or introducing unitary control. It is only on viewing the perspective and accepting the strategy as a whole that the correct balance can be arrived at.

SECTION I

FINANCIAL RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I

THE PROBLEM IN OUTLINE

FINANCIAL DEPENDENCE OF STATES ON CENTRE

1.1 The allocation of resources and functions in the Constitution has consistently produced surpluses at the centre and deficits in the states. Exact correspondence of resources and functions is not possible to secure in any federal situation but in India the balance is tilted rather heavily in favour of the centre and the outstanding feature of the financial relationship between the centre and the states consequently is that the former is always the giver and the latter the receivers. The favourable position given to the centre in regard to financial resources reflects the strong-centre theme running through the Constitution and many feel that this has been an important factor in keeping the country u....d.

1.2 But if national unity had been the only consideration all resources could have been kept at the centre and devolutions made annually to the states according to their needs. That this was not done underlines another principle, namely, that the allocation of independent resources to the states is essential for responsible public administration at the state level. What degree of financial independence is appropriate for this purpose is as much a matter of judgment today as it was when the Constitution was drafted. But today's judgment can have the benefit of a quantitative analysis of the extent of dependence of the states on the centre over the last several years.

1.3 The imbalance between the functions and resources of the states has to an extent been sought to be rectified by the Constitution in a two-fold way. First, certain duties and taxes have to be shared by the centre and the states. Secondly, grants-in-aid are to be given by the centre under Article 275 of the Constitution to such of the states as are in need of assistance. The Constitution provides for an independent Finance Commission to make recommendations to the President in regard to the distribution of shareable taxes and the

payment of grants-in-aid to states. These provisions are designed to ensure that there should be as little central interference in state administration as possible.

1.4 With the advent of planning the devolutions mentioned above have been over-shadowed by the large grants and loans given by the centre to the states on the recommendations of the Planning Commission. The sense of dependence has been heightened by the fact that plan grants are discretionary in character, almost all of them being made under Article 282 of the Constitution. A correct appreciation of the extent to which funds transferred from the centre are helping to finance state expenditure must take account of all channels, disregarding technical distinctions between items where the states receive shares as a matter of right and items where that is not so or between grants and loans.

Extent of dependence

1.5 A total view of this kind reveals the following facts for three plan periods:

	First Plan	Second Plan	Third Plan
	(Rs. in crores)		
Total expenditure* of states (plan and non-plan) ..	3359	5885	10833
Resources from centre	1413	2868	5602
Resources as percentage of expenditure	42	49	52
Total state plan expenditure	1427	2083	4058
Resources from centre deployed on plan side	880	1058	2502
Central assistance as percentage of plan expenditure ..	61·6	50.8	61·5

(*Excluding discharge of debt and repayment of loans).

It will be seen that while the expenditure levels in the states have risen three times financing by funds received from the centre in one way or another has gone up four times. The central component was almost equal to the total plan expenditure of the states in the First Plan period and exceeded it by Rs. 800 crores in the Second and by Rs. 1,600 crores in the Third. The centre could, from this angle, be said to have virtually financed all state plans, and state resources on their

own have not been enough even to meet all non-plan expenditure. There is thus heavy and increasing financial dependence on the centre.

Reasons for dependence

1.6 The main reasons for this state of affairs are that

(i) the resources for raising funds available to the states are comparatively inelastic;

(ii) the functions allocated to the states are such as lead compulsively to expanding responsibilities, particularly in the context of ambitious development plans; and

(iii) important sources for national plan financing are foreign aid and deficit financing, both tending to strengthen central rather than state resources.

MECHANISM OF DEVOLUTION

1.7 Allied to the problem of heavy financial dependence is that relating to the mechanism of financial devolutions and assistance. The introduction of planning and the consequent increase in public spending widened the gap in the states between needs and resources. Interpreting the figures given in the tables above, nearly three-fifths of the plan expenditure incurred by the states in the first three plans was directly financed by the centre and almost the whole of the rest indirectly through Finance Commission grants and shared taxes. While the latter would be regarded by the states as something they were entitled to as a matter of constitutional right, the former was discretionary with the centre. This discretionary element introduced a centralising tendency the dimensions of which were not envisaged by the Constitution-makers. For bridging the gaps created by the plans a complex system was evolved for the transfer of funds from the centre to the states through the Planning Commission, bypassing the Finance Commission.

Restriction of Finance Commission's scope to non-plan needs

1.8 The Finance Commission has confined itself to assessing non-plan needs, recommending the devolution and distribution of taxes and grants-in-aid to meet gaps in the non-plan budgets of the states. These grants-in-aid (also sometimes referred to as "statutory grants") are given under Article 275. This Article requires that grants-in-aid should be paid to such of the states as are in need of assistance. It gives no indication

as to how and for what purposes such "needs" should be computed. It makes no distinction between plan and non-plan or development and maintenance needs. In theory, therefore, there is nothing to prevent the Finance Commissions from taking into account plan requirements also (in fact the second and the third Commissions attempted this partially), but in practice this responsibility is primarily looked after by the Planning Commission. The Finance Commission has restricted its jurisdiction to an examination of non-plan revenue needs only and following the pattern evolved by Niemeyer under a similar provision in the Government of India Act, 1935, it estimates the revenue gap of each state after taking into account its share of divisible taxes.

1.9 This restriction is not without its own logic. If the Finance Commission were to devolve plan grants it would be necessary for it to know beforehand the size of the central and state plans. But the size of a state plan can be determined in a reasonably accurate manner only after non-plan needs have been estimated and provided for. If the Planning Commission finalises the plan before the Finance Commission decides the devolutions the scheme for plan financing may be upset by the subsequent recommendations of the Finance Commission. If, on the other hand, the Finance Commission assesses plan requirements itself and devolves plan grants without waiting for the Planning Commission's estimates, it will have effectively assumed to itself the responsibility for planning. This a shortlived body like the Finance Commission is not equipped to discharge. If the Planning Commission continues to co-exist in such a situation it will, instead of allocating resources so as to suit a known plan, be forced to adjust the plan itself to fit into a scheme of allocations already accomplished. Both the situations mentioned above are untenable and, realising this, the Finance Commissions have operated with the self-imposed restriction of examining non-plan needs only, leaving plan needs severely alone.

Overlap of jurisdictions of Planning and Finance Commissions

1.10 The matter does not end there. Although the jurisdiction of the Finance Commission has been limited to revenue expenditure, it has not been possible wholly to avoid crossing wires with the Planning Commission. On the plan

side, for arriving at estimates of plan resources, the Planning Commission too scrutinises budgetary needs and *inter alia* assesses the non-plan revenue gap of states. There is thus duplication of work in the two Commissions and, because of their timings and differences in approach, divergence in assessment as well, both of the expenditure and the resources of the states. These inconsistencies at the centre (the Planning Commission and the Finance Commission are part of the central complex) stem from the absence of an integrated approach inherent in the system. Nor is inconsistency the only drawback: there are others more comprehensively listed in the relevant chapter. Had the financial provisions of the Constitution been framed at a time when the Planning Commission was in full operation, it is a matter for conjecture whether the determination of the budgetary needs of the states would have been entrusted to two separate bodies *viz.* the Finance Commission and the Planning Commission.

1.11 Shortcomings are thus discernible in the existing system. The two major drawbacks are the excessive financial dependence of the states on the centre and the faulty mechanism of devolving funds. A review of the existing system is called for to give the states a position that is self-respecting and at the same time consistent with the strong-centre concept. A treatment of this problem must, therefore, embrace consideration of measures to rationalise the mechanism of devolution, to secure a more equitable distribution of resources between the centre and the states and to streamline the financial arrangements for formulating and implementing plans. The first two aspects are dealt with in this section. Section II takes up the third.

ARTICLE 282 AND NON-PLAN GRANTS

1.12 The massive use of Article 282 for discretionary grants and its scope in relation to that of Article 275 which deals with statutory grants has come in for considerable comment. In financial relations between the centre and the states this Article has come to play a most significant part. The subject of discretionary grants for plan projects is dealt with in Section II. Discretionary grants, however, are given

in the non-plan sector also and in this section are discussed the general scope of Article 282, its use for non-plan purposes and the principles that should qualify non-plan items for central grants.

THE PROBLEM OF INDEBTEDNESS

1.13 Yet another problem is the massive indebtedness of the states to the centre. The figure of indebtedness has risen from Rs. 239 crores in 1952 to Rs. 4094 crores in 1966. This enormous increase has taken place largely because of increased public spending for development, although unexpected contingencies like famine and other natural calamities have also contributed to the bill. The states are finding it increasingly difficult to repay their debts or even the interest charges in some cases. Most of them do not have revenue surpluses to meet debt obligations from. A system has, therefore, been developed in which the states repay their loans and, in some cases even interest charges, to the centre out of fresh borrowings from the centre. Such repayments constitute an increasingly large part of the total state borrowings from the centre. They rose from 9% of total state loans in the First Plan period to 33% in the Third Plan period, and are expected to be as much as 40% in the Fourth Plan period. As it is improbable that the states will be able to repay these loans from their own revenues in the foreseeable future, the cycle can be expected to continue with an expanding sweep. There is a degree of unreality in the present arrangement which breeds unhealthy attitudes both in the giver and the receiver. And yet, given the magnitude of the borrowings, the cycle seems inevitable. To introduce rationality and realism in the lending-borrowing relationship between the centre and the states a different approach is required.

1.14 How can the burden of loans be lightened? The simple view, taken by the classical economists, is that only programmes which yield direct financial returns should be financed through the public debt. This view would imply that either the remaining development programmes should be financed from the general revenues, for which purpose taxation may have to be increased considerably, or that they

should be curtailed to the extent to which they can be supported by a feasible level of taxation. Neither of these courses is acceptable politically and economically. The role and responsibility of government in social and economic development, recognised even in advanced countries, has a special significance in developing ones. Accordingly, as planning gained momentum in this country the earlier constraints upon the classification of expenditures were substantially relaxed and it is no longer merely revenue-earning schemes that are financed from the capital budget. The capital budget is used also to finance schemes that create physical assets without earning revenue, and, through the mechanism of the miscellaneous development loan, schemes in the revenue budget as well even though they might not create physical assets.

If the earlier constraints were too rigid and no longer tenable the present notions appear to be too loose. Two questions, both interlinked, need investigation here: whether government to government lending is based on realistic principles and whether the principles determining the terms and conditions of advances require a radical change so that borrowing relationships and the borrowing mechanism become simpler and more realistic, more just to the states and yet more clearly relatable to economic considerations.

Unauthorised overdrafts by states on the Reserve Bank of India is an allied problem and, although second in importance to the main problem, merits attention and has been discussed in the relevant chapter.

1.15 The three propositions, together forming a new approach to centre-state financial relationships, that have thus been examined and developed are that: NEW APPROACH TO FINANCIAL RELATIONS

(i) the arrangements for devolution should be such as will allow the states' resources to correspond more nearly to their obligations;

(ii) the devolutions should be made in a manner that enables an integrated view to be taken of the plan as well as non-plan needs of both the centre and the states;

(iii) the advancement of loans should be related to the productive principle.

ITEMS DISCUSSED IN SECTION I

1.16 A chapterwise discussion follows on the following problems:

A—The magnitude and mechanism of devolutions

B—The indebtedness of the states

C—Discretionary non-plan grants.

CHAPTER II

DEVOLUTIONS

INTRODUCTORY

2.1 The first chapter brings out the extent of the dependence of the states on financial assistance from the centre. To some extent financial dependence of the states on the centre is desirable as representing a centripetal force. But the magnitude of such dependence makes a qualitative difference. When the extent of dependence goes too far wrong attitudes begin to make an appearance amongst those responsible for financial management in the states as well as at the centre. In the states, excessive dependence on the centre tends to produce irresponsibility and operational inefficiency. At the centre, dominant financial power in relation to the states gives central authorities exaggerated notions of their importance and knowledge and does not allow sufficient place to the points of view of the states. It is important, therefore, that the degree of financial dependence of the states on the centre should be reduced to the minimum, because that minimum would be adequate from the point of view of giving the centre controlling powers in the context of ensuring national integration.

2.2 How the extent of financial dependence should be reduced is the problem we have addressed ourselves to in this chapter. The first thing to consider in this connection is whether some of the sources of revenue at present allotted to the centre could be transfered to the states. This, in fact, would be the only method of reducing dependence as such. But the country being a single economic unit any transference of sources that occurs is, for reasons of administrative convenience, more likely to take place in the opposite direction. Sales tax affords a good illustration, for here is a state tax which, for reasons of economy and efficiency of effort, should perhaps gradually give way to central excise duties. Another method of assisting the states could be the exploitation of the taxes mentioned in Article 269, which are leviable only by and at the discretion of the centre with the proceeds going to

the states. But this would have only a limited impact and may not provide a solution to the problem of dependence on the centre. With these two possibilities ruled out, it would appear that the phenomenon of financial dependence of the states is, in a sense, unavoidable.

2.3 But there is another method of looking at the problem. Financial assistance flows from the centre to the states in the main through two channels. One is the channel of what might be called assured devolutions, where the states are not left in any kind of doubt about what they are going to get and their share goes to them regardless of what they spend it on and how they perform. In this class fall divisible taxes and grants-in-aid under Article 275. One of the features of this sector of assured devolutions is that the amounts are determined on the basis of a semi-judicial adjudgment by the Finance Commission. The other channel is where executive and discretionary factors operate, and while the amounts transferred to the states are large, their actual quantum remains uncertain and subject to year to year fluctuations. Plan grants fall in this category. A valid method of decreasing the dependence of the states on the centre would be to see that the states get more through assured devolutions. This is the approach we have explored in this chapter.

2.4 But before doing so it is necessary to examine the problem of an appropriate mechanism through which all kinds of devolutions to the states should flow. The relevance of examining the mechanism lies in the fact that not unless things are rationalised there can the further question be gone into as to how devolutions could be made more extensive. It has already been mentioned how, in practice, the operation of the Finance Commission has come to be restricted to the non-plan sphere and why overlap occurs between the estimates of the Planning and the Finance Commissions. The drawbacks of the existing system require a detailed discussion so as to make it possible for a recommendation for a more rational arrangement to emerge.

MECHANISM OF DEVOLUTION

2.5 The five-yearly assessment of the non-plan needs of states as carried out by the Finance Commission suffers

from some basic handicaps:

(i) as an *ad hoc,* short-lived body the Commission does not have the advantage of a permanent secretariat engaged in a continuous study of central and state budgets and in a systematic collection of statistical data.

In determining the grant-in-aid of revenues of a state the Finance Commission prepares forecasts of revenues and expenditures for each of the years for which it is to make an award. For this purpose the rates of growth for each type of revenue and expenditure are worked out and all factors likely to affect them are taken into account. If the total revenue receipts of the state (inclusive of its share of central taxes and duties) fall short of its revenue expenditure the deficit is made up by recommending a grant-in-aid. In estimating revenue deficits the Finance Commission does try to make its forecasts as factual as possible, but it does not succeed in making satisfactory assessments in regard to

(a) the tax effort made by a state in relation to its tax potential; and

(b) the relative performance of states in the matter of economy in current or proposed administrative expenditure consistent with efficiency.

There is limited time at the disposal of the Commission and, because of this limitation, quantitative issues tend to squeeze out qualitative ones in the Commission's examination of budgetary needs. The states find indirect (and unintended) encouragement for the belief that, no matter how poor their tax efforts and how high their levels of expenditure, the non-plan revenue gap will be made good by the Finance Commission;

(ii) although not debarred by the Constitution from recommending capital as well as plan grants to states it is now an established convention that

the Commission merely determines the non-plan revenue needs of the states, leaving it to the Planning Commission to assess plan requirements;

(iii) the Finance Commission does not scrutinise the estimates of central revenues and expenditure. As the underlying purpose of its investigations is to discover an optimum allocation of funds between the centre and states, leaving the former out of the scope of its study is a major omission.

Differences in approach between Finance and Planning Commissions

2.6 The restriction of the Finance Commission's examination to the non-plan revenue side of state budgets arises chiefly out of a desire to avoid overlap with the Planning Commission. The shortcomings of this arrangement are several:

(i) there is a marked difference between the basic approaches of the Finance and the Planning Commissions. According to the Finance Commission the broad purpose of devolution is to make larger funds available to the states to meet their expanding responsibilities in the non-plan field, to help them in equalising standards of basic social services and to meet their special obligations. The emphasis of the Finance Commission is on the consolidation of what has been achieved or acquired. The Planning Commission's emphasis on the other hand is on taking the level of development a stage or two further. With its focus on development, the Planning Commission strives constantly for maximum economy in the non-plan field, larger savings in current revenues and higher plan outlays even if it means drastic reductions in non-plan expenditure. There is thus a lack of a unified or integrated approach to the total problem of assessing the needs of the states and the resources required by them;

(ii) the Finance Commission confines itself to current revenues and expenditure while the Planning Commission deals with the entire range of the

government's activities, including those in the nature of banking, deposits and remittances;

(iii) unlike the Finance Commission the Planning Commission examines the budgetary position of the centre in detail;

(iv) there appears to be a "target" element in the estimates of resources made by the Planning Commission, while the Finance Commission tries to make its estimates as factual as possible;

(v) the Planning Commission, being interested primarily in incremental development, largely ignores the need for adequately preserving the gains secured in previous plans. Since the qualitative aspect is not usually gone into by the Finance Commission the maintenance of completed schemes suffers by falling between two stools;

(vi) the states play off one body against the other. For the Third Plan period, the figures presented by some of the states to the Finance Commission under-estimated revenue resources while those to the Planning Commission over-estimated them. For the Fourth Plan the states were unable to use this device as the fourth Finance Commission had completed its work before the plan was formulated. But some of them, it is understood, managed to attain their objective (*viz.* a large plan) by presenting an over-optimistic picture of their capital resources;

(vii) the very time-lag between the final assessments of the two bodies causes divergence and discrepancies.

Divergent conclusions

2.7 It has to be noted that, as against a revenue surplus of Rs. 357 crores assessed for the states for the Fourth Plan period by the fourth Finance Commission (1965), the surplus estimated by the Resources Working Group (and finally adopted by the Planning Commission for the purpose of its Note 'Fourth Five Year Plan—Resources, Outlays and Programmes' published in September, 1965) was 772 crores.

The difference of Rs. 415 crores could in part be attributed to the fact that anticipated receipts from Fourth Plan schemes were taken into account by the Resources Working Group but not by the Finance Commission. However, this cannot account for the entire difference. A precise analysis of the factors responsible for the difference is not possible as the Finance Commission has not disclosed its estimates of receipts and expenditures but it is natural that, with their different approaches and different methods of estimation, there should be substantial divergence between the conclusions arrived at by the two Commissions.

2.8 A state, if it is to receive the whole of the central plan assistance assured to it for a particular year, has to mobilise its own resources to the extent agreed upon during the plan discussions and has to reach the targetted plan outlays. The state has, therefore, so to regulate its non-plan expenditure and administer its taxes as to be able to produce a revenue surplus of the order estimated, not by the Finance Commission, but by the Planning Commission. The Planning Commission's assessment of the needs of the states, in a manner of speaking, supersedes that of the Finance Commission. When, however, the state comes up to the centre for additional non-plan assistance for some purpose or the other, the centre examines the demand in the light of the report of the latest Finance Commission, the assumption being that all normal non-plan requirements have been duly taken care of by that Commission. This is obviously disadvantageous to the state, as under the compulsions of planning not all the revenue resources made available by the Finance Commission for non-plan purposes are actually so available. The centre (taking the Finance Commission and the Planning Commission as part of the central complex) thus appears to speak with two minds.

Summing up of defects of present system

2.9 The foregoing discussion emphasises the overlap of functions of the Finance and the Planning Commissions and the divergent assessments they make. With their different yardsticks and approaches it would appear that the two Commissions, between them, have not been able to secure the best possible distribution of resources.

TWO ALTERNATIVE APPROACHES

This is a substantial defect. The deficiencies and drawbacks it gives rise to have been enumerated above. Possibilities have, therefore, to be explored of an arrangement which will remove these drawbacks. Two broad alternatives could be considered: one which would radically alter the existing system by bringing about a unification of the two bodies, and the other which, while retaining the existing structure, would seek to secure better co-ordination by an adjustment of procedures and functions.

THE FIRST ALTERNATIVE—A UNIFIED AGENCY

2.10 An ideal solution would be to devise a machinery that would singly have charge of the total problem of plan and non-plan needs and thus be able to develop well-coordinated solutions to the different aspects of the problem. The machinery should function on a continuous basis. It should operate independently enough to inspire confidence amongst the states and yet not in so detached a way as to be cut off from reality. While it is difficult to think of a machinery that will be a perfect answer in every way, three possible models can be considered for an organisational solution of this kind, each being a variation on the same basic theme—the unification of the two agencies:

I—the functions of the Finance Commission may be expanded to include what the Planning Commission is doing in the matter of plan assistance, and it may function as a standing constitutional body;

II—the Planning Commission may be reconstituted to be a combination of two wings, one looking after planning and the other performing the functions of statutory devolutions;

III—the functions of the Planning Commission may be expanded to embrace those of the Finance Commission.

First Model: Finance Commission to take over planning functions

2.11 The first model is on the lines of a suggestion made by the third Finance Commission. The earlier suggestion was turned down because such functions could not be given to a body cut off from the responsibility for plan formulation and implementation. That argument is still valid and this alternative must consequently be rejected.

Second Model—Unified constitutional body with two statutory wings

2.12 In the second model the unified Finance-cum-Planning Commission would be a constitutional body consisting of two wings, the planning committee and the finance committee. The commission could be headed by the Prime Minister and have minister as well as non-minister members. The planning committee, which would be co-extensive with the entire commission, could formulate, review and evaluate the plan, while the finance committee, which would consist only of the non-minister members, could go into the question of devolutions (except loans) for plan as well as non-plan purposes. The finance committee while devolving could, if felt necessary, have as its chairman a person who is not a member of the commission.

2.13 The two committees could be served by a common secretariat. The planning committee could (a) arrange for the preparatory work on the plan (b) prepare, with the help of the states, a tentative plan and (c) arrive at tentative conclusions in regard to non-plan expenditure, plan outlays and the extent of basic as well as additional resources both for the centre and the states. The finance committee could then go into the matter further and make its award on the non-plan side as well as on the grants portion of plan assistance. The award would make it clear that plan grants, although devolved statutorily under Article 275, would be available for expenditure on plan schemes alone. After the finance committee makes its award, the planning committee could finalise the central and state plans and submit them to the National Development Council as at present.

2.14 The advantages of the second model are as follows:—

(i) there would be continuity in the exercises carried out on the non-plan side, which is not the case in the *ad hoc* studies taken up now every five years;

(ii) plan and non-plan requirements would be viewed in relation to one another and in the context of the resources and the requirements of the states as well as of the centre;

(iii) plan grants would be devolved once for all for a period of five years. This could compel the governments as well as the unified commission to be as realistic as possible in their forecasting;

(iv) as plan and non-plan devolutions would be made simultaneously, it would be possible to secure an optimum distribution of the resources available.

2.15 But there are also disadvantages :

(i) with two independent wings headed by different chairmen procedures would become clumsy and involved;

(ii) in the event of a disagreement between the two committees over an important issue an impasse might result and much time lost in arriving at an acceptable solution;

(iii) the deciding voice being that of the devolving body, *viz.* the finance committee, the arrangement would reduce the planning committee headed by the Prime Minister to the level of a recommending wing. Or, in the alternative, if the finance committee consisting of persons who would also belong to the planning committee, were to accept, invariably and in routine, the suggestions of the latter, impartiality and independent thinking might cease to be assured and the commission may not inspire the confidence of the states.

This model, in its working, is thus likely to meet with difficulties and must also be rejected.

Third Model—Unified body without statutory wings

2.16 The third model envisages a unified commission performing the functions of both the finance and the planning committees in the second model described above. Two variants are possible. The commission may either be non-statutory like the present Planning Commission or a standing constitutional body. In either case, non-minister members would be specialists or public men with wide experience.

The number of minister-members could be restricted to the Prime Minister and the Finance Minister, so that the commission can inspire confidence. By convention, the basic work, under broad policy guidelines given by the commission, could be performed by an informal committee consisting of the non-minister members. The procedure for determining plan and non-plan devolutions could be somewhat similar to that described at paragraph 2.13 above, a major departure making for smoother and simpler operations being that the award declaring non-plan devolutions and plan grants would be made at the end of plan formulation. The single commission would continue to seek the guidance of the National Development Council (or any advisory organ that replaces it) in all important matters like the size of the plan, taxation policies and the like. If the commission is made non-statutory, grants (non-plan and, if necessary plan) recommended by it can be assured to the states by Parliament passing a law for the purpose once in five years.

2.17 Such a commission would possess all the advantages enumerated in paragraph 2.14 above. Not only would it be operationally superior to the second model, it would also ensure an integrated approach to the whole problem of devolutions and grants. But for the drawbacks described below this model would provide the ideal solution.

2.18 The non-statutory variant of this model may not inspire the confidence of the states, particularly in regard to tax-sharing. Besides it would not be legally binding on the centre to consult the non-statutory commission, and this would deprive the states of a vital constitutional safeguard at present available to them. It might for this purpose become necessary to think of a constitutional body to determine the allocation and distribution of shareable taxes.

2.19 If the single commission were to be given constitutional status, the following other handicaps would have to be reckoned with :

(i) as the recommendations of such a body would affect the entire range of governmental activities, plan as well as non-plan, it might come to wield

too much influence over the policies of the centre and the states;

(ii) the planning process, being essentially one of continuous review, consultation and adjustment, must be flexible and must make allowance for political needs. The juridical approach that might permeate the deliberations of the unified constitutional body would make the process rigid;

(iii) any report by a body headed by the Prime Minister should be unanimous. But in a commission consisting mostly of experts, the Prime Minister and the Finance Minister can, in theory, find themselves out-voted and placed in an embarrassing position. Also, members may air their differences by appending minutes of dissent;

(iv) with the Finance Minister as one of its members, the commission may appear to favour the centre rather than the states and hence its awards may not prove acceptable to the states, particularly in regard to tax-sharing;

(v) superimposing the duties of the Finance Commission on those of the Planning Commission may lead to (a) the expansion of an organisation which is already quite large and (b) administrative difficulties and bottlenecks.

The defects at (i), (iv) and (v) are not insurmountable nor as serious as those at (ii) and (iii). There does not seem to be any method of getting round the latter, and this model, therefore, would also not seem capable of providing the right solution.

Drawbacks of statutory plan grants

2.20 If in the case of these models plan grants are statutory, all the objections listed in Chapter VII would arise. Therefore, even if any of the models were to be accepted, plan grants would have to remain "non-statutory".

FIRST ALTERNATIVE: NOT FEASIBLE

2.21 The disadvantages in a unified agency explained above are formidable and seem to outweigh the advantages. Each of the models envisages a completely new organisation and procedures which have yet to be tried. As it is essential

that transition from the old to the new should be smooth, it is felt that none of these models, attractive though the last one in particular is, can be recommended. The alternative of a unified body has, therefore, to be discarded.

THE SECOND ALTERNATIVE

2.22 The impracticability of having a single body to determine devolutions of taxes and grants leads us to explore possibilities of securing an integrated approach without merging the two bodies. This alternative presents us with two choices. The first would give them a common secretariat, and, in part, common membership, but leave their functions unchanged. The second would redistribute functions, and, if necessary, give the two bodies a common secretariat.

Streamlining existing procedures

Common Membership and Secretariat

2.23 The first choice itself has two variants, one based on statute and the other non-statutory. In the first variant, the Planning Commission could be made a statutory body either by amending the Constitution or by an Act of Parliament. A statute can lay down qualifications for the non-minister members of the Planning Commission. The Finance Commission Act could then be amended to provide for :

(a) the chairmanship by an existing or former High Court Judge, if necessary;

(b) the automatic membership of all or some of the non-minister members of the Planning Commission;

(c) two or three other members fulfilling the prescribed qualifications; and

(d) a member-secretary to be the same as the Secretary to the Planning Commission.

2.24 In the second variant, the Planning Commission could continue to be the non-statutory body that it is at present. By convention the non-minister members of the Planning Commission could be so chosen that they qualify for membership of the Finance Commission. All the other arrangements mentioned in paragraph 2.23 could also be introduced by convention.

2.25 An important feature in both variants is that the two Commissions would have a common secretariat and a common secretary. The secretary (and the common members)

would co-ordinate the thinking of the two Commissions and help them resolve the differences that may develop. The Finance Commission could take an overall view of both plan and non-plan needs for its quinquennial devolution, while the Planning Commission could base its scheme of plan financing on the conclusions reached by the Finance Commission. Thus the benefit of integration could be secured without an actual fusion of the two Commissions. The award of the Finance Commission in regard to the devolution of taxes and grants-in-aid and the announcement by the Planning Commission of state plans and plan assistance could be almost simultaneous, the timelag between the two not exceeding a couple of months or so.

2.26 While this arrangement would enable an integrated look to be taken the arrangement itself is a little clumsy and almost has an element of duplicity in it. Common membership amounts, in effect, to unifying the two Commissions, and leaves little point in having two Commissions at all. Besides, in theory at least, possibilities of friction between the two Commissions cannot be overruled. The converse of this proposition is that, in practice, it may be difficult for members to be independent.

Re-distribution of functions of Finance Commission

2.27 We now come to the second choice available in this alternative, i.e. of redistributing the functions of the Finance and the Planning Commissions. Broadly, there are three functions to be performed. There is first the task of determining the share of the states in divisible taxes and distributing that amongst the various states. There is then the task of determining how much grant-in-aid each state should get under Article 275. And, finally, there is the question of determining how much each state should get in the way of plan grants. At present, it is the Finance Commission that deals with the first two of these functions and the Planning Commission with the third. Determining how taxes should be shared is an issue which would appear to require a semi-judicial approach, because a tax sharing scheme has to be in the nature of an award by an impartial body capable of inspiring the confidence of all concerned. This function should, therefore, continue to be looked after by the Finance

Commission, which does have the attributes of a semi-judicial forum. The third of the functions listed above, namely, the determination of plan-grants for states, must similarly continue to be handled by the Planning Commission because the task is inseparable from the process of planning. This means that the only flexibility available for redistributing functions between the two Commissions is in respect of the second of the above tasks, namely, the determination of grants-in-aid under Article 275. The specific proposition we have considered is the transfer of this function from the Finance Commission to the Planning Commission.

2.28 The reason for the conflict and confusion in the present situation is that both Commissions go into the needs of the different states, and in doing so apply different criteria and arrive at different results. The Finance Commission examines the needs of the states because it has to have a formula for determining grants-in-aid and the practice has obtained from the beginning that the quantum of grants-in-aid is related to the budgetary gaps of the states. The Planning Commission examines the needs of the states in order to discover what surpluses can be made available from the non-plan side for deployment on the plan side. If the function of determining grants-in-aid were to be transferred from the Finance Commission to the Planning Commission, the states' requirements would be looked into only at one place and the occasion for conflict and confusion would disappear. The Finance Commission would then no longer have to meet the budgetary gaps of the states. The entrustment to the Planning Commission of the two tasks of fixing grants-in-aid under Article 275 as well as plan grants would not only remove the possibility of conflict and confusion, but would also enable an integrated and rational approach to be developed in regard to grants for the states after taking account of the requirements of administration as a whole. For these reasons, we consider that there is a good case for re-arranging functions in the manner mentioned above.

2.29 A possible argument against expanding the functions of the Planning Commission in the above fashion could be that, since it is primarily concerned with planning and

development, it is not likely to give adequate attention to the non-plan requirements of the states. Such a fear would be well-founded if the attitude of the Planning Commission remains as in the past. But we consider that, if the Planning Commission is made responsible for making a total assessment of states' requirements, non-plan as well as plan, its approach cannot but change. The present partiality of this body for plan requirements would then be replaced by an objectivity in regard to the total needs of administration. We do not, in other words, share the fear that entrusting the Planning Commission with the job of making a total assessment of states' needs and determining both plan grants and grants-in-aid under Article 275 would result in the claims of the plan squeezing out non-plan requirements. On the other hand, we think, there is reason to hope that such an arrangement would impel the Planning Commission to give greater attention to an aspect of non-plan requirements which has remained much neglected, namely, satisfactory maintenance of the level of development achieved under previous plans.

2.30 Another possible argument against the re-arrangement of functions discussed above could be that it would not leave the Finance Commission with enough functions. It might be said that successive Finance Commissions have been in broad agreement in regard to most of the principles and criteria for tax sharing, so much so that the Chairman of the fourth Finance Commission even suggested that these principles and criteria could be written into the Constitution itself. This being the case, it might legitimately be asked whether Finance Commissions of the future would have much to do. So long as shareable taxes remain what they are today, it does seem that the task for a Finance Commission, in the light of the principles and criteria evolved by the past Commissions, is not a very complex one. However, it is one which has to be performed by a body of appropriate status and independence and consequently the need for Finance Commissions will continue. What is important to note, in this connection, is that shareable taxes need not for ever remain what they are today. Later in this very chapter we ourselves are recommending a widening of the base of devolution. If

and when such an eventuality takes place the functions of the Finance Commission would become correspondingly more important.

2.31 Still another argument which could be urged is that this arrangement would place the states at a disadvantage. In the present dispensation the area of their assured devolutions consists of two components, *viz.*, their shares in divisible taxes and their grants-in-aid. In the proposed arrangement only the first of these would have all the features of assured devolution, the second being entrusted to the discretion of a non-statutory body like the Planning Commission. If shared taxes remain as at present, grants-in-aid will continue to be as important as they have been in the past. In that event some degree of validity would have to be conceded to this argument, although the evidence before us is that not all the states have less confidence in the Planning Commission as compared with the Finance Commission. But we do not anticipate that there will be no expansion in the area of shareable taxes. On the contrary, as mentioned earlier, we are of the view that the base of devolution should be widened by including more central taxes in the list of shareable taxes. If that view is found acceptable it will become possible for the states to get far more through the channel of divisible taxes than is the case at present, and in that event assured devolutions through the Finance Commission will again come to form a high proportion of the total devolutions passed from the centre to the states. Our views about widening the base of devolution are set out later in this chapter, but it is necessary to mention that they have influenced our thinking to some extent in suggesting a re-arrangement of functions between the Finance and the Planning Commissions.

2.32 We would, therefore, recommend that the Planning Commission should be entrusted with the entire work of determining budgetary needs. In other words, the Finance Commission should deal only with the sharing and distribution of divisible central taxes, while the Planning Commission should determine plan assistance as well as non-plan grants. This determination should take into account the

centre's needs as well as those of the states. Grants and loans for new plan schemes should be decided tentatively for a plan period and their annual amounts reviewed and finalised yearly thereafter. The transfer of functions relating to grants-in-aid from the Finance Commission to the Planning Commission would necessitate an amendment of Articles 275 and 280 of the Constitution. A question arises whether in this eventuality, both the Articles [275(1) and 282] under which grants are given to the states need be retained. One view is that grants should then be made only under Article 282, and that statutory grants should disappear. The other view is that there should be no uncertainty about the annual amounts to be paid to the states as non-plan grants-in-aid over a period of five years. A law should, therefore, be passed every five years under the substantive portion of Article 275(1) fixing the annual grants-in-aid to be paid to such of the states as require assistance. The latter view is commended.

2.33 The advantages of this arrangement are that

Advantages of redistribution

(i) there will be an integrated and comprehensive examination of plan and residual non-plan "needs" by a single body *viz.* the Planning Commission;

(ii) the divergence that is apparent in the assessments of the present two Commissions will be avoided and the distribution of resources will be placed on a sounder footing;

(iii) the Planning Commission will necessarily have to consider and make adequate provision for important non-plan items (including 'committed' expenditure);

(iv) the bulk of non-plan needs will continue to be met by devolutions through an impartial body *viz.* the Finance Commission; and

(v) in considering demands from states for additional assistance, the centre need go by only one set of estimates *viz.* those arrived at by the Planning Commission.

Secretariat for the Finance Commission

2.34 It will have to be considered whether, under the new arrangement, the Finance Commission should have a separate permanent secretariat of its own or whether it should have a secretariat common with the Planning Commission. In this arrangement the Finance Commission will not be required to fill the budgetary gaps of states but may nevertheless have to make a broad (though not a meticulous) assessment of the "needs" of the states and of the ability of the centre to meet those needs. In other words, the Commission, while determining a state's share of divisible taxes, may have to take an overall view of the functions, resources and levels of expenditure of the centre vis-a-vis those of the states. There is, therefore, a possibility of the Finance Commission's broad assessment of the states' needs differing in certain respects from the detailed assessment carried out by the Planning Commission for the purpose of determining grant assistance. A remedy that could be thought of is a common secretariat for the two Commissions. But we think this is unnecessary as the actual award of the Finance Commission will not carry assumptions or implications of the "needs" of the states, plan, or non-plan, and will, therefore, contain no estimates of budget deficits or surpluses. Moreover, in order to give the entire work of the Finance Commission an air of scrupulous impartiality and to keep it free from any allegation of bias that a body like the Planning Commission may inevitably attract, it appears necessary that it should not have any organic link with the latter body. Mention may be made here of the recommendations of the fourth Finance Commission in this connection. The Commission recommended that the cell in the Ministry of Finance which collects budget data for the Finance Commissions should be reorganised and strengthened, so that there is a continuous study of state revenues and expenditure. A unit for studying the finances of states is at present functioning in the Plan Finance Division of the Ministry of Finance and has made considerable headway in collecting and analysing various types of data in this connection. It is suggested that this unit should be strengthened, if necessary, and whenever a Finance Commission is set up, it should form the nucleus around which the Commission's secretariat is constituted.

MORE RESOURCES FOR THE STATES

2.35 As pointed out earlier, a method has to be devised of expanding the area of assured devolutions, more particularly if the proposed re-arrangement of functions between the Finance and the Planning Commissions is not to operate to the detriment of the states. Successive Finance Commissions have recommended progressively larger devolutions of taxes to the states in view of their expanding range of functions, particularly in the economic field. Nevertheless, all except a few states continue to need grants-in-aid to fill their non-plan revenue deficits. It, therefore, appears necessary :

(i) to secure for the states a larger devolution of taxes than at present, so that, in actual practice, the need for grants-in-aid under Article 275 either disappears or is minimised. This would suggest
  (a) widening the base of devolution, and
  (b) fixing the states' share of divisible taxes at sufficiently high levels;

(ii) to bring about a fuller exploitation of the assigned taxes mentioned in Article 269 of the Constitution; and

(iii) to safeguard the interests of the states in the matter of such of the central taxes as concern them and to have an institutional forum for consultations between the centre and the states to facilitate an appreciation of common problems.

The first two questions are dealt with in the succeeding paragraphs of this chapter. Proposals for the third have been adumbrated in Section III of this report, as this desideratum extends to other areas of centre-state relationships.

WIDENING THE BASE OF DEVOLUTION

2.36 One way of reducing the excessive dependence of the states is by increasing devolutions. The normal essential expenditures of states have been increasing and will continue to do so at a fast rate. It will, therefore, have to be examined whether there is not a case for widening the base of devolution by extending shareability to other taxes. The existing restriction is academic because, if necessary, the share of the states in the taxes and duties shareable at present could be as high as 99%. How high the share is fixed depends on how broad or narrow the base of devolution is. Recognising that

the needs of the states increasingly outstrip their resources and that funds have to be devolved by the centre in some form or other it is only realistic to grant the case for extending the base of devolution and bring other taxes also within the ambit of shareability. This will also enable rationalisation in tax levy and administration. It will further have to be considered whether the corporation tax and such of the surcharges as continue to be levied by the centre, for say, more than three years, should not be shared with the states. The question of sharing corporation tax will have to be viewed in the light of the exclusion from the divisible pool of income-tax paid by companies.

Prescribing shares of divisible taxes in the Constitution

2.37 Having regard to rapidly changing conditions, no five-yearly award, however, carefully worked out, can prove to be even reasonably accurate. A view can, therefore, be taken that in regard to shareable levies, the respective shares of the states should be laid down in the Constitution itself. The states' share, whether of income-tax or Union excises, has been progressively increased by the successive Finance Commissions. A stage has perhaps been reached where no substantial increases in terms of percentages of net proceeds can be expected by the states. It has, therefore, been suggested by some that the percentage shares of the states should be incorporated in the Constitution itself. A further suggestion is that the states' share should be fixed at a level which would take care of a part of the revenue plan needs of the states. If this is done, most of the states will not have a revenue deficit and the task of determining the non-plan needs of the states will be further simplified.

Some proponents of this course would also say that if the percentage shares of the states of the proceeds of income-tax and shareable excises are fixed at a sufficiently high level in the Constitution itself, it would not be necessary to widen the base of devolution. This last argument seems to be dubious. A glance at the analysis at Appendix I will show that there are substantial sources of revenue, existing and potential, other than income-tax and shareable excises (corporation tax being an example of the first and wealth tax of the second) and that a permanent fixation of a percentage of the last two may

not, in a changing economy, secure to the states the advantage sought. Even if the percentage of the proceeds of some taxes and duties is fixed in the Constitution, the issue of widening the base of devolution will have to be looked into.

Distribution among states of share of divisible taxes

2.38 As regards the distribution of the states' share of divisible taxes among the states *inter se*, there is a view that an expert body should suggest a distribution based on factors that can be reliably determined. If this is not possible general principles and criteria should be evolved for the distribution of divisible taxes among the states. Once such a set of principles and criteria receives general acceptance the task of the five-yearly Finance Commission will be rendered easier and will be limited to the application of these principles. A major drawback here is that shares and weightages fixed today may cease to have any validity in future years. In a dynamic situation, changes may be so fast that recommendations made now may cease to have much meaning and relevance five years hence.

Exploiting taxes in Article 269

2.39 Article 269 of the Constitution mentions a number of taxes which can be levied and collected by the centre but the proceeds of which are to be wholly assigned to the states. Inter-state sales tax and estate duty are the only taxes in this category which are being levied at present. As regards the remaining, terminal tax on goods or passengers carried by railway, sea or air and taxes on sale or purchase of newspapers and on advertisements are potential sources of fairly sizeable revenues. Taxes on railway fares and freights could be levied only in lieu of increases in fares and freights and will naturally affect the revenues of the Railways. A balance will, therefore, have to be struck between the needs of the states and of the Railways. Duties in respect of succession to property other than agricultural land have not been levied so far mainly on account of the difficulties arising from the peculiar features of the Hindu joint family system. Taxes other than stamp duties on transactions in stock exchanges and futures markets may not yield significant revenue, as only a few states possess well-developed stock exchanges. A comprehensive examination should now be carried out in

regard to the possibility of exploiting these taxes and the repercussions that these are likely to have on the economy.

2.40 We, therefore, recommend that an expert body should examine all the courses mentioned in paragraphs 2.36 to 2.39. The basic idea of this examination would be to see how larger resources and greater devolutions to the states can be ensured. The advantage of such a study could also be taken to examine other related questions, e.g. the rationalisation of taxes. Possible items for examination are listed in Appendix 2. This body could either be a specially set up Finance Enquiry Commission, or the next Finance Commission itself, set up earlier and with terms of reference suitably enlarged.

SUMMARY OF CONCLUSIONS

2.41 To conclude:

(1) the work of allocating and distributing shareable taxes and that of determining grants-in-aid under Article 275 to states in need of assistance are distinct functions and should be separated by entrusting the latter to the Planning Commission;

(paragraphs 2.27 to 2.33)

(2) the present unit in the Plan Finance Division of the Ministry of Finance which has made considerable headway in the collection and analysis of data relating to state finances should be strengthened. This unit should form the nucleus of every Finance Commission's secretariat;

(paragraph 2.34)

(3) either a Special Finance Enquiry Commission or the next Finance Commission may examine the question of widening the base of devolution and of prescribing the shares of divisible taxes in the Constitution itself (for possible terms of reference, please see Appendix 2).

(paragraphs 2.35 to 2.40)

CHAPTER III

LOANS AND INDEBTEDNESS

INTRODUCTORY

Centre's responsibility under the Constitution

3.1 The Constitution has placed a special responsibility on the centre in regard to borrowings by the states. Subject to such conditions as may be laid down by Parliament by law, the centre can make loans to a state or give guarantees in respect of loans raised by a state. A state cannot raise a loan without the consent of the centre as long as a central loan is outstanding or a guarantee given by the centre is in operation. In giving such consent the centre can impose such conditions as it thinks fit. In practice, every state has to borrow regularly from the centre so that at no time is it free from indebtedness to the centre. Consequently, its entire borrowing operations come under the centre's control.

Sources of states' borrowings—market borrowings

3.2 The two important categories of borrowings by states are market loans and loans from the centre. The market borrowing programmes of the states and the centre are co-ordinated by the Reserve Bank of India in consultation with the centre whose formal concurrence is necessary under the Constitution whenever a state loan is floated. Market borrowings do not present any repayment problem. On maturity these are usually repaid by raising new market loans. The orthodox method, however, is to amortize market loans from revenue. The limited availability of funds in the market in a way acts as a check on the undue accumulation of such debts.

Central loans

3.3 The states receive central loans for plan as well as non-plan purposes. Repayment of central loans is usually in equated annual instalments. A period of moratorium is sometimes allowed for the repayment of the principal, having regard to the nature of the scheme on which a loan is utilised. No limit has been placed on the extent to which a state can borrow from the centre. Neither has there been any attempt to link the magnitude of central loans with the capacity of the recipient state to extinguish its overall debt obligations.

Main cause of heavy in debtedness

3.4 The increase in the size of the debt has been steep over the three plan periods. Fresh loans invariably outstrip repayments and in effect the principal (and, in some cases, even interest) is repaid by taking fresh loans from the centre.

Certain attitudes arising from heavy indebtedness

3.5 This has bred in the states a degree of indifference as a result of which, when receiving assistance from the centre, they heed little whether the assistance is in the form of a loan or a grant. For this very reason mounting indebtedness does not seem to have brought about keen awareness of the need for either thrift or the efficient utilisation of scarce resources. On the contrary, we have it on the authority of the Ministry of Finance, even the less developed states, undeterred by the heavy burden of debts, have permitted wasteful expenditure, embarked on expensive projects without carefully assessing their likely returns in relation to their expenditure and generally taken advantage of the centre's anxiety not to let any part of the country remain without development (*vide* paragraph 10 of the 22nd Report of the Public Accounts Committee, 1963-64). The affair of the Paradeep Port Project is an illustration of the aberrations that have thus occurred. The existing creditor-debtor relationship between the centre and the states is partly responsible for breeding these attitudes and for providing a mechanism for their successful play.

Artificiality of states' indebtedness to centre

3.6 The ratio of the total public debt in India (for the centre and the states put together) to the national income stood at 51.2 per cent in 1963. This compares favourably with 67.4 per cent for Australia, 76.4 per cent for Canada, 123.2 per cent for U.K. and 64.6 per cent for U.S.A. for the same year. Relatively, therefore, the burden of public debt is not heavy in India. This can also be inferred from the fact that, not taking into account the centre's loans to the states, the revenue receipts, whether of the centre or the states, have kept pace with debt repayment obligations. In this context, the phenomenal and now almost unmanageable burden of outstanding central loans to states appears paradoxical and calls for an examination of the very basis of the lender-borrower relationship between the centre and the states.

3.7 This relationship has various aspects but the essential fact about it is the unmanageable magnitude of the debt of the states and it is to the treatment of this problem that we have primarily addressed ourselves in this chapter. Once this problem, which calls for an examination of the principles governing the advancement of loans, is settled the other aspects fall in place. Of the latter, we have discussed in this chapter what seemed to us the most pressing, namely, arrangements for the amortization of existing debts and the problem of unauthorised overdrafts.

Matters examined in this chapter

3.8 Between 1951-52 and 1965-66 the outstanding debt liabilities of the states rose from Rs. 445 crores to Rs. 5,382 crores—a more than twelve-fold increase over a period of 15 years. Of these liabilities, while market borrowings increased six times—from Rs. 149 crores to Rs. 870 crores—outstanding central loans rose from Rs. 239 crores to Rs. 4,094 crores —a seventeen-fold increase (Appendix 3). The increasing dependence of the states on central loans for their capital disbursements is revealed by the following figures:—

RISING MAGNITUDE OF INDEBTEDNESS

Growth of indebtedness

	First Plan	Second Plan	Third Plan
	(In crores of rupees)		
A—Capital disbursements*	998	1905	3458
B—Loans from the centre	770	1417	3091
Percentage of B to A*	77	74	89

(*Excluding appropriation to contingency and other funds, state trading transactions and all debt and deposit items excepting loans and advances by states).

3.9 The large intake of central loans has naturally resulted in a steadily increasing repayment obligation. The proportion of repayments of central loans to the amount of such loans received rose from 9% in the First Plan period to 26% in the Second and to 33% in the Third (Appendix 4). A rough estimate shows that during the Fourth Plan period repayments are likely to constitute 40% of the new loans to be received.

Increasing repayment obligations

3.10 Amortization practices differ from state to state. Only a few states attempt to meet central loan repayments

Amortization of debt

from revenues and none really has the revenues to succeed in the attempt. For unlike the centre, which has had comfortable revenue surpluses since the beginning of the Third Plan period, the surpluses of the states as a whole have been meagre (Appendix 5). Thus the proportion which the repayment of central loans by states bore to their total revenue receipts increased from 3 per cent for the First Plan period to 9 per cent for the Second and to 14 per cent for the Third (*vide* Appendix 6), while in the case of the centre the ratio of debt repayments to total revenues has not shown an increase nearly as sharp (Appendix 7). The result, as shown above, is that loan repayments are financed exclusively from fresh borrowings. As long as this is so the states cannot hope to effect any reduction in their overall indebtedness. Amortization or financing repayments from revenues is just not possible with a debt of this scale. The primary need, therefore, is to see if the creditor-debtor relationship between the centre and the states cannot be so altered in the future as to reduce substantially the pressure of debt on the latter. Only if that can be done can any scheme of amortization hold out promise of success.

Non-plan loans

3.11 The great burden of outstanding central loans is due mainly to the rising magnitude of plan loans. Loans are indeed given for non-plan purposes also but these do not give rise to a comparable problem. They fall under three categories—(i) general purpose loans, *e.g.*, share of small savings and ways and means advances, (ii) loans utilised by states for re-lending to third parties, *e.g.* loans to displaced goldsmiths, and (iii) loans for other specific purposes, *e.g.* assistance for natural calamities, police housing schemes etc.

The problem of liquidating non plan loans

3.12 A state's share of small savings, which is received by it as a central loan, is comparable to its market borrowings. Both represent the savings of the community residing in the state and are an index of its economic prosperity. As such, it would be reasonable to assume that the state would be able to raise taxes of an order commensurate with the volume of such borrowings. In other words, it should be possible to amortize these loans from revenue without the state having to curtail its normal activities. Ways and means

advances are extended by the centre to help a state tide over seasonal fluctuations in its finances. A prudent state should be able to repay them without having to resort to extra borrowings. Loans in the second category, *viz.*, those utilised by the states for re-lending can be paid out of the recoveries effected from the loanees and hence should not pose any difficulty either. As for loans in the third category, their magnitude is likely to be comparatively small except when, in abnormal circumstances such as severe drought, the states are forced to borrow large amounts. In the Third Plan period these constituted roughly ten to fifteen per cent of the total of all non-plan loans (Rs. 1,214 crores).

3.13 It will be clear that non-plan loans by themselves are well within the capacity of the states to liquidate by amortization (or repayment from revenue where necessary) and that the causes for rising indebtedness must be looked for in the massive increase in plan loans. We shall, therefore, examine the principles underlying the giving of loan assistance for state plans. It may be mentioned that plan loans to the states amounted to Rs. 805 crores in the Second Plan and Rs. 1,953 crores in the Third Plan. In the Fourth Plan, they are likely to be of the order of Rs. 2,800 crores.

Determining plan assistance to states

3.14 This magnitude of indebtedness for financing the plans is marked by certain anomalies. Planning involves, among other things, the formulation of physical targets, the estimation of financial resources and the balancing of the physical plan against the financial plan for the country as a whole. After the plan outlays and the financial resources to be raised have been determined for the centre on the one hand and the states on the other, the gap between the states' resources and their plan outlays is left to be met by assistance from the centre. The central assistance so determined is distributed among the states and the plan outlay for each state finalised. At this stage the grant and loan components of central assistance are not known.

Principle of partnership between centre and states

3.15 A striking feature of this process is that till the end of the plan formulation stage the centre and the states are thought of as partners in a common endeavour. The ostensible aim is to assist each state according to its developmental needs, such needs having been determined in the national

plan. A state when assured of a certain quantum of central assistance for its plan is committed to its execution. There can be no question of a state backing out on the plea that the central loan assistance earmarked for it will prove unduly burdensome.

Loan obligations not shared equitably

3.16 A logical corollary of this partnership would be to ensure an equitable sharing of the repayment obligations which the capital resources distributed bring in their wake. But the present scheme of financing is not designed to ensure this. Except for a small portion treated as capital grant all the capital resources transferred to a state are treated as loan, whether or not the state has the capacity to shoulder the loan obligation. Consequently, when the plan is implemented and plan assistance is released a relationship of partners is transformed into a creditor-debtor relationship. Herein lies the anomaly which has placed an unduly heavy burden of outstanding loans on the states.

3.17 An assumption implicit in the existing system is that a state alone derives all the benefits from the development schemes that it finances. But these schemes promote economic activity and result in increases in the production of goods and services, increases in national income and so on. The centre shares in these benefits through increases in its financial resources (*e.g.* Union excises, corporation tax and market borrowings, to name a few). As a sharer in the fruits of such projects in the states the centre cannot, in fairness to the states, absolve itself of all responsibility for shouldering a reasonable portion of the repayment obligations referred to in the preceding paragraph. It might be argued that the converse is also true, that a state benefits from a central public undertaking located in it, but that this has never been held to be a ground requiring the state to share the centre's burden of repaying the debt incurred on that project. This converse argument does not have the same force because in this second situation the increased resources of the state would be balanced in due course by a decrease in the assistance from the centre. A comparable balancing mechanism, despite the sharing of taxes, does not exist in the first.

3.18 Another drawback in the present scheme of financing is that there is no attempt to determine separately the gap between the revenue resources of a state and the revenue component of its plan outlay and to cover the gap by revenue grant assistance. The result is that a state is sometimes forced to finance its revenue plan expenditure from capital funds. This is not sound financial practice, as capital funds are required to be spent either on concrete assets of a material character or for reducing recurring liabilities. During the Third Plan period there was an instance of a state which exceeded its targets for both additional taxation and mobilisation of other resources (and did not resort to overdrafts) and yet had to meet a part of its revenue plan expenditure from capital resources.

Utilization of capital resources for revenue expenditure

3.19 The third drawback in the present system of loan assistance is the insufficient attention paid to the financial remunerativeness of plan schemes. Financial prudence requires that, in utilising borrowed funds, the maximum possible returns should be ensured so that the capacity to repay such funds is not impaired. The selection of plan schemes is no doubt based on broad economic criteria but this by itself is not good enough. State governments should strive to secure the maximum possible financial returns consistent with the overall goals and objectives of the plan. In actual practice, in the quest for broad economic and social benefits, this aspect is largely over-looked. To some extent this neglect arises out of factors built into the present system for determining loan assistance.

Insufficient attention to financial remunerativeness of schemes

3.20 As explained in Chapter VII of this report it is with the help of patterns of assistance that the loan and the grant components of central assistance to be released against each head of development in the state plan are determined. These patterns do not take into account the financial remunerativeness of schemes. To quote a few examples, flood control schemes and anti-sea-erosion schemes earn 100 per cent loan assistance, irrespective of the extent to which they might be productive. Again, the miscellaneous development loan, which is earned on the basis of the total plan outlay (excluding outlay on agricultural programmes, co-operation and

certain river-valley projects), indirectly finances even revenue expenditure on plan schemes where the very mention of a productivity test is irrelevant. We venture to suggest that the failure to link the loan relationship with tests of financial remunerativeness of the outlays financed from loans is possibly a factor contributing to the partial failure of some of the plan effort mentioned in the Draft Outline of the Fourth Five Year Plan.

Drawback in regard to period of loan repayment

3.21 The fourth drawback relates to repayment schedules. The standard period of 15 years and the upper limit of 25 years prescribed for the period of repayment are based on the periods of maturity of medium and long-term market loans and are not related to the capacity of the schemes financed to yield returns. The result is that the repayment of a loan starts long before the scheme financed by it starts yielding returns. For example, the miscellaneous development loan, which finances major irrigation schemes and power schemes, has to be repaid in ten years even though these schemes often need longer periods to yield returns. This obviously places a strain on a state's resources.

PROPOSED MECHANISM FOR LOAN FINANCING

3.22 Any rational scheme for the transfer of capital resources should be in consonance with the spirit of partnership which guides the formulation of plans and the allocation of central assistance. The centre, in the matter of utilisation of its capital resources earmarked for the plan, would, therefore, be justified in treating the capital expenditure of the states on the same footing as its own capital expenditure. Just as the centre does not expect all its own investments to yield returns sufficient to recoup the capital invested, it should not in principle insist that the capital resources transferred to the states should invariably be repayable by them. If the country had been a unitary state the government would have had to undertake and finance the very activities which the states now finance through central loans. Presumably the government in the unitary arrangement would also have used capital resources for these without necessarily expecting or providing for repayment in every case. Why then should the centre deal with the states in the matter of loan repayments as a bank deals with entrepreneurs especially when the fiscal

Principles that should govern distribution of capital resources

administration of the country has many unitary features and the states are in fact heavily dependent on the centre? True, in the hypothetical unitary state the government would be responsible for the wise selection and efficient execution of projects but, in a federal set-up, the Central Government as the lender could attach suitable conditions to ensure that capital assistance is utilised as efficiently as possible. Where the investments made by the states with the help of capital assistance from the centre yield direct financial returns, the centre would be justified in claiming a reasonable share of the returns. Where they do not, there is no real justification for expecting returns or repayment. This principle, stated baldly here, is spelt out in the succeeding paragraphs.

Categories of central loans

3.23. The categorisation made in paragraph 3.11 for non-plan loans holds good for all central loans and may be repeated:

(i) general purpose loans, *e.g.*, share of small savings and ways and means advances. These are entirely non-plan loans but like market borrowings are available to the states for any purpose;

(ii) loans utilised by states for re-lending to third parties which may be plan or non-plan; and

(iii) loans which are given for specific purposes (whether itemized or broad) and utilised by the states towards direct expenditure, *i.e.* expenditure other than on loans to third parties. These again may be plan or non-plan. As pointed out in paragraph 3.12 above non-plan loans of this variety are of comparatively small magnitude and, as such, we have grouped them with plan loans utilised for direct expenditure.

General purpose loans

3.24 As regards the first category, the repayment obligations are, and should remain, entirely the responsibility of a state. These loans are not normally meant for revenue expenditure, but even if some part is so utilised that is the concern of the state as it has to repay it like a market borrowing. We do not, therefore, suggest any change either in the present procedure for giving general purpose loans or in their terms and conditions

Loans utilised for re-lending

3.25 A central loan which is re-lent by a state to third parties can be repaid out of the recoveries effected from them. Such loans should not in general pose any special repayment difficulty and should continue to be recovered from the states as at present. It is the business of the state to collect them in turn, and in time, from the parties to whom these moneys are lent. Remissness on the part of a state must not here be viewed leniently and recovery should be effected from it in full by the centre. But we feel that the terms and conditions of repayment could be softened in the case of loans utilised for re-lending to an autonomous body in the public sector which provides a public utility (*e.g.* a development authority) and, as a consequence, faces the same handicaps as the state government in the matter of increasing its earnings and repaying its loans.

3.26 What is the extent to which the centre should exercise itemised control over such loans? We feel that no change in the existing procedures is necessary for non-plan loans earmarked for re-lending. This control is at present itemised, every loan being given by the centre to a state for a specific purpose. For plan loans to be re-lent we would recommend a different approach. In Section II we have spelt out measures for bringing about a considerable degree of decentralization and have suggested an approach according to which grants for plan purposes will be block grants to be used by the states at their discretion, except for crucially important programmes to be specified beforehand for which grants will be tied. The same approach could govern loans meant for re-lending to third parties. A block amount may be loaned to a state for re-lending in a particular year, after assessing its broad lending requirements according to its plan. Its utilization on individual schemes may be left to the state government. Loans for crucially important programmes may be issued in a tied form so that they are utilized only on these programmes.

Revenue expenditure to earn only revenue grants

3.27 Coming to the third category, the first step required to rationalise the system of loan assistance to states is to affirm the principle that capital assistance must not be used to finance revenue expenditure. As non-plan loan assistance

is decided with reference to individual cases this reform can be brought into effect in the non-plan field without much difficulty. For plan assistance it will be necessary, in the first instance, to work out the revenue and capital components of the estimated plan outlay of each state. The total revenue grant assistance to be provided by the centre should be of a magnitude which, together with a state's own revenue resources for the plan, balances the revenue plan outlay. The balance of revenue resources, if any, with the centre will, as is the usual practice, be added to the centre's pool of capital assistance to states. In this way, the possibility of a state having to meet revenue expenditure from capital funds will be avoided.

3.28 That the balancing of revenue resources against revenue expenditure is feasible will be evident from the latest estimates pertaining to the Third Plan. As against a revenue expenditure of roughly Rs. 893 crores on state plans, the states raised revenue resources of Rs. 790 crores and received grants totalling up to Rs. 549 crores from the centre. In addition, the centre had a revenue surplus of Rs. 1,020 crores. In other words, sufficient revenue resources were available in all for meeting all revenue expenditure on state plans and no assistance for this purpose from capital resources was necessary taking the all-India picture as a whole. However, as pointed out in paragraph 3.18 above, such balancing was not attempted for individual states, with the result that in one instance revenue plan expenditure had to be financed from capital resources. To rule out such possibilities this balancing, which is perfectly possible, should be attempted for every state and the revenue component of grants assessed accordingly.

Productive and non-productive schemes

3.29 Schemes eligible for capital assistance but not involving re-lending to third parties are divisible into two groups:—

(i) financially productive schemes, *i.e.* schemes expected to yield revenues, which, after meeting all expenses on their working, maintenance and upkeep are not less than a prescribed percentage of their cost of execution; and

(ii) financially non-productive schemes, *i.e.* schemes which do not fall in the above group.

Our proposal basically is that loan assistance should be confined to financially productive schemes and that for the remaining schemes assistance should be given in the form of grants, revenue for meeting revenue expenditure and capital for meeting capital expenditure. This seems to us a rational course, for loan creates an obligation on the borrower to make the necessary return and this is to be expected only from financially productive schemes. From the point of view of the states it is harsh to have to give interest on and to repay loans taken for, non-productive schemes which nevertheless have to be undertaken in the national interest.

3.30 Two important ends are sought to be secured by this approach. First, the entire lending arrangement will be rationalized, as we shall presently show. Secondly, special attention will be paid to financially productive schemes and the financial returns from them will be maximised. It is important that the centre should be in a position to locate, among the numerous schemes for which central assistance is sought by a state, those which are productive.

Loan assistance for productive schemes

3.31 Loans for productive schemes should be given on the following terms:—

(i) the loan should be non-repayable but should bear an appropriate rate of interest. A state should, however, be free to refund the whole or part of such loan at any time;

(ii) the loan should be tied to a scheme or a group of schemes as may be prescribed; and

(iii) a state should have the option of taking a repayable loan on the usual terms, if it feels that the terms of a non-repayable loan are less advantageous.

It has to be noted that the above terms are based on anticipated returns and not on the returns that will actually be realised. The procedure governing the release of assistance will, by relating it to actual expenditure, ensure that the amount is spent for the purpose for which it is advanced.

Implications

3.32 Non-repayable loans for productive schemes will be a novel feature. Such loans will finance productive schemes

amd, hence, will be comparable to the investments made by thie centre in public sector enterprises. Just as these enterprises are expected to pay dividend on investments, states wiill likewise assure the centre of a minimum return by way of interest charges on non-repayable loans. These terms are no) doubt rigorous but rigour needs to be introduced in financiaal management and in selecting and implementing remunerattive schemes. Absence of this rigour, and of criteria of, or evcen at times the recognition of the need for, profitability has ledl to imprudent spending in the past. By introducing this discipline the states, in order to cope with their obligations, cam be expected to pay more attention to the selection and effiicient implementation of schemes and to secure maximum retiurn from them. If the payments to be made to the centre are not covered by receipts from these schemes the fact can quiite legitimately be commented upon by audit, a corrective that is not available in the present system.

Identifying financially productive schemes

3.33 In the non-plan field, identifying productive schiemes will not present much difficulty as loan assistance is determined separately for each type of scheme. To identify productive plan schemes, it will be necessary to:—

(i) conduct a detailed survey of sectors like agricultural production, irrigation, power, industries, transport and communications with a view to segregating schemes which are likely to be productive;

(ii) examine schemes so segregated intensively. The objective should be to prescribe the minimum rate of financial returns that a scheme or a group of schemes should be expected to yield. Wherever possible, upper limits for the capital and maintenance expenses on the schemes as well as norms in regard to the cost of execution should be prescribed, keeping in view the objectives the scheme or schemes are supposed to fulfil, their location and so forth. In the case of a composite scheme like a multipurpose project, the productive part of the scheme should be separated and a minimum rate of return, ceilings on recurring

expenses and cost norms should be prescribed for it;

(iii) prescribe the patterns of loan assistance that different categories of productive schemes will be afforded. As mentioned in paragraph 3.31 above loan assistance may be tied to individual schemes or groups of schemes as may be found convenient. Productive schemes, however, should not be eligible for grant assistance, tied or untied; and

(iv) survey and examine state plan schemes continually. The object should be to identify as many productive schemes as possible, to lay down new standards and to bring up to date existing standards.

Financial productivity and other plan criteria

3.34 The main idea is to promote the efficient implementation of schemes, without detriment to either the other economic criteria or the plan objectives which determine the inclusion of such schemes in the plan. Thus the rate of return that a scheme should be required to yield may vary from sector to sector or from scheme to scheme and there need not be a single minimum rate for all schemes. The criterion of financial productivity, therefore, need not come in the way of plan formulation techniques. On the other hand it should help to maximise, through the proper execution of schemes, other economic benefits as well. There will thus be a renewed emphasis on "productivity" in the wider sense of the term.

Agency to identify productive schemes

3.35 The question arises as to which central organisation will identify productive schemes and lay down norms. This work is intimately connected with plan formulation and the financing of the plan, and hence, we feel, should be undertaken by the Planning Commission, in consultation with the Ministry of Finance and other central ministries concerned. The final decisions in regard to the patterns of loan assistance will naturally have to be taken by the Ministry of Finance in consultation with the Commission.

Scrutiny of productive schemes by centre

3.36 It may further be necessary for the centre to scrutinise certain categories of productive schemes in the state plans before approving loan assistance for them. For example

a scheme whose estimates depart significantly from approved norms or whose total cost exceeds certain prescribed limits may be examined in detail by the centre. It is, however, difficult to visualise at this stage what schemes will need scrutiny at the centre, which agency will scrutinise them and what type of scrutiny will be exercised. These are matters which the centre will have to decide from time to time in the light of the experience gained in working the new scheme of plan financing.

Capital grants for non-productive schemes

3.37 Financially non-productive schemes should be eligible for capital grants. To prevent the use of these grants for revenue expenditure they should be tied to the estimated capital outlay on the state plan as a whole (excluding loans to third parties). Within this broad framework, the principles suggested in Section II for the utilization of plan grants should be applicable here. Thus, reappropriation should be freely permitted except that grants for schemes or groups of schemes considered crucial or of national importance should be tied.

Implications

3.38 Capital grants are not an unknown feature. Such grants are given even now for purposes like slum clearance, rural housing, border roads and water supply and sanitation programmes. The present practice is that these are written back to revenue over a period of 15 years, on the ground that the grants do not create any concrete assets for the centre and ought, therefore, to be met from revenue. But, as explained in paragraph 3.22 above, the centre should take the view that, when a state creates or acquires durable assets with the help of the capital funds of the centre, the main purpose of raising those funds is fulfilled in the same manner as when capital funds are used for creating or acquiring the centre's own durable assets. There should, therefore, be no need to write back these capital grants to revenue.

3.39 It is true that an asset may be financially non-productive and yet increase the revenue-earning capacity of the government concerned (*e.g.*, roads). It would appear that the centre, when it gives a capital grant instead of a repayable loan to a state for expenditure on an unproductive asset, deprives itself of interest charges and also derives no share

in the indirect benefits that might accrue to the state from the asset. But this, as already explained earlier, is only superficially true, for any increase in the revenues of a state on account of the saving in interest charges and the indirect benefits resulting from the asset means a reduction in the revenue grant assistance to be provided by the centre for plan and non-plan purposes. The net loss of revenues to the centre would not be significant.

Miscellaneous development loan to be discontinued

3.40 It will be observed that, in the new proposal, specific purpose loans from the centre will finance only capital expenditure in the states and that there will be no place for a non-descript loan such as the miscellaneous development loan, which has provided an easy means of departing from the priorities laid down for the plan. The device of the miscellaneous development loan must, therefore, disappear in the new scheme of things.

Financial implications

3.41 We shall now attempt to estimate in a broad way the possible repercussions of the above proposals on the centre's resources. It would be of interest to note that the gap between new loans advanced to the states and repayments from the states has increased from Rs. 698 crores in the First Plan period to Rs. 1,052 crores in the Second and Rs. 2,078 crores in the Third. In the Fourth Plan period it is likely to be of the order of Rs. 2,800 crores. The widening gap is explained by the heavy increase in outlay in successive plans, the outlay in any plan period being roughly twice the outlay in the previous period (Appendix 8). In keeping with this trend, loan assistance has progressively increased. Thus there is, on the one hand, a large transfer of capital resources in the shape of loan repayments from the states to the centre and, on the other, a large transfer of these resources to the states as fresh loan assistance, giving an air of unreality to the whole exercise. The widening gap between fresh loans and loan repayments shows that even if a moratorium were given on all repayments the centre would still have sizeable capital resources left from which to grant assistance to the states. But the actual effect of our proposals will fall far short of a total moratorium.

3.42 As the criterion of financial productivity has not figured very prominently in plan formulation it has proved difficult to collect reliable data about the extent to which central loan assistance has been utilised for financially productive schemes. Moreover, as loan assistance for state plan schemes is released by heads of development and as a large part of the assistance is given in the form of the miscellaneous development loan, it is also difficult to arrive at any firm conclusion about the extent to which central loans have been utilised for re-lending purposes. Nevertheless, to see whether the arrangements proposed will stand the test of practicability, it would be worthwhile attempting an estimation, however rough, on the basis of some *ad hoc* assumptions. These assumptions, we know, are challengeable, but no sophisticated analysis being possible for lack of reliable data, they can at least help us form some idea of the practical effects of our proposal.

3.43 By treating irrigation, power and industries as productive sectors (without attempting to lay down a minimum rate of return), and the remaining sectors as either partially productive or totally unproductive, we have roughly estimated that, out of the total assistance (plan and non-plan) of Rs. 3,100 crores paid to the states in the Third Plan period, loans amounting to Rs. 1,000 crores were utilised by the states for productive and partially productive schemes and Rs. 600 crores for non-productive schemes, while the balance represented either general purpose loans or loans utilised for re-lending.

Working this scheme backwards we find that if the proposal to give non-repayable loans and capital grants for productive and non-productive schemes respectively had been brought into effect in the Third Plan period, roughly 50 per cent of the total capital assistance would have been in the shape of such loans and grants. Assistance in the shape of repayable loans would have decreased by a corresponding amount. In view of what has been said in paragraph 3.41 above, this would not have impaired the resources position of the centre. Nor would the net assistance to the states have been affected.

Some salient features of proposed system

3.44 It would be pertinent to observe here that these proposals do not seek to modify the techniques of plan formulation or the size of the plans. Denial of loans for schemes at present qualifying for them will not mean denial of assistance, for such schemes will be eligible for grants. What the new scheme purports to achieve is to place the transfer of resources on a more rational and realistic basis without affecting the volume of resources available for the centre for its own plans or the volume of resources available to the states for theirs.

3.45 The scheme of loan financing suggested in this chapter gives the states greater discretion in certain areas and also aims to reduce their interest and repayment burden to reasonable proportions. It should not for that reason be misunderstood as something which will usher in an era of unchecked and unpreventable state irresponsibility. In regard to loans issued for remunerative purposes the centre will in fact have more control than at present to ensure that its funds are invested wisely and well. This is because the scheme envisages careful scrutiny of state schemes before declaring them eligible for loan financing. There is also the point that the scheme does not visualise the possibility of states securing grants for schemes which should be regarded as productive. In addition, we would suggest that procedures for releasing loan assistance for remunerative schemes should be such that they ensure the utilisation of funds for the purpose to which they relate. Furthermore, we would also suggest that if a scheme adjudged as remunerative and thus eligible for loan assistance is operated by a state in a fashion that turns it into an unremunerative scheme, the state concerned should nevertheless be required to pay the stipulated interest on the loan taken, and that, at the time of a five-yearly assessment of the non-plan needs of the state, such interest charges should not qualify for grant assistance. This should provide adequate discipline to prevent diversion of loan funds to unauthorised purposes and also to ensure economic implementation of the schemes concerned. In regard to block loans issued for plan purposes, this kind of sanction will, of course, not be available, but we consider that the states could be ex-

pected to conform to certain minimum standards of financial performance which would rule out the possibility of the suggested arrangement resulting in confusion or chaos. It has to be borne in mind that states have to come to the centre for loans, and this gives the centre a powerful position from which it should be able to operate the proposed scheme of loan financing without much difficulty. The ultimate sanction in the case of states which persistently misuse loan funds or default in any other way is always available to the centre in the form of denial or reduction of further loan assistance to such states.

3.46. The system suggested by us has the following advantages:— Advantages of proposed system

(i) as a substantial part of capital assistance will not have to be paid back there will be a considerable easing of the burden of loans on the states;

(ii) the loss of resources to the centre will only be notional as under the existing arrangements repayments of loans are routed back to the states as fresh loan assistance;

(iii) the states (and the centre) will become cost conscious and will pay greater attention to maximising financial returns from state schemes;

(iv) the financial results of the working of productive schemes can be scrutinised by audit. This will provide a valuable tool for judging the efficiency of implementation;

(v) it will be ensured that capital assistance does not finance revenue expenditure incurred by the states; and

(vi) the states will have to ensure efficiency in implementing the schemes as they will have to pay the prescribed interest irrespective of returns.

3.47 It has been suggested to us that loan assistance to state for financing large projects in sectors like irrigation power, industry and transport should be channelled through Creation of a National Development Bank

a National Development Bank. The object is to introduce a banker's approach so that the technical feasibility and financial viability of a scheme can be subjected to the appraisal of a competent and objective authority. The Development Bank, it is expected, will be immune to political pressurising and will be in a better position than the Central Government to (i) determine loan assistance on purely business considerations, (ii) enforce efficient implementation of schemes and (iii) ensure proper servicing of loans. The bank will also be able to give competent technical advice where needed.

Drawbacks

3.48. The concept of having an independent authority for financing large schemes is no doubt attractive. But, as an institution set up by the centre and with nominees of the centre on its board of directors, it is difficult to say whether such a bank can in practice act independently of the centre. If each individual state is represented on the board, problems of pressure-politics, lobbying and partiality will only increase. Besides, applying sanctions against defaultng states may prove difficult. We have the instance of the Reserve Bank experiencing difficulty in taking effective steps against states which resort to unauthorised overdrafts. Moreover, the Development Bank will have to work in close co-ordination with the Ministry of Finance and the Planning Commission. Should the bank fail to establish rapport with these authorities it will very likely come in for criticism at the hands of the centre as well as the states. This will certainly place the bank in an embarrassing position and impede its proper functioning. Further, it will need a large contingent of technical staff to assess the techno-financial feasibility of schemes in the various sectors and watch the progress of their implementation. This will mean duplication of the work that will have to be done as part of plan formulation by central ministries and their technical organisations like the Central Water and Power Commission.

In view of all these difficulties we feel that the rationalisation of the creditor-debtor relationship of the centre and the states does not in itself call for the establishment of such an institution.

Treatment of existing debts

3.49 The system of loan-financing outlined by us takes care of loans to be given in the future. Central loans which are outstanding pose certain special problems for which also a solution has to be devised. Treatment of these debts will necessarily have to be considered in the context of the centre's own debts, its repayment obligations, and its resources position. The steps that we think should be taken to resolve this problem are outlined below:—

(i) that portion of the outstanding debt of each state which has been utilised for re-lending to third parties should first be determined. Repayment of this portion to the centre should be insisted upon and should present no difficulty;

(ii) a comprehensive survey should be undertaken of the investments made by the different states with the help of central loans and a realistic assessment made of the proportion of the outstanding loans which can be linked with productive assets. A repayment programme should be drawn up for each state for the productive part of its outstanding central loans, keeping in view the returns expected. Converting the productive part of the debt into an interest-bearing non-repayable loan can also be considered;

(iii) the burden of the remaining part of the debt, against which no financial return can be expected, may be apportioned between the centre and the states and a method devised of writing it off to revenues over a period of time.

3.50 The whole problem of outstanding central loans to states will thus have to be examined from the long-range point of view and will need to take into account the effect of the steps proposed on the finances of the centre and the states. As the problem is of considerable complexity and is likely to prove time-consuming, we recommend that the matter should be referred to the expert body the establishment of which we have recommended in Chapter II. The items that it could look into have been listed in Appendix 2.

Amortization of debt

3.51 A programme drawn up for the repayment of the productive part of the outstanding central loans to the states will bring up the question of amortizing loans from revenue. A financial practice accepted as sound is to extinguish loan obligations either by making amortization arrangements or by repaying loans from revenues. Towards the end of the First Plan the states started experiencing difficulties in balancing their revenue budgets, mainly on account of the increased borrowings for the purpose of implementing their development plans. On the ground that all resources were being mobilised for financing the plan and that no real revenue surpluses were available the centre in 1955 advised the states that they should repay loans from their capital resources and make provision for only such sinking funds as they were bound to set up in accordance with any law or with any specific undertaking given in the case of any loan. Since then, no uniform practice in regard to amortization has been followed by the states.

3.52 If the system of loan financing proposed here is introduced and the problem of existing debts tackled in the manner recommended by us the total indebtedness of each state will be reduced to reasonable proportions. It may then be possible to introduce the sinking fund method for the amortization of outstanding loans and to make provisions in this behalf at the time of the five-yearly assessments of non-plan needs. The rate at which contributions to the sinking fund should be charged to revenues, the period over which debts should be extinguished, and the manner in which the revenues set aside should be held or invested, are matters of detail which should also be worked out by the proposed expert body.

UNAUTHORISED OVERDRAFTS

Need for financial discipline

3.53 The entire discussion in the foregoing paragraphs pre-supposes that state governments comply with the customary restrictions of the budget and strive to adhere to the terms of any agreement or undertaking which they may have entered upon. It will readily be conceded that if there is lack of financial discipline all procedural reforms will be fruitless. Restrictions on the use of central loans will have

no meaning if a state indulges freely in overdrafts on the Reserve Bank and, for clearing them, relies on *ad hoc* central assistance being provided. This tendency, unfortunately, has been greatly on the increase in recent years and cannot but cause concern for the financial health of the country as a whole.

Seasonal overdrafts

3.54 Overdrafts for short periods can occur in spite of best efforts to prevent them e.g. when, in the event of a natural calamity or the purchase of food stocks, large payments have to be made at short notice. Overdrafts may also be seasonal as when, at certain periods of the year, revenues invariably fall short of expenditure. Such overdrafts are understandable and need cause no concern. They offend the letter and not the spirit of the law. Perhaps to legitimize them the limits of authorised overdrafts could be raised so as to accommodate seasonal fluctuations. If necessary, the possibility of having different limits for different quarters of a year could also be considered.

Persistent overdrafts and remedies

3.55 This consideration to a state over its seasonal unauthorised overdrafts implies that at the close of the cycle, say the year (or shorter period), the unauthorised overdraft will disappear. A persistent overdraft, however, (with no extraordinary circumstances such as a continuing drought to justify it) shows the state's inability, or unwillingness, to balance expenditure against receipts. The inability may arise from a faulty reporting system in the state government. Thus a state which is unable to keep a proper watch over its incomings and outgoings may not be able to take timely steps to curtail its expenditure if the resources actually realised fall short of the resources anticipated. A remedy for this would be to strengthen the reporting system so that a single agency in the state government receives prompt and up-to-date information in regard to the receipts and payments occurring on behalf of the state. A remedy on these lines has been suggested by the Study Team on Financial Administration. Much the greater problem is, however, presented by wilful overdrafts by states undertaking programmes in full knowledge of the fact that the requisite resources are not

available and possibly without effecting all possible economies.

3.56 Of the two remedial measures provided by the law, i.e., stoppage of payments on behalf of the defaulting state by the Reserve Bank and, in the last resort, the declaration of a financial emergency by the President bringing the management of the finances of the state and, by implication, its administration under his control, the first has grave administrative and the second equally grave political repercussions. These remedies have, therefore, never been applied. (This only serves to emphasize a truth that is even otherwise obvious, that lack of financial prudence on the part of a responsible government cannot be remedied by mere organisational or procedural improvements). The tight resources position of the states has also made recourse to overdrafts unavoidable to some extent and has morally inhibited the application of these correctives. The enforcement of discipline requires conditions in which it can be practised. Our proposals in this and the last chapter are designed, among other things, to give the states more elbow room and to enable and indeed compel them to exercise responsibility. They can, therefore, justifiably be expected to exercise the discipline that must accompany responsibility. If irresponsibility persists, its treatment will not be so much a matter of administrative reform as of the will that the centre can summon and the tactics that it can employ to chasten a wayward state.

SUMMARY OF CONCLUSIONS

3.57 (1) Central loans to states like their share of small savings and ways and means advances which are not tied to any specific purposes may continue to be given to the states as at present.

(paragraph 3.24)

(2) (a) Loans to states for re-lending purposes should constitute a category by themselves and made repayable on existing terms and conditions.

(paragraph 3.25)

(b) **No change is necessary in the existing procedures for non-plan loans earmarked for re-lending. As regards plan loans, a block amount should be loaned to a state for re-**

lending in a particular year, after assessing its broad lending requirements according to its plan. Loans for crucially important programmes may be issued in a tied form so that they are utilised only on these programmes.

(paragraph 3.26)

(3) Capital assistance for specific purposes should not finance expenditure booked in the revenue section of the accounts of a state.

(paragraphs 3.27 and 3.28)

(4) A financially productive scheme, plan or non-plan, should be eligible for an interest-bearing non-repayable loan. The state should have the option of repaying the whole or a part of the loan at any time. It should also have the option of taking a repayable loan on the usual terms, instead of a non-repayable loan.

(paragraph 3.31)

(5) (a) Financially productive schemes included in state plans should be identified. Keeping in view the main purposes of such schemes, minimum rates of financial return, and where possible, upper limits for the capital and maintenance expenses as also norms in regard to cost of execution should be prescribed.

(b) Patterns of loan assistance for the above schemes should be evolved. Such assistance may be tied to individual schemes or groups of schemes. Productive schemes should not be eligible for grant assistance.

(c) The Planning Commission, in consultation with the Ministry of Finance and other central ministries concerned, should survey and examine state plan schemes continually with the object of identifying productive schemes, laying down new standards and bringing up-to-date existing ones.

(d) The centre should decide what types of productive schemes should come up to the centre for scrutiny before loan assistance is allowed for them.

(paragraphs 3.33 to 3.36)

(e) A non-plan scheme, before being sanctioned capital assistance, should be classified as financially productive or

non-productive as the case may be and assisted accordingly.
(paragraph 3.33)

(6) (a) Financially non-productive schemes should be eligible for capital grants. These grants should be tied to the estimated capital outlay on the plan (excluding loans to third parties). Capital grants for schemes or groups of schemes considered crucial or of national importance should be tied.
(paragraph 3.37)

(b) There should be no need to write back capital grants to revenue in the accounts of the Central Government.
(paragraph 3.38)

(7) The device of the miscellaneous development loan should disappear under the proposed system of loan-financing.
(paragraph 3.40)

(8) The problem of dealing with outstanding central loans to states as also the question of the setting up of sinking funds for the amortization of debt should be referred to an expert body along with the issues concerning devolution. Possible terms of reference have been listed at Appendix 2.
(paragraphs 3.49 to 3.52)

CHAPTER IV

NON-STATUTORY NON-PLAN GRANTS

INTRODUCTORY

4.1 It has been pointed out that there are two channels for transferring revenues in the shape of grants from the centre to the states. One is provided by Article 275 of the Constitution. This Article appears in the section dealing with the "Distribution of Revenues between the Union and the States" and was intended to serve as the main provision for grants to the states, grants here being unconditional. The second is provided by Article 282 which is one of the "Miscellaneous Financial Provisions". Its use for devolving large sums to states as conditional grants of a discretionary nature has been the subject of considerable controversy, particularly because this raises the question whether the giving of large conditional grants as a regular measure year after year is consistent with the concept of the states being operationally independent units with clearly demarcated spheres of executive authority. This chapter examines the scope of Article 282, the constitutionality of its use for giving conditional grants and the principles of its application for non-plan purposes. The impact (as distinct from the legality) of the present system of grants on the development side is dealt with in Section II of this report.

EVOLUTION OF ARTICLE 282

4.2 Article 282 has a history which assists in understanding its scope. The Government of India Act, 1919, provided for a division of functions between the centre and the provinces. The Devolution Rules framed under the Act made illegal any expenditure from the central revenues for provincial purposes and *vice versa*, and this gave rise to considerable inconvenience. The draft Government of India Bill which later became the Government of India Act, 1935 sought to avoid such a situation and provided a clause to the effect that it would be lawful for the federation to make grants for any provincial purpose and for a province to make grants for any federal purpose. It was later noticed that this

provision might not permit the federation to make a grant to an organisation the activities of which, though relatable to a "provincial" subject, were not confined to any particular province. The draft clause was, therefore, amended to enable the federation as well as the provinces to make grants for *any* purpose. Finally, when the Bill was passed, the clause (as amended) shed its marginal heading "Power of Federation and Provinces to make grants" and became the second sub-section of a section (150) the first sub-section of which provided that federal or provincial money should be applied to purposes within India only. The section carried the marginal heading "Expenditure defrayable out of Indian revenues".

4.3 The provisions in the Government of India Act, 1935 in regard to the distribution of revenues between the federation and the provinces came under the heading "Distribution of Revenues between the Federation and the Federal units" in Part VII—Chapter I of the Act. (The provisions in the present Constitution relating to these matters owe their genesis to, and closely follow, those of the 1935 Act). Sub-section (1) of Section 150 had nothing to do with the distribution of revenues between the federation and the units, nor with any of the other major heads under which the financial provisions of the Act were spelt out. It appropriately, therefore, found a place under the heading "Miscellaneous Financial Provisions".

4.4 It is clear therefore, that despite separate arrangements in the 1935 Act for the distribution of revenues between the federation and the units a residuary channel for making grants to the provinces was provided in the form of Section 150(2). No restrictions were laid down regarding the purposes for which these grants could be made. The provision appears first to have been made use of in 1943-44 when special assistance was given by the centre to Bengal in connection with famine. Thereafter, grants were given on various accounts like post-war development, grow more food, and relief and rehabilitation. At the time of the framing of the Constitution the Expert Committee on the Financial Provisions recommended the inclusion of Article 203 of the

Draft Constitution (which finally became Article 282 of the Constitution) for making specific purpose grants. Sub-section (2) of Section 150 has thus appeared as Article 282 in the Constitution, the only change being that the grants under Article 282 are for "any public purpose" while those under Section 150(2) were for "any purpose". Sub-section (1) of Section 150 has not found a place in the Constitution as it would have been incongruous, after independence, to restrict the expenditure of the centre or a state to purposes within the country. But the marginal heading of Section 150 has been retained in much the same form: it speaks of "Expenditure defrayable by the Union or a State", although the Article deals with "grants" only. With the deletion of Section 150(1) the marginal heading seems to be inappropriate.

SCOPE OF ARTICLE 282

4.5 From the standpoint of the Constitution, the states' shares of the revenues raised by the centre are fully determined by Articles 268, 269, 270 and 272, which deal with the distribution of certain taxes and duties and by Article 275, which deals with grants-in-aid to states in need of assistance. The logical inference is that Article 282 was intended, not to enable the centre to make regular grants to a state, but to serve as a residuary provision enabling the centre as well as the states to make grants for any "public" purpose.

4.6 It has been argued in this connection that the purpose of Article 282, as indicated by its marginal heading, is to validate expenditure incurred by the centre or a state on a subject not falling within its executive jurisdiction, and that such expenditure could be direct and not necessarily limited to giving of grants. This seems to us to be erroneous for the substantive article is clear enough and it does not validate direct expenditure. When the main provision is unambiguous the marginal heading (which itself is vague) cannot be used to interpret the article, particularly when it has been shown to be an obsolete remnant that should have been discarded along with Sub-section (1) of Section 150 of the 1935 Act. Unnecessary confusion has been caused by this heading but there cannot be any doubt that the Article covers only grants and not direct expenditure.

4.7 It has also been averred, notably by the Chairman of the fourth Finance Commission in a separate minute appended to the report of that body, that Article 282 "was not intended to enable the Union to make a grant to a state as such", that the Article should be used only "for the purpose for which it was originally intended" and that a specific provision may be added to the Constitution to enable the Union Government to make conditional grants to the states for implementing projects. The original intention has not been clarified in that minute and the earlier paragraphs of this chapter have tried to bring out what it really was. These make it clear that the corresponding provision in the 1935 Act envisaged the making of specific purpose grants, among others, to the provinces. Any lingering doubt on this score should be settled by a reference to the report of the Expert Committee on the basis of which the present financial provisions in the Constitution were adopted. "It is clear", said the Expert Committee, "that during the developmental stages of the country it will be necessary for the centre to make specific purpose grants to the Provinces from time to time". It is probably true that the Expert Committee could not have visualised the massive extent to which recourse would be taken to this provision. It is also possible to argue from this that, had it been the intention of the Expert Committee to make this one of the principal provisions for the transfer of large-scale assistance to provinces for their development schemes, the clause should correctly have found a place under the heading "Distribution of Revenues between the Union and the States" rather than under "Miscellaneous Financial Provisions". But this is really an objection to the extent to which the provision has been used and not to the purpose for which it has been used.

4.8 The legality of the present use of Article 282 cannot, therefore, be questioned. The arrangement, however, though not unconstitutional, is not neat. The remedy that a separate article included under the heading "Distribution of Revenues between the Union and the States" so as to enable the centre to make conditional grants to states would

certainly make it clear that Article 275 is not the only provision under which the centre assists states by means of grants. But, apart from this, there would be no practical advantage from what would amount merely to a shifting of the provisions of Article 282 from one place in the Constitution to another. A simpler proposition would be to amend the marginal heading of Article 282 to read "Grants by the Union or a State for any public purpose" so as to indicate the real purpose of the Article. The present marginal heading is a dispensable legacy of the earlier section of the 1935 Act and has possibly been unwittingly incorporated. With the deletion of the first sub-section of Section 150 of that Act this marginal heading is no longer applicable and its continuation is meaningless. We would, therefore, recommend its deletion.

USE OF ARTICLE 282 FOR NON-PLAN GRANTS

4.9 In view of the unmistakable intention of the Article as brought out above and the recognition of the need for conditional grants to fulfil the objects of a national plan, it is not a little surprising that the attack on Article 282 should have been focussed on its use for plan rather than for non-plan purposes. For it can more cogently be argued that the financial requirements of the states on the non-plan side should be met by assured grants under Article 275 and that, as conditional grants fetter the initiative and independence of action of the grantee in spheres exclusively reserved for it. Article 282 should not normally be used for giving non-plan grants. And yet substantial non-plan grants have been made forming, as Appendix 9 shows, 21 per cent of the total of all types of grants (statutory and non-statutory) passed on to the states during the Third Plan period.

4.10 The argument given in the last paragraph has for its basic premise the postulate that the entire non-plan needs of a state are covered by the devolution of taxes and grants under Article 275. Any additional grants that the state needs should be for purposes which are either sudden and unforeseen or such as could not be provided for at the time of the five-yearly assessment of non-plan needs. For such unforeseen needs the use of Article 282 for giving non-plan grants would

appear to be in order as long as the conditions, if any, attached to the grants do not seek to perpetuate central control over programmes and schemes which are a state's legitimate concern. At the same time it does not appear advisable to impose any constitutional restrictions on the power of the centre or a state to make grants because flexibility is useful in meeting unforeseen situations. Such restrictions might have been called for if the existing elasticity were abused, but a review of non-plan grants that follows shows that this is not so. This inference is particularly supported by the fact that as much as ninetythree per cent of all such grants are made for purposes essentially "central", as compensation for tax on railway passenger fares, from the Central Road Fund and for meeting large and unforeseen liabilities *vide* Appendix 10. Broad principles can and should, however, be laid down for the guidance of central ministries in the use of the Article. For this a look at the existing non-plan grants and the purposes for which they are given is necessary.

NON-PLAN GRANTS IN THE CONTEXT OF FINANCE COMMISSION'S REPORT

4.11 In assessing the needs of states, the Finance Commission makes certain adjustments in order to secure uniformity in classification and mentions in its report various items of receipts and payments that it has taken into account or omitted as the case may be. For example, it indicates the margin that it has allowed to each state for meeting unforeseen expenditure on natural calamities. When additional assistance has to be given to a state for a non-plan purpose, the Ministry of Finance determines, with reference to the report of the latest Finance Commission, whether any provision has been made by the Commission for that purpose. Thus in the case of expenditure on natural calamities central grant assistance is limited to half the expenditure incurred by a state in excess of the "margin" allowed by the Finance Commission.

4.12 The fourth Finance Commission has been more specific than the previous Commissions and has mentioned the non-plan grants that the Commission assumed will continue to be received by the states on the existing basis. The Commission has explained that the revenue deficits and surpluses of the states have been arrived at after taking credit

for these grants. Although the Finance Commission has not given any specific reasons for making such an assumption, the grants concerned—(e.g., implementation of gold control rules, rehabilitation of displaced persons etc.), are in general for such schemes as involve expenditure the magnitude of which cannot be forecast with any accuracy. The Ministry of Finance has, therefore, adopted the principle that the non-plan grants other than the above should not normally be continued.

CLASSIFICATION OF GRANTS

4.13 A break-up of all non-statutory non-plan grants, classified according to their purposes, is available at Appendices 11 to 16 which contain also our recommendations on them. Briefly, these grants can be divided into four broad categories:

I—grants for schemes which, by their very nature, have to be implemented by the states under central control or supervision;

II—grants to assist states in carrying out schemes which fall within their executive control;

III—grants to meet a large liability which is either unforeseen or of an indeterminate magnitude; and

IV—grants paid in pursuance of an understanding or agreement between the centre and a state.

Grants for central purposes

4.14 The first category of grants can be grouped, according to their purposes, as follows:—

(A) *Grants for purposes which are purely "central"*

It will be seen from the brief details given in part 'A' of Appendix 11 that "Maintenance of mental patients evacuated from Pakistan", "Payments to police force", "Construction and maintenance of border roads", "Rural housing research-cum-training-cum-extension centres" and "Flying training schools run by state governments" are schemes for activities falling clearly within the jurisdiction of the centre and that the states should, therefore, be regarded as implementing these schemes on behalf of the centre. It is, therefore, suggested that such payments to the states should be treated as the direct expenditure of the centre under Article 258 of the Constitution and not as grants under Article 282.

(B) *Grants for schemes in regard to which the centre has undertaken a specific responsibility*

[Details of the grants coming under this category will be found in part 'B' of Appendix 11].

(i) *Inter-State Exchange of Cultural Troupes*

Except for the expenses incurred by a state on collecting the members of a troupe at the point of assembly within the state the expenditure on the scheme is borne by the centre in full. If the exchange of cultural troupes were regarded as merely a means of encouraging and fostering the arts the scheme would have to be treated as primarily a "state" activity. On the other hand the declared purpose is "emotional and cultural integration", a subject which does not find a mention as such in any of the three lists in the Seventh Schedule of the Constitution. To treat it as a residual and thus a "central" subject may present difficulties. For one, the subject as stated is vague. Each activity pursued in furtherance of such integration is likely to be covered by some item or other in the three lists. It may not be correct, therefore, to treat the entire subject as central. If despite this it were to be treated as central, it may possibly have the effect of shackling the states who should certainly not be prevented from undertaking such activities of their own accord and from their own resources. In this specific case the most appropriate course would be to include the scheme in the states' plans and not to treat it as a non-plan item at all.

(ii) *National Prize Competition for Children's Books in Regional Languages*

Encouragement of children's literature in a regional language is meant to help educational development and hence is primarily a state's responsibility. And yet central initiative is not undesirable here. It is suggested that expenditure on prizes on the basis of such a competition, whether in children's books, agricultural production in each district, or any other subject of national importance, should be treated as a plan scheme of the states. Being a repetitive item, the award of prizes can continue as a plan scheme in every plan period.

(iii) *Award of Community Prizes for Increasing Agricultural Production*

An inter-state competition can appropriately be held by the centre alone. There should, therefore, be no objection to a state being given an award for achieving a prescribed increase in the production of foodgrains. But this could well be a plan scheme.

However, encouraging districts within a state should be entirely the state's business. In other words, awards to districts should properly be made by the states themselves. As suggested in (ii) above, the payment of awards to districts could be treated as a plan scheme of the states.

(iv) *Scholarships for Studies in Public Schools in India*

This scheme clearly relates to "education", a state responsibility. It is, therefore, suggested that the centre should merely co-ordinate the selection and placement of scholars and leave to the states concerned to make financial provisions for these scholarships and to settle details of administration like preliminary selection, payment of travelling allowance etc. That part of the expenditure on scholarships which is now treated as central plan expenditure should be treated as part of the states' plans. The additional expenditure that the states may have to incur can be taken care of at the time of the five-yearly assessment of non-plan expenditure. The present grant should, therefore, be abolished.

(C) *Grants for joint participation*

Part 'C' of Appendix 11 gives details of the schemes in which the centre and the states jointly participate. A characteristic of these schemes (viz. the Small Savings Scheme and the National Sample Survey Scheme) is that the centre as well as a state are well within their rights in embarking on them. In fact, the centre and the states, as a matter of mutual convenience, have evolved an arrangement for co-ordinated action. Such an agreement or understanding would not appear to be open to objection. Article 298 of the Constitution empowers the centre and each state to enter into a contract for *any* purpose without constitutional impropriety. It would perhaps

be too technical a view to take that every agreement or understanding that the two governments arrive at should be ratified by a formal contract executed in the manner prescribed in Article 299. The payments that the centre makes as its share of expenditure on these schemes would, therefore, appear to be justified.

To the extent that a scheme subserves a "central" purpose (which is clearly the case in respect of both the schemes mentioned above), the states can be deemed to be performing functions on behalf of the centre. It would, therefore, be more correct to treat the centre's share of the expenditure on the scheme as its direct expenditure instead of as a grant to the states. As a matter of fact the centre's share would have to be so treated had there been a formal agreement to share expenditure on the scheme.

Grants for state purposes

4.15. The grants which fall under the second category can be grouped as follows:—

(A) *Grants for schemes and programmes which do not now need supervision by, or financial aid from, the centre*

Items 1 to 9 of part 'A' of Appendix 12 give brief details of grants for purposes which fall in the State List. The schemes appear to be well-established in the states, which should not now need any financial inducement to continue them. Mention may be made here of the "Indo-Norwegian health projects in Kerala" (Item 1) which should, in fact, have been included in the state plan for Kerala.

Items 10 to 19 give details of grants for purposes which fall in the Concurrent List. Of these, the grant for "Archaeological excavations" appears unnecessary as any expansion of the programme of excavations should be undertaken by the centre or a state from its own funds, the centre employing a state as its agency wherever necessary. As regards the "Workers Social Education Institute, Indore", the scheme has shed its pilot character and the Government of Madhya Pradesh, which benefits from the scheme, should be willing to bear the entire expenditure. The schemes at items 12 to 19 relate to the training of craftsmen, employment and relief

and rehabilitation. The continuance of these grants, it appears, was assumed by the fourth Finance Commission. But, as the liability of a state in respect of these schemes is not an indeterminate amount, it should be possible at the time of the next assessment of non-plan needs to take into account the estimated expenditure on them. In other words, these grants could be discontinued during the next plan period. To enable the centre to discharge its responsibilities towards training services and especially in the maintenance of all-India standards, suitable legislation may be passed by Parliament where necessary.

(B) *Grants to assist states for schemes entrusted after the Finance Commission's award*

There are two such grants, brief details of which may be seen at part 'B' of Appendix 12. One of the grants is for the "National Fitness Corps." If this scheme, as has been proposed, is decentralised and handed over to the states, the grant may have to continue till the end of the current plan period. It may be pointed out that as the scheme furthers an activity that falls essentially in the State List, there was hardly any justification for treating it as a central responsibility.

The second grant is for the "Production of live oral polio vaccine at the Haffkine Institute, Bombay". The assistance is to meet the expenditure on the building and equipment for the manufacture of the vaccine on a large scale, the condition imposed by the centre being that the vaccine manufactured should be made available to it on a "no profit" basis, should it require the vaccine for any of its programmes. The straightforward course would have been for the centre to give a loan for this scheme and then purchase the vaccine at the usual rate. If it wished to sell the vaccine again at lower rates it could have done so by means of appropriate subventions. Even if a grant had to be given, it should have been given as a part of the plan if necessary, over and above the amount otherwise earmarked as assistance. The scheme should appropriately have been included in the state plan.

(C) *Grants to induce states to continue plan schemes under central supervision*

An example of such a grant, which is given to meet "committed" expenditure, may be found at part 'C' of Appendix 12. According to the Department of Social Welfare, the scheme "Employment organisation for the handicapped" did not take firm root in the Third Plan. The department fears that the states may give up the scheme if central assistance is stopped.

Instead of continuing this grant for an indefinite period, suitable legislation could be passed enabling the centre to take up the scheme as a central scheme (which could be implemented by the states as agencies under Article 258) or making it obligatory for the states to provide employment facilities to the handicapped in accordance with such guidelines as the centre may lay down. In the latter event the expenditure on such facilities could be taken into account at the time of the five-yearly assessment of the non-plan needs of the states.

Grants for unforeseen or indeterminate liabilities

4.16 Appendix 13 gives details of the third category of grants viz., those given to assist states to meet large liabilities which are either unforeseen or of an indeterminate character. The use of Article 282 for this category of grants seems appropriate. *Ad hoc* demands for assistance from states (*e.g.* on account of increase of dearness allowance to state employees) will have to be considered individually and the quantum of assistance determined by the centre after taking into account its resources and commitments. This incidentally answers the criticism of some that the Constitution provides no mechanism for giving assistance to the states for meeting large unforeseen liabilities arising after the award of the Finance Commission. Article 282 does provide such a mechanism.

Grants paid on the basis of an assurance to states

4.17 Appendix 14 gives details of the fourth category of grants mentioned in paragraph 4.13 above, viz., grants paid in pursuance of an understanding or agreement between the centre and a state. There are two such grants, viz., "Grants in lieu of tax on railway passenger fares" and "Subsidy to the Mysore Government". As the subsidy to the

Mysore Government is in compensation for the loss of tax on electricity and this loss was covered by the fourth Finance Commission's award, the subsidy will cease from 1967-68. Grants of this type would appear to be justified so long as the commitment or assurance behind them continues to have a practical significance.

(a) Grants for railway safety works
(b) Central Road Fund grants

4.18 Two grants need separate mention. One of them is the grant for railway safety works. According to the Railway Ministry, the states are responsible for meeting a part of the cost of railway safety works at level crossings, if such works are necessitated by an increase in both rail and road traffic. However, states have so far shown little inclination to bear willingly their fair share of the cost of such works. The present grant is, therefore, designed to assist the states to meet their share of such cost. A Railway Safety Works Fund has now been created into which is to be credited every year a part of the increased dividend that the Railways have to pay to the general revenues. The amount so credited is to be allocated to the states in the same proportion as their shares of the payments in lieu of passenger fare tax. A state's share of expenditure incurred on safety works is to be reimbursed to it as a grant up to the limit of the amount standing to its credit in the Fund (*vide* Appendix 15).

4.19 Grant assistance to a state over an indefinite period with a view to helping it to meet its proper obligation does not appear to be sound in principle. The main lacuna in the existing arrangements is that a state is in no way bound to accept its fair share of expenditure on safety works. A possible solution would be to amend the Indian Railways Act so as to make it legally binding on a state government to bear its share of the cost of a railway safety work, if the work is considered by the Commission of Railway Safety to be absolutely essential in the interest of public safety. The Commission of Railway Safety is an organisation under the Ministry of Tourism and Civil Aviation and not under the Railway Ministry and its decision is likely to be accepted by the states as that of an impartial authority. The extra financial burden

on account of such works can be taken into account at the time of the five-yearly assessment of a state's non-plan needs.

4.20 The other grant is the Central Road Fund grant. The Central Road Fund was started in 1929 at a time when road development was yet to be organised in an integrated manner. It was felt that the development of roads was passing beyond the financial capacity of local governments and local bodies and becoming a national interest which to some extent might legitimately be a charge on central revenues. The Fund is credited with the proceeds of certain extra duties of customs and excise on non-aviation motor spirit. Eighty per cent of the proceeds are allocated to the states (and union territories) to be spent by them on approved road schemes included in their plans. The remaining proceeds are credited to a "Central Reserve", a portion of which is paid as special grants to states for approved road development schemes, particularly schemes which benefit more than one state (*vide* Appendix 16).

4.21 With states spending large sums on planned development it is no longer true that road development is beyond their financial capacity. Moreover, the earmarking of receipts from particular taxes for specific purposes does not always lead to sound financial management. Balanced development requires that all resources available for the plan should be pooled and allocation made for the different sectors according to their relative priorities. The earmarking of receipts also involves schemewise control by the centre over road schemes in the state plans. There does not seem to be any need for giving road development this unique treatment. As will be evident from Section II of this report, sound planning requires operational independence to the states in regard to their development schemes and scrutiny at the centre should be limited to large schemes and to certain specified classes of schemes and road development in the states should as a whole be encompassed by the plan arrangements recommended by us in Section II. These arrangements allow, among other things, the tying of central assistance to programmes of crucial importance and that part

of the road programme that is considered of crucial importance could be brought within the ambit of this device. On the face of it, therefore, there do not seem to be any compelling reasons justifying the continuance of the Central Road Fund and, unless any can be adduced, it should be abolished.

QUINQUENNIAL REVIEW OF CONTINUING NON-PLAN GRANTS

4.22 Before concluding this review, we would suggest that non-plan grants which are likely to continue from one plan to another should be reviewed and the results achieved should be evaluated. Such a review with proper evaluation should be synchronised with the five-yearly assessment of the non-plan needs of the states. This will enable the assessment to take into account the centre's decisions in regard to the continuance or otherwise of existing non-plan grants. It is important that the report on the five-yearly assessment should indicate clearly the assumptions made in regard to the existing grants.

RESULTS OF REVIEW

4.23 The foregoing review shows that there has been no large-scale misuse of Article 282 by the centre on the non-plan side. A constitutional amendment defining or restricting the scope of the Article is, therefore, not necessary, especially because, to meet unforeseen situations, the centre should have a degree of flexibility in the use of the Article.

4.24 It is however clear that greater discipline needs to be exercised in the use of the Article as in many instances other forms of financing should replace non-plan grants under this Article. What is required is the articulation of a proper set of principles for this purpose. We are of the view that restrictions on the use of the Article should develop by administrative convention. Administrative instructions could be issued by the Ministry of Finance laying down the guidelines to be followed in determining whether a non-plan grant should be given to a state for a particular purpose or not. These guidelines should be based on the following principles that emerge from the review just conducted:

(i) re-imbursement to states of expenditure on schemes fulfilling a "central" purpose should be treated as direct expenditure of the centre and not as a grant under Article 282;

(ii) repetitive development schemes (e.g. prize competitions) should be included in state plans. Similarly, schemes which are eligible for inclusion in the plan (e.g., the Indo-Norwegian health project, roads) should not receive non-plan grants;

(iii) when the centre wishes to pursuade a state to take up or continue a scheme that should ordinarily be taken up by the state itself (e.g. employment exchanges for the physically handicapped), or when a state does not readily accept its share of some liability (e.g. railway safety works), it does not appear to be correct in principle to offer financial inducement in the shape of grants. Such inducement has the effect of encouraging a sense of dependence on the centre;

(iv) schemes making a direct encroachment on the states' sphere for which the centre has no responsibility should not be entertained for grants under this Article;

(v) non-plan grants, in addition to those under Article 275 of the Constitution, should not be paid to the states unless the grants are for—

(a) helping them to shoulder a liability arising after the five-yearly assessment of non-plan needs has been completed, or to meet an unforeseen liability of a large magnitude;

(b) assisting them to meet an indeterminate liability not taken into account at the time of the five-yearly assessment; and

(c) fulfilling a commitment or assurance from the centre to pay a grant to recompense the state for the loss incurred by the state owing to any action of the centre;

(vi) non-plan grants should be subject to a quinquennial review and the decisions taken to continue or discontinue any or all of them should be intimated to the authority assessing the five-yearly non-plan needs of the states.

4.25 To conclude:

(a) **the use of Article 282 for making specific purpose grants, plan as well as non-plan is constitutional;** SUMMARY OF CONCLUSIONS

(paragraph 4.7)

(b) **the marginal heading against this Article should disappear and the Constitution amended for this purposes;**

(paragraph 4.8)

(c) **the use of Article 282 for giving non-plan grants to the states is inescapable in some instances and unjustifiable in others and should be guided by the principles suggested in paragraph 4.24.**

SECTION II

CENTRE-STATE RELATIONSHIPS IN THE SPHERE OF PLANNING AND DEVELOPMENT

CHAPTER V

PROBLEMS AND APPROACH

5.1 Planning involves a consideration not only of administration but of policy and this effort is therefore best undertaken against a national perspective, for what happens in one part affects the other parts and the whole must be viewed together for the sake of coherence and co-ordination. The insertion of the entry "economic and social planning" in the Concurrent List recognises this necessity, and although recourse to legislation under this entry has never been had, institutions and systems have been evolved to give practical shape to this idea. Centralised planning has thus inevitably entered administrative areas encompassed by entries in the State List. The legality of the exercise has not been questioned as the decisions made have so far been accepted by the states and in theory implemented as their own. The entire process of decision-making and the manner and extent of central involvement in state subjects have thrown up several problems affecting centre-state relationships.

5.2 Centre-state relations in the sphere of planning do not relate only to subjects in the State List. There *is* a problem of centre-state relationships in plan activities falling in the Union List. The tugs and pulls of the states for locating central public sector industries are a prominent and well-known example of it. But here only problems relating to plan activities in the Concurrent and State Lists are dealt with chiefly because it is these that would seem to be the most pressing.

5.3 The five year plans concern themselves mainly with what may be called incremental development during the respective plan periods. That is to say they include schemes for taking the level of development a stage or two further. The maintenance of the level of development already attained does not form a part of a five year plan although in fact it has an integral link with the plan. Provision for it is made on the non-plan side, and financed at least partly through

devolutions. We have attempted to deal with the development sector in its totality and not only with that portion of it which falls within a current five year plan.

XISTING STR TEGY

5.4 The strategy adopted so far in planning relationships consists broadly of two elements:—

(i) the formulation of state plans has been done to a considerable extent by the state but within two kinds of central discipline:

—financial, in the sense of conforming to ceilings of state and central resources settled in consultation with the centre; and

—substantive, in that broad features like targets, priorities, types of schemes, etc., have been required to fit in with thinking at the national level;

(ii) execution has been entirely the responsibility of the states, but here again there have been items of central discipline:

—schemes of special complexity or size have had to be individually approved by the centre before execution;

—deviations from the agreed plan have been discouraged through the exercise of a variety of financial controls.

Over the three five year plans the stance of the centre on certain items of detailed procedure has not remained unchanged. Thus in some sectors of development there has been a selective relaxation of central constraints relating to the prior sanction of individual schemes or to reappropriations. But this has not really altered the broad strategy.

5.5 In essence the purpose fulfilled by this strategy is to secure the acceptance of priorities as determined by the centre. The decisions may take place after consultations with the states but they are ultimately those of the centre. As planning has to meet national needs it must subscribe to national priorities. And, of national priorities the centre must be the final arbiter. Again the inter-relation of various plans, sectoral and territorial, can best be appreciated and their

co-ordination, also involving the allocation of priorities, best done by the centre. That the centre has to have a vital role here is not therefore a proposition that can seriously be questioned—necessity gives this role the 'vesture of legitimacy.' It is the extent of this role and the means by which it is discharged that are the crux of the matter and call for an examination.

5.6 The strategy described above has been given effect to not through legislation, but through financial inducement. Theoretically a state is free to reject central discipline of this nature, if it is prepared to forgo the large sums offered by the centre for the plans. In practice it has no choice but to accept for even the richest state is too poor to afford such deprivation. The relationship struck by the centre and states has by no means crystallised into a fixed, unchanging pattern. It has been developing along certain lines since the advent of planning, is still evolving and is compounded of many elements among which co-operation, persuasion and cajoling can certainly be counted. But the real sanction behind this relationship remains financial inducement, which in the indigent circumstances of the states, becomes a weapon of decisive power.

5.7 If all were well in this relationship there would be no problem to enquire into. But, even while recognising the need for a national network for planning, it is possible to discern certain unsatisfactory features in the strategy as it has come to be employed.

SHORTCOMINGS IN EXISTING SYSTEM

5.8 To succeed as a national endeavour the plans must secure the commitment of the states by involving them earnestly in the first and basic task of determining goals and perspectives. The rather striking weaknesses in the process of consultation at this stage require to be eliminated by a more effective use of the instrument of the National Development Council. Meaningful consultation with the states, at different levels, is an imperative at every subsequent stage in the framing of the detailed plans but efforts at effecting this—and these have been many and persistent—have stopped well short of the easily realized ideal. An examination

of the entire process continues to reveal a marked need for greater initiative and participation by the states to bring that much more realism to the endeavour. There are obvious limitations to the knowledge, and therefore wisdom, of a central planner removed from the grassroots to which his plans are meant to cater. Inadequate thinking and planning in the states and too great a preoccupation with and control over details at the centre have sometimes led to rigidity and unrealistic uniformity in schemes.

MECHANISM OF ASSISTANCE

5.9 Why have the states not participated as effectively as they should have? The answer lies partly in their own inability to do so but this is not true of all the states, nor perhaps wholly true of any state. Deficiencies that exist here need to be made up. But the other part of the answer is supplied by the fact of the financial dominance of the centre which operates in various ways. A complex mechanism of assistance has been evolved by the centre consisting mainly of:

(a) central assistance for the state plan, (grants and loans) comprising
  (i) assistance for centrally aided schemes;
  (ii) loans for specific purposes;
  (iii) the miscellaneous development loans; and

(b) central assistance for centrally sponsored schemes, which are executed by the state but the central assistance for which is not counted against the state plan ceiling.

In the first case the mechanism works initially at the stage of the formulation of the state plan, when the financial aid attached to particular schemes induces their acceptance by the states, and later in the restrictions imposed on reappropriation. This mechanism is meant to assist in underlining the priority of particular schemes but, as the detailed discussions in the following chapter will show, has in fact led to considerable distortion in the approach to planning. State plans tend to become a conglomeration of centrally aided schemes in the belief (mistaken as it happens) that this helps to increase the flow of central assistance. Much more thought

emanating from, and related to the actual needs of, individual states, is required to make plans fully realistic and fruitful. In this view of the matter, centrally aided schemes have tended to act as blankets snuffing out independent thinking and planning in the states.

REAPPROPRIATION

5.10 Restrictions on reappropriations are meant to secure adherence to priorities. But while, on the one hand, they tend to fetter the operational flexibility of the states, they have, on the other, proved ineffective in many instances. Both because of their growing power and because of certain peculiarities in the mechanism itself, the states have time and again circumvented this discipline with impunity, until one cannot resist asking the question whether a control that irritates but is not effective is worth retaining.

CENTRALLY SPONSORED SCHEMES

5.11 Circumvention of course is a game at which two can play, and central ministries have not proved inept at it. The centrally sponsored category of schemes, through which the centre is enabled to sponsor schemes and give assistance for them over and above the assistance earmarked for the state plans, and which was originally conceived for valid purposes, has provided the ministries with an opening for direct involvement with state subjects which they have used more amply than necessary. The criteria laid down for restraining the ministries in their ventures have not been followed and deviation here is another unsatisfactory feature.

SCRUTINY OF SCHEMES

5.12 The insistence on the scrutiny of certain individual schemes is yet another problem. Although there has been commendable decentralisation some anachronisms still exist which result in delays and the expense on which could well be saved.

5.13 It will thus be seen that as a result of planning the three horizontal layers of administration represented by lists of central, concurrent and state subjects have been vertically partitioned into plan and non-plan sectors and that within the plan world, the compulsions and consequences of planning have tended to unite the three horizontal pieces into a single near-monolithic chunk controlled from the centre although operated in respect of concurrent and state

subjects in the states. It would not be wrong to describe this as a distortion, resulting from a discipline-enforcing structure in which the demonstrable weaknesses are so numerous as to call for a review of the system.

5.14 This is not meant to be an indictment of the Planning Commission or the central ministries. Starting practically from scratch the Planning Commission has done invaluable work. Nor has it neglected to give attention to some of the unsatisfactory features mentioned above. The measures of reform introduced by it have, however, been hamstrung by the general strategy governing these relationships. It is true that reforms should be appropriate to the situation for which they are fashioned and we have earlier said that planning relationships are still evolving. They need to come out of the chrysalis stage that they are in at present and this needs the introduction of a new approach to planning relationships.

NEW STRATEGY

5.15 What could a new strategy for planning relationships be? When a fundamental question of this kind is posed it is best to go back to first principles. The Constitution recognises that the administration of this large country cannot be effectively or efficiently carried on from a central point alone and that regional units in the form of state governments are necessary. It also visualises that these regional units should not have the attributes of subordinate offices of the Central Government but should instead function responsibly and democratically. These rather obvious remarks need stress here as in their tendency to acquire too much control on too many details central authorities tend to lose sight of this perspective. Besides the need for increased operational efficiency and for a healthier partnership with the states asks for a new approach to centre-state relationships and for an appropriate modification of plan policies and procedures. The urgent acceptance of this proposition is necessary also to prevent a preternatural growth of central agencies. This is not a harkening back to any vestal ideas about the constitutional division of powers, denying the centre any significant role in the development of activities in the state field. That is neither possible nor desirable. But

it is a plea for reposing greater trust in the states and making them responsible and self-respecting partners in this venture.

5.16 This approach would necessitate serious effort to strengthen the planning machinery within the states: it is possibly the predominance of the central planning apparatus that has so far inhibited such a development. Efforts would also have to be made to evolve a satisfactory process of consultation between the centre and the states that ensures the full participation and involvement of the latter. Such an approach is essential for securing national agreement on objectives and strategy and would be the best guarantee that plans formulated with national targets in view do get implemented in the states. In implementing plans, the states would have to be left largely free to act according to their best judgment, substantially unfettered by restrictions requiring central sanction and where so restricted, limiting them to technical clearance. The entire process of planning would have to be freed, as far as possible, from the constraints on thinking and execution introduced by financial baits.

5.17 There are without doubt risks in this new approach. It may happen that the trust reposed in a particular state by a far-reaching scheme of decentralisation is betrayed in the sense that the amounts made available are not utilised for the correct priorities. To this all that can be said is that in a relationship of trust occasional betrayals do take place and need not be considered a calamity. If there is full participation of the states at the stage of formulation of plans such betrayals should be rare.

5.18 Perhaps it is not so much fear of betrayal as that of *bona fide* error or differences in the administrative and technical capabilities of the different states that have impelled the centre to retain the present degree of centralisation. *Bona fide* error is as likely in the centre as in the states; probably more so because of its divorce from the field. The differing capacities of the states inviting direct central involvement in aid of the weaker ones, make a more telling argument. Could there be a case for a differentiation in

central attitudes towards states that are relatively advanced and those that are relatively weak? Should the concept of decentralisation itself be flexible, to be trimmed in each individual case to the capacity of the state and leading to a calibrated progress from each according to its ability to each according to its need? Such a course may not prove politically acceptable, for political compulsions will demand the uniform application of principles in any scheme of devolution. The degree of decentralisation effected, therefore, should be such that a balance is maintained: it should neither be a drag on the progressive states nor require an impossible level of administrative performance from the weaker ones, and what has been suggested in this report attempts to secure such a balance. This may require an effort of the latter, but after fifteen years of planning none is incapable of effort, and where administrative capacity is lacking the answer is not spoon-feeding, which after a period inhibits growth psychologically and physically, but assistance to develop that capacity. This indeed should now be one of the major functions of the central ministries.

5.19 The principle of delegation inherent in the new strategy should be accompanied by a well organised system of information feed-back to the centre so that major deviations from essential priorities or substantial shortfalls in performance can come to notice promptly after the event and remedial measures can be adopted in time to be effective for the future. As a final sanction, there is always the weapon of the total quantum of assistance from the centre being subject to adjustment in the downward direction for a persistently recalcitrant state. Not merely the progress but the eventual evaluation of programmes should also be a major concern of the centre so that their efficacy is judged and correctives applied.

5.20 In short, having regard to the many defects in the present system, a move towards a relationship of trust would seem to be called for, the gains expected being worth the risk involved. For planning relationship between the centre and the states can then be expected to be placed on a

sound basis with a sharper emphasis on efficiency and responsibility. Quantities of avoidable work that today clutters up the Planning Commission and ministries handling concurrent and state subjects will be jettisoned, resulting in quicker and more economical operations in the states. This will also slim down these central agencies and, what is more important, enable them thereafter to focus attention on the really important matters some of which otherwise escape notice.

The last mentioned item has significant and interesting possibilities, both negative, that is those relating to the work that the central organisations will shed, and positive, that is those concerning functions they should actively assume and which they have neglected so far. The results of a functional study on these lines have been incorporated in a later chapter in this section.

5.21 The different aspects that this section of the report will deal with are:

A—Planning and the National Development Council

B—Central assistance for administering plans in states

C—The centrally sponsored sector

D—The formulation of plans and scrutiny of schemes

E—Evaluation

F—The role of central agencies dealing with matters in the State and Concurrent Lists.

CHAPTER VI

PLANNING AND THE NATIONAL DEVELOPMENT COUNCIL

NEED FOR NATIONAL POLICIES

6.1 The nation is more than the centre, and indeed very much more than any state and a national endeavour like the five year plans must encompass both the centre and the states calling for a co-ordinated effort from all of them. It may be that in a national endeavour of this kind the centre becomes the lynch pin, playing, of necessity, the role of initiator, guide, co-ordinator and watch-dog of the execution of the national will, but the will, if it is to be honestly and earnestly implemented throughout the country, must be national and therefore nationally determined. This asks for a process of consultation with the states in which all the basic issues confornting the nation are given full and frank consideration. Such a process leading to a commitment of the states to any plan, becomes imperative when we consider that it is at the expense of their jurisdiction that the plans comprehend development activities falling within the states' sphere. Decisions which imply a discipline on them that the law does not enjoin must, to be morally binding on the states, secure the imprint of their acceptance through synergetic collaboration rather than passive acquiescence.

6.2 This exercise basically involves the enunciation of the goals and objectives of a plan and its strategy, the formulation of the plan, the determination of the priorities of different sectors and the identification, in particular, of the crucial ones among them. It is not difficult to point out what the essential ingredients of such a statement should be. It must set out, in the first instance, the direction and extent of the development of society envisaged in a given period, development being considered here in the total context of government's responsibility without distinction between the plan and non-plan sectors so that the relationship of the different parts is borne in mind and a balanced judgment arrived at on priorities. It must contain an articulation of

the strategy devised to attain the goals and objectives of the plan. Ideally such a strategy, to eliminate ambiguity and to provide a clear perspective in which the mutual relationships and responsibilities of the centre and the states can be understood, must outline, among others, basic policies regarding the size of the plan, the clear effort required of the centre and the states, the relationship of the centre with the states in the formulation, financing and execution of the plan, the degree of centralisation and uniformity necessary, the intersectoral outlays and priorities essential for the fulfilment of the objectives and the techniques and organisation required to be forged. Such an enunciation, which forms the bedrock of all plan effort, must seek the support of the states. Implicit in any attempt to enable the states to give businesslike consideration to basic policy is the presentation to them of different alternatives, giving the basic assumptions behind them, so that decisions are not the choice of a Hobson but are taken after evaluating all aspects. Implicit also is the organisational need for a forum where these issues can be discussed and settled.

THE NATIONAL DEVELOPMENT COUNCIL

6.3 It is in realisation of this need that the Planning Commission suggested in the Draft Outline of the First Five Year Plan the creation of the National Development Council which would be a "forum.....at which, from time to time, the Prime Minister of India and the Chief Ministers of the States can review the working of the Plan and of its various aspects". The Council was established in 1952 by Cabinet resolution, which defined its functions as follows:—

(1) to review the working of the National Plan from time to time;

(2) to consider important questions of social and economic policy affecting national development; and

(3) to recommend measures for the achievement of the aims and targets set out in the National Plan, including measures to secure the active participation and co-operation of the people, improve

the efficiency of the administrative services; ensure the fullest development of the less advanced regions and sections of the community and through sacrifices borne equally by all citizens, build up resources for national development.

It consists of the Prime Minister, the Chief Ministers of the states, and the members of the Planning Commission. but its meetings are usually attended by others as well, particularly by ministers of the Central Government with an interest in the items included in its agenda and, at times, by experts called to give advice.

6.4 How well has this instrument been used for securing a national consensus? The Council is certainly consulted at certain well-defined stages in the formulation of a five year plan. First, the Planning Commission places before it the "Memorandum" on the five year plan which contains a tentative framework integrating the programmes of various sectors after taking into account the recommendations of the different working groups and the perspective plan prepared in the Planning Commission. This Memorandum may be accompanied or preceded by a paper raising the main issues to be discussed by the Council. After a discussion of these a more detailed "Draft Outline" is prepared and placed before it. Between the Memorandum and the Draft Outline another document may also be presented to discuss the size of the plan, outlays in different sectors, resources and other issues. The result of all this work is incorporated in the final draft which is again discussed by the Council among others and becomes operative after adoption by Parliament.

6.5 There is thus a measure of consultation with the states, both at the initial stages and later, in detailed formulation. The degree of consultation has increased with every succeeding plan and so steadily has the influence of the Council. And yet a study of the planning documents and an examination of the planning procedures reveal a paradoxical situation in which, while consultation with the Council on certain basic matters of policy has been inadequate, the attention bestowed on them by the Council when opportunity has visited it has been even more so.

WEAKNESSES AND PROCESS OF CONSULTATION

6.6 Weakness in the process of consultation is most tangible at the primary and most important stage of the formulation of goals and objectives and the adumbration of the strategy of planning. Goals, objectives and strategy are dealt with in the "Memorandum" placed before the Council and are based on the studies conducted within the Commission on a fifteen year perspective. But the perspective plan document is never taken up in the Council. The overall projections are indeed summarily mentioned in the Memorandum but the basis on which they are arrived at is not revealed. Alternatives within a given framework may be discussed and these take the form of readjusting, seldom more than marginally, inter-sectoral priorities and outlays, but alternatives to that framwork are not presented to the Council. The "Notes on Perspective of Development : India 1960-61 to 1975-76" do speak of alternative approaches but dismiss them without much elaboration in a matter of four pages. In any case, as mentioned earlier, this document is not discussed.

6.7 This would be a merely academic question if no serious possibility of any practicable alternatives existed. But that has never been the case. When formulating the Third Plan the document giving a firm basis to discussions styled "Dimensional Hypothesis concerning the Third Five Year Plan" envisaged a transition to a 'self-generating economy' and outlined a certain pattern of investment required to achieve this objective. The policy implications of such a plan were examined by an economist in another paper, in which the problems involved in such a transition were posed, the assumptions underlying the priorities were questioned, the need to reconcile some apparent contradictions emphasized and an alternative approach suggested. This paper was not published or circulated to the states although it was presented before the Commission's Panel of Economists. The "Memorandum" presented before the National Development Council contained, not alternatives, but the approach of the Planning Commission after it had considered the available alternatives. Other instances of inadequate consultation, or failure to seek a consensus, or to implement it when arrived at, can be furnished, but perhaps the point is made.

6.8 The right of the Council to be consulted on all issues of basic importance must not obscure from view its responsibility to give them careful consideration when they do arise. The discharge of its obligation to consult the states must be matched by a commensurate willingness on the part of the latter to settle them clearly, coherently and in the interest of the country as a whole. It is of significance, therefore, that the Council has in the past often failed to give the crucial issues raised before it the depth of consideration they deserved. This will be borne out amply by the narration at Appendix 17 which shows how, faced with the gulf between the expenditure and taxation for the Third Plan and with specific proposals for bridging it, the Council tended not to confront them squarely and preferred to prevaricate. The National Plan was approved without any clearly agreed national policy on the fiscal measures required to underpin it.

6.9 Two factors have worked in the past to perpetuate the deficiencies mentioned above, namely uniparty control all over the country and the dominant personality of the first Chairman of the Planning Commission under whose aegis conventions were developed. The Commission has usually had its way, and no one has thought it fit to make heavy weather of either the fact of inadequate consultation with the Council or of inadequate consideration by it. But with neither of these two factors operating now to influence the course of events, it is necessary to place the working of the Council on a systematic footing so that the maximum advantage can be extracted from it. It is likewise necessary for the Council to respond by giving its best attention to important policy issues brought before it and to give its decisions keeping the national good in view.

CONFERENCING PROCEDURES—NEED FOR STANDING ADVISORY COMMITTEE

6.10 In the formulation of the broad features of the plan the Council has involved itself to a much greater extent. The Council provides the Planning Commission with its most important sounding board, and the deliberations of this body give some indication of the extent to which the states are prepared to accept centrally determined priorities. The Council therefore, exercises an influence on the planning process

which may not be perfectly revealed in the planning documents, one reason being that the Planning Commission is itself influenced by the anticipated reactions of the Chief Ministers before presenting proposals to the Council. Nevertheless, even here the Council, in practice, often becomes a forum for the ventilation of individual grievances rather than for collective discussion of principles and policy. A third factor comes into play to prevent these meetings from giving of their potential best—the absence of systematic and streamlined conferencing procedures. The Council meets for a day or two and, as a rule, cannot meet for longer, for the Chief Ministers are busy men. In this short period it takes up a number of important and complex issues. The organisation of these meetings is such that the Chief Ministers are left with hardly any time to study the papers, grasp the implications of all the proposals and come to conclusions after considering the different aspects of each problem. Indeed as Appendix 18 will show the agenda papers are as a rule circulated so late that it is virtually impossible for Chief Ministers to go through them with care. It is necessary, and indeed only fair, that such important papers should be sent to all concerned well in advance. Even this precaution would not suffice, for the issues are such that they need to be predigested before the National Development Council deliberates on them and for this purpose we would recommend that this Council should be assisted by a standing advisory committee consisting of official advisers from each state, the central ministries concerned, and the Planning Commission. Matters going up to the Council would then have been vetted by this committee earlier. The conclusions of this body could be placed before the Council along with the memoranda of the Planning Commission. If the National Development Council is replaced, as is recommended later, by a Council with wider functions, a standing advisory committee, similarly composed, will be necessary for that body for the subjects embraced by planning.

6.11 The National Development Council did appoint a standing committee in 1954 consisting of members of the Planning Commission and the Chief Ministers of nine states.

It was also decided that the Chief Ministers of one or more of the remaining states could be invited to attend meetings of the committee. The result of this last provision was that no clear distinction existed between the standing committee and the Council. The standing committee functioned with some effectiveness at the time of the formulation of the Second Five Year Plan, but not many meetings of the committee have been held since 1956. It is again their busy time schedules that have prevented the members of such a committee from functioning effectively. For formulating the Fourth Plan the Council appointed five sub-committees to examine and make recommendations on five different sectors. These did function somewhat effectively, although inevitably their deliberations too tended to be of a general nature. Devices of this nature are useful and can be persisted with, but cannot be substitutes for the standing committee of officials suggested above.

6.12 In brief we envisage added dimensions to the role of the National Development Council in which the show of respect made to it by the Commission, never a facade, will permeate to the basic premises of planning. Needless to point out, these new dimensions will add to the responsibilities of the Council which must perforce show a willingness to shoulder them. Not until both these conditions are satisfied will planning become a truly national endeavour, to which the centre as well as the states will be morally committed. This would be a commitment that should be honoured, irrespective of the changes that may occur in the complexion of the governments at the centre and the states. With such a commitment the decentralization proposed in the chapters following can be undertaken with added confidence.

SUMMARY OF CONCLUSIONS

6.13 To conclude:

(1) all basic questions of planning policy, particularly those pertaining to goals and objectives, alternative frameworks, strategy and crucial sectors should be placed squarely before the National Development Council in time and debated there;

(paragraphs 6.6 to 6.8)

(2) the Council should give the highest importance to these basic issues to help arrive at a national consensus keeping the national good in view;

(paragraph 6.9)

(3) the Council should be assisted by a standing advisory committee consisting of official advisers from each state, the central ministries concerned and the Planning Commission.

(paragraph 6.10)

CHAPTER VII

CENTRAL ASSISTANCE FOR ADMINISTERING PLANS IN STATES

CENTRALLY AIDED SCHEMES—MECHANISM

7.1 With the formulation and acceptance of a state five year plan, an indication is given, after taking into account financial needs and resources, of the central assistance to be rendered to the state for implementing the plan. The exact figure for each year is given at the time of framing the annual plan. While the amount of this assistance is arrived at for the plan as a whole, the plan itself is composed of a number of individual schemes many of which have varying patterns of central assistance. The loan and grant portions of the total central assistance for a state plan are arrived at by adding up the loan and grant components in the patterns of schemes included in the plan. If the sum total falls short of the total assistance assured to the state the balance is made up through what is called a miscellaneous development loan.

PATTERNS AND PROCEDURE OF ASSISTANCE

7.2 The patterns and procedure of assistance for centrally assisted schemes have undergone a number of changes during the three plan periods. The existing position briefly is that under each head of development, such as education, agriculture and so on there are schemes which earn assistance and there are schemes which do not. Loans and grants are intimated to the states for each head of development as a whole. The state governments are asked to ensure that the assistance granted under a head of development is utilised only for schemes carrying some pattern of assistance and in particular that no diversion takes place from certain specified special schemes. Adjustments in outlays under different heads require the concurrence of the Planning Commission or the central ministries concerned. If a state government diverts funds from one head to another without the approval of the centre, it forfeits proportionately its right to the grant admissible under the former, but if it achieves the state plan target as a whole it earns the assistance so forfeited in the form of a miscellaneous development loan.

7.3 Major departures from this system of grants are made in two cases as described below:

(i) in the case of programmes for agriculture and co-operation the central assistance earmarked is not available for diversion to any other head. If there is a shortfall in expenditure the amount of central assistance is correspondingly reduced, re-appropriation to another head not qualifying even for a miscellaneous development loan;

(ii) the central assistance for "village and small industries" is allocated not for the head as a whole but separately for each of the seven groups into which the head of development has been classified: handicrafts, coir and so on.

7.4 It will thus appear that in the centrally assisted sector, grants are of three main varieties:—

(a) those tied to heads of development, the tie not being absolute as reappropriation earns assistance for the state government in the form of a loan;

(b) those tied to groups within a particular head of development, the tie not being absolute;

(c) those tied to a head of development, the tie being absolute.

DRAWBACKS

7.5 The objects of the centre in prescribing patterns of assistance for schemes are to ensure balanced development and adherence to priorities considered essential by it and to enable its own judgment about their feasibility and fruitfulness to determine their final format. But even a cursory analysis of the procedure will show that there is a built-in mechanism in it for defeating whatever purpose scheme-wise patterns are expected to serve. This is the mechanism provided by the miscellaneous development loan. In theory, reappropriation from one head of development to another is not permissible without the approval of the centre. Nor is reappropriation allowed from schemes bearing a pattern of assistance to schemes which do not earn assistance. And yet if any such reappropriation is made by a state government

on its own authority it is not deprived of assistance as the total amount of central assistance is assured for the state plan as a whole. All that happens in such a case is that the state forfeits the grant portion that it could have earned according to the patterns of assistance attached to the abandoned schemes but earns corresponding assistance in the form of a loan through the mechanism of the miscellaneous development loan, provided its performance is such that the total expenditure targets fixed for the plan are attained. The obligation to accept central assistance in the form of a loan instead of a grant should normally be a deterrent, but these loans themselves are serviced by further loans from the centre, as a result of which for a state the line of distinction between a loan and grant has begun to wear thin. A state government that is fully cognisant of the operations of this entire mechanism would not therefore hesitate very much to reappropriate. It would, however, be under some pressure at the time of formulating the plan to accept schemes that bear patterns.

7.6 Where the ramifications of this mechanism are not fully understood or where the liability of a loan as contrasted with the benefits of a subsidy continues to have a deterrent effect the assistance proves to be a two-edged weapon: it can secure adherence to priorities but it can also distort them. Implicit in this system is the assumption that the centre knows, better than the states, what priorities the latter should observe, what details their schemes should have and to what extent virement should be permitted. These are all questionable assumptions particularly when extended to individual schemes within a sector of development, for a state as a rule is in a better position to assess the claims of different schemes in relation to its own needs and capacities. These vary from state to state, and yet uniform schemes with regimented patterns are suggested by the centre. Besides the financial bait there is insistent pressure by the ministries on the states to accept pattern-bearing schemes which are for the most part formulated by the centre itself. Schemes are consequently often included in state plans not because the states consider

them inherently important but because they carry patterns of assistance. This, crudely stated, is the purpose of this device. It is in any case its natural effect—a conclusion affirmed by a representative sample of officers with whom we held informal consultations and supported by the evidence furnished by our own random studies (Appendices 19 and 20) which reveal how, hard-pressed for finance, the state governments included schemes in their plans bearing some pattern of assistance in preference to those that did not although, in their view, many of the discarded schemes had a higher priority than some of the included ones. Judgments about the priority of individual schemes can always differ but in the instances cited the superior wisdom of the centre is not borne out.

7.7 When the Constitution entrusts the administration of certain subjects to the states it is in principle objectionable to fetter their discretion in matters even of detailed schemes within a sector. Scheme-wise priorities cannot be uniformly laid down. Nor should scheme-wise formats. Of both the state must be assumed the best judge. When formulating the plan the centre has ample opportunity of discussing priorities and sectoral targets with the states, both through the Planning Commission and the central ministries. The working group exercise is another means of giving guidelines to the states. The states can be expected to conform to these broad indications consistent with the adjustments required to suit local conditions. The determination of detailed schemes and their formats is not the function of the centre nor is it equipped to discharge it. We saw during our investigations the long delays that could occur in the existing system, the rigidities inherent in the uniform application of patterns, the complexities in procedure, the ability of the states to defy the centre should they so choose and the eventual fruitlessness of much of the large volume of work involved. The narration of the cases at Appendices 21 and 22 is illustrative of these shortcomings.

The first case dealt with a proposal from the Secretary, Department of Agriculture to give an enhanced subsidy to the

farmers for pump-sets. The idea was to mobilize all available diesel pumps for the coming rabi programme and for subsequent programmes. The need for this measure was said to be urgent. Yet it took 5 months to reach an agreement (involving horizontal co-ordination among five bodies) on the pattern of assistance, a delay wholly unnecessary for, being a state plan scheme, the pattern did not affect the total quantum of assistance earmarked for the state plans. The rabi season was over by then. In the second case, which was concerned with the establishment of agricultural colleges, a state government disregarded the ceiling proposed by a committee set up by the Department of Agriculture and despite the opposition of the Government of India, went ahead with the opening of the college. As assistance was reckoned on total plan performance the state did not lose anything by this defiance.

7.8. It will be clear that the effectiveness of scheme-wise patterns of assistance in ensuring adherence to priorities is basically illusory and that where the illusion persists the effect is often to distort priorities and perspectives rather than preserve them.

7.9 These are not the only drawbacks in the system of centrally assisted schemes. There are others which are enumerated below:

(1) there is a large variety of patterns, over 100 of them, which causes unnecessary confusion and which creates enormous work at all levels;

(2) the form and substance of many of the schemes is determined by the centre and applied uniformly in all the states leading to rigidities in implementation. In the case study at Appendix 21, already referred to, we see that the scheme of subsidies to farmers for diesel engines was changed to provide for a higher rate of subsidy. Clearly the capacity of the farmers to pay for these engines varies in different states and to provide for a uniform rate of subsidy ties the hands of the states unnecessarily

(3) the procedure for fixing the pattern of the scheme is complex and delays in decision inhere in it;

(4) there is in any case no means available to the centre of verifying in time whether reappropriation, within the same head of development, has occurred from assisted to unassisted schemes;

(5) there is and can be no exact correspondence between the figure of total central assistance earmarked for a state plan and the sum total of assistance earned by a state by implementing pattern-bearing schemes. Where the latter is less than the former the balance is made up by a miscellaneous development loan as already mentioned. At times, however, it happens that it is more and has therefore to be limited to the overall ceiling for assistance. In such an event scheme-wise patterns have no meaning;

(6) patterns laid down for staffing and pay scales disturb parities in the state services. This problem, though, is not so acute here as in the centrally sponsored sector.

7.10 The net result of the system of scheme-wise patterns in the state plan would therefore appear to be needless, voluminous and complicated work, a distortion of priorities, vexation to the states without ensuring effectiveness for the centre, a dilution nevertheless of the initiative and judgment of the states and a fettering of their operational flexibility. The system may have served a useful purpose in the initial stages of planning but has outlived its utility. We would therefore recommend that the system of attaching patterns to schemes should be discontinued altogether.

REAPPROPRIATION

7.11 Allied to this is the question of permitting reappropriations. We have come a long way from the position in the First Plan, when assistance for every scheme was tied and the states were not given any discretion to reappropriate. There has, for operational reasons, been a progressive relaxation of the conditions for reappropriation. Barring the exceptions listed earlier, assistance is now tied to heads of development, and reappropriation from one head to another

results only in the substitution of a loan for a grant, provided the total state plan target of expenditure is achieved. A head of development covers a broad area containing a mixture of schemes of high, medium and low priority. While scheme-wise tying has proved unworkable tying assistance to broad heads of development does not really secure any real adherence to priorities. The balancing mechanism of the miscellaneous development loan does not even ensure balance in inter-sectoral outlay. In a typical circumvention a plan is agreed to for a particular state in which the state accepts a smaller investment, say for power, than it wants to because higher investment in industry is pressed for by the centre. During implementation the state is unable or unwilling to forgo the need for bigger power development and presses ahead with it diverting additional money to it from other development heads including industry. Priorities fixed when the plan was formulated are thus drastically altered. Any grants lost by the state through diversion from grant-earning schemes are made good in the shape of miscellaneous development loans, the centre thus becoming a party to the whole thing financially as well as otherwise. The present system is thus hardly fulfilling the purpose for which it was introduced and the best thing would be to scrap it.

7.12 Reappropriation should normally be permitted freely at the discretion of the states from one scheme to another and from one head of development to another. Reappropriation is often necessary because of escalation in costs or unavoidable shortfalls in expenditure. The states alone are in a position to assess the relative merits of the claims of different sectors and to see where cuts should be imposed.

TIED GRANTS FOR CRUCIAL SCHEMES

7.13 This would in fact mean that the states would be given block amounts as central grants with freedom to use these amounts according to their discretion. If the priorities of particular programmes affected only the state concerned there would perhaps be no objection to such wholesale decentralisation, and democratic processes within a state could be expected to apply the correctives to executive aberrations. But there are items within any state plan which

are crucial from the national point of view. How is adherence to priorities to be secured there? The freedom given is not to be regarded as a licence to the states, to be abused because it exists. There is no reason to suppose that the states will not select avenues of expenditure after sober reflection and for the good of the state. They will rather have an added incentive to do so, for this money they could really consider their own. Moreover, the greatest safeguard against its irresponsible use would be the national consensus achieved over goals and objectives, priorities and nationally crucial areas. The freedom to operate will be within the parameters of such a consensus. To withstand pressures generated within a state against the observance of these priorities some central control is obviously necessary. Here we would suggest that the concept of tied assistance for programmes of crucial importance should be systematically introduced and implemented. There will be justification for tying this assistance as the programmes will have been selected after a full debate by the National Development Council. The concept is not unknown to Indian planning but it needs to be applied very selectively and after careful rationalisation. A balance must even here be kept between central direction and state discretion and our suggestions on this subject are listed in the following paragraph.

7.14 (1) For securing adherence to priorities for areas of overriding national importance tied grants may be allowed. The tie in such a case must be absolute, that is, shortfall in performance should automatically result in a downward adjustment of assistance to the state concerned.

(2) The tie in such cases should be to a sector or a programme (*i.e.* a group of schemes) as a whole. It should ordinarily not be to specific schemes, nor preferably to a head of development.

(3) The sectors to which tied grants have to be given must be selected with the greatest discrimination and must be kept to the minimum. This note of caution is necessary as there is bound to be pressure from central ministries to include a large number of programmes in this category and

there is also considerable possibility of disagreement over the areas which should be given this priority. Thus different proponents of decentralisation have severally included the following subjects among the exceptions to be given overriding priority:

(i) agriculture
(ii) education
(iii) health
(iv) multi-purpose projects
(v) roads

Obviously, very little would be left in the state plans outside these exceptions. If tying has to have any meaning the sectors will have to be selected with great discrimination and kept to the minimum. Moreover it would be pointless selecting an entire head of development for such a restriction, which should be applied to specific programmes rather than to the entire field encompassed by a broad subject. Thus, at any given point of time, the programmes relating to the production of foodgrains under the head "agriculture" might be considered of crucial importance. In that case these programmes rather than all agricultural activity should come under this constraint. Or, in the field of education the planners might consider "technical education" or "the quality of science education in schools" as deserving of this consideration in which case these rather than all "education" should come in for tying.

(4) There need be no regimentation in the selection of sectors. Different sectors could be selected for different states. Thus while food production would be an appropriate sector for most states it may not be as important as cashew nut or rubber plantations for a state like Kerala.

(5) A concept could perhaps here be introduced of having even for untied heads of development, two categories of schemes one having a higher priority over the other. Virement could be restricted and permitted only from a lower to a higher category, whether within the same head of development or from one head of development to another. This

idea, however, is not an integral part of the system proposed by us.

Procedures to give effect to this system will have to be worked out by the Planning Commission and the Ministry of Finance. A possible drill is suggested at Appendix 23.

THE MISCELLANEOUS DEVELOPMENT LOAN

7.15 With the acceptance of this system the balancing mechanism of the miscellaneous development loan will become unnecessary. The system of having a miscellaneous development loan should be abolished altogether and capital assistance should be given in the manner recommended in Chapter III.

SHORT-TERM EVALUATION

7.16 With the extent of the decentralization proposed here in plan financing the need for adequate procedure to check progress, locate bottlenecks, make adjustments and take remedial measures will be sharply accentuated, for plan grants in the tied sectors will be conditional on performance and it is on performance that cuts may have to be imposed. Even in the remaining sectors performance will be relevant, as a whole for assessing the assistance earned and in individual sectors to gauge the extent and direction of progress made. It will be important therefore to have mid-year appraisals of the state plans, both for keeping abreast of events and for suggesting correctives if necessary. It will be necessary for the centre to secure in time all the information required for this purpose. This exercise, also sometimes referred to as "short term" or "internal" evaluation will involve for the states a two-fold task: the collection and submission of information of performance in financial terms, separately for crucial and other sectors and the collection and submission of data regarding performance in physical terms. Information in financial terms will be indispensable for the mid-year appraisal as well as for the annual compilation. It is a current complaint against mid-term evaluations that they are too financially oriented. The complaint does have substance but cannot obscure the need for the timely and accurate collection of information of financial performance.

7.17 The answer to the complaint against the present preoccupation with financial targets is to conceive of short

term evaluation as a necessary management tool available with the states to watch and improve plan performance. Such an evaluation must take account of physical achievements also, as well as of the various difficulties and bottlenecks encountered. In the forging of such a tool the appropriate management techniques must be made use of to render this activity more efficacious. The details of the information required and the techniques to be employed need not be spelt out here. They are primarily for Government and the Planning Commission to work out. We may however broadly suggest that

(1) for the purpose of making financial adjustments the following feed-back information may be compiled:—

(a) financial performance scheme-wise in the crucial sectors to which central assistance is tied;

(b) achievement of physical targets scheme-wise in respect of the crucial sectors;

(c) financial performance head-wise, in other sectors, bringing out the effect of the reappropriation, if any on physical targets originally contemplated. (Cuts will be imposed on a scrutiny of figures in respect of (i) plan performance as a whole and (ii) plan performance in crucial sectors);

(2) a comprehensive annual report should reach the Commission and the ministries for appraisal during the middle of the following year. Departmental figures of expenditure reconciled with the Accountant General, should be incorporated in this annual report. Departments in the states should, where they have not done so already, evolve some machinery for the collection of expenditure data. (Successful arrangements like the attachment of a small contingent to the office of the Accountant General have been devised by some states). Ideally, authentic scheme-wise figures should be available straightway from the Accountant General. With the present budget head system, which renders a linking of plan schemes with budget provision very cumbersome, this is not possible. If reform is found possible here the

process will be considerably simplified. Once an easy correlation is available the existing time lag for securing correct figures from the treasuries will be appreciably reduced;

(3) adjustments in the quantum of central assistance for the next annual plan owing to the shortfalls in the previous annual plan will be made on the basis of the reconciled departmental figures but final adjustment shall be made, in due course, on the basis of audited figures. (At present, also, the financial adjustment of the central assistance is made on the basis of audited figures, in due course). Mid-year appraisals may have to be based primarily on financial achievement to be assessed over a suitable period.

ARTICLES 275 AND 282

7.18 A final word may here he said about the use of Article 282 for giving plan grants. It could be mooted that in the high degree of decentralisation proposed, plan grants should be made under Article 275, albeit on the recommendation of the Planning Commission. This would make the scheme of decentralisation complete. We consider however that this course is not yet practicable and will not be so for some time to come. If plan grants are given under Article 275 for a a five yearly period the flexibility necessarily required in planning and determining central assistance from year to year will be lost. The centre itself may not be completely certain of the position of its resources except from year to year and in the present circumstances a five-yearly devolution will not be financially feasible. Besides, the tying of crucial programmes with a built-in mechanism for annual correctives will not be possible in such a system. The utility of Article 275 lies only in employing it for long term—say quinquennial awards. If plan grants are to be made the subject of annual dispensation, as is unavoidable, there is no purpose served in preferring Article 275 to 282.

7.19 To conclude:

SUMMARY OF CONCLUSIONS

(1) the system of attaching patterns of assistance to plan schemes should be discontinued altogether;

(paragraph 7.10)

(2) re-appropriation should normally be permitted freely at the discretion of the states from one scheme to another and from one head of development to another;

(paragraph 7.12)

(3) the states should be given block amounts as central grants with freedom to use these amounts according to their discretion, except for programmes of crucial importance. For programmes of crucial importance the concept of tied assistance should be systematically introduced and rigorously implemented;

(paragraph 7.13)

(4) the mechanism of the miscellaneous development loan should be abolished altogether;

(paragraph 7.15)

(5) with decentralisation, short-term evaluation will become particularly important to enable the centre to work the mechanism proposed and also as a management tool for the states. Feed-back information on financial and physical achievement will have to be sent by the states and adjustments based thereon.

(paragraph 7.17)

CHAPTER VIII

THE CENTRALLY SPONSORED SECTOR

ORIGIN

8.1 The concept of the centrally sponsored sector has evolved gradually during the plans. In the First Plan practically every scheme was sponsored by the centre and there were no distinct categories like "centrally sponsored" and "centrally aided". With the introduction in the Second Plan of the institution of the "centrally aided" sector, that of the "centrally sponsord" sector acquired a separate existence, not recognised initially as a concept with a name, but a reality nevertheless made up of *ad hoc* schemes sponsored and partially or wholly financed by the centre. In time the category gained recognition and its present nomenclature.

MECHANISM

8.2 Schemes in this sector are sponsored by the centre and are executed by the state governments under the technical guidance and supervision of the central ministries concerned. The assistance given by the centre for these schemes is over and above the total central assistance earmarked for the state in the state plan and provision for it, therefore, is made in the budgets of the central ministries.

8.3 Each scheme requires the specific approval of the central ministry concerned before it can be undertaken. Patterns of assistance are here applied to individual schemes and payment is made on the basis of the expenditure reported for each of them. Schemes costing less than Rs. 25 lakhs over the five year period or Rs. 10 lakhs in a year are approved by the ministries on the basis of a certificate from the administrative department concerned in the state to the effect that the schemes have been accepted for financial sanction by the State Finance Department. For schemes costing more, the central ministries accord approval after conducting the necessary scrutiny themselves.

8.4 During the annual plan discussions, centrally sponsored schemes are discussed by the Planning Commission

mainly with the central ministries concerned and not as a rule with the state governments. The reason is that the central portion of such schemes forms part of the central plan and the schemes are executed by the state governments under the guidance and supervision of the central ministries. State governments, at the time of the preparation of their budgets, are usually not aware of the central assistance that would be forthcoming during the year for these schemes.

8.5 The Ministry of Finance obtains from the central ministries the state-wise break-up of the loans and grants to be given for centrally sponsored schemes. After the central budget is passed these figures are communicated to the states. These figures are not communicated before June each year and are sometimes indicated even later.

PURPOSE AND CONSTITUTIONALITY

8.6 It will be apparent from this description that, almost by definition as it were, central sponsoring implies an intrusion into the state sphere. The intrusion is not, technically, unconstitutional for it is protected by Article 282 but it is a question whether, with the help of the financial carrot such intrusion is desirable and conducive to the growth of healthy federal relationships. The device of central sponsoring was really meant to enable the centre to have its way in putting through development measures when there was a risk of the states not according the requisite priority to them. What were the measures that qualified for this treatment? There had to be some principle of selectivity and the working principles enunciated for classifying plan schemes as "centrally sponsored" were as follows:—

(i) they should relate to demonstrations, pilot projects, surveys and research;

(ii) they should have a regional or inter-state character;

(iii) they should require lump sum provisions to be made until they could be broken down territorially; and

(iv) they should have an overall significance from the all-India angle

Despite the vagueness of the last two these could in the main be said to be salutary principles. To keep in tune with the spirit of the planning strategy, such schemes should have been restricted to the minimum possible but in practice central ministries have not adhered to these principles and the original purpose of a centrally sponsored sector cannot be recognised in the expanded scope given to it in practice. Thus a number of schemes are included in it that are in nature indistinguishable from state plan schemes. Our studies show that much the heavier part of the outlay in the centrally sponsored sector does not conform to the working principles described above.

ACTUAL USE

8.7 The centrally sponsored sector gives a foothold to the central ministries concerned in subjects allotted by the Constitution squarely to the states. This foothold has become firmer with the progressive increase in the centrally sponsored sector as will be evident from the sample analysis of a few sectors at Appendix 24. This analysis, which gives a comparison between the budget allotments for 1966-67 and 1962-63, shows that the proportion of central assistance earmarked through the centrally sponsored sector has increased generally in different sectors dealing with state subjects, although the increase is more sharp in some than in others. Thus the increase in the "Education" sector is from 9.5% (of the total central assistance for this sector) to 22.4%, and in the "Co-operation" sector from 24.1% to 52.5%. Figures for 1961-62, comparison with which would have been more apposite, are not easily available, or they may have shown the proportionate increase to be even sharper.

8.8 The central ministries are obviously going in for financing activities falling within the State List of subjects, outside the state plan, to a substantial extent and in the process acquiring a measure of detailed control over them. To this extent the result, for all practical purposes, is to make such subjects concurrent or central by the fiscal backdoor. The advisory organs of the ministries also tend to act as pressure groups urging expansion in this direction. Thus the Education Commission has suggested a large scale recourse to the centrally sponsored sector.

8.9 Although the Planning Commission has of late tended to resist the insistent demand of the ministries to expand the centrally sponsored sector, its resistance has obvious limitations.

A striking illustration is afforded by the decision of a sub-committee of the National Development Council to transfer the centrally sponsored schemes in the social welfare sector to the state plans. Despite the concurrence of the Planning Commission and the National Development Council to the suggestion, the schemes, at the insistence of the ministry concerned, were not decentralised. The general resistance of the Planning Commission and the National Development Council has borne some fruit as is demonstrated by the reduction of the amount eventually allotted to the centrally sponsored sector in the Fourth Plan, but this has to be seen against the mounting demand from the ministries for the expansion of this sector and their partial success in securing it.

8.10 The ostensible reason for over-stepping the bounds of the working principles enunciated is the need to secure adherence to national priorities and to vest in the centre the controlling authority for determining the format of a particular scheme considered nationally important so that it yields the best results.

8.11 The Planning Commission has now sought to expand the working principles enounced earlier and in the formulation of the Fourth Plan has proposed the following revised principles:—

(i) schemes of national importance which the state might not otherwise take up;
(ii) schemes likely to benefit a number of states;
(iii) pilot projects for research and development;
(iv) schemes which require maintenance of high standards in training;
(v) schemes where central expertise and supervision are considered essential; and
(vi) new schemes taken up after a five year plan is finalised.

The very vagueness of these criteria is likely to open up a vast field for inclusion in the centrally sponsored category.

DRAW-BACKS

8.12 The demerits observed when discussing centrally aided schemes are, generally speaking, all present in the centrally sponsored sector. Indeed, as virement is altogether ruled out here, some of them get accentuated. The arrangement relegates to the centre the responsibility of settling priorities in matters in the state sphere, and in a manner of speaking, compelling their acceptance by the states. It is defended by the citation of a similar practice in other federal countries, *e.g.* the United States of America and Australia. It has to be realised that the financial structure of our country is different in many ways from that of these countries. In the U.S.A., for instance, the federal government often gives grants directly to the local bodies and is constitutionally empowered to do so. Much more important than this, these countries have neither gone in for planning on the basis of a national consensus nor have other arrangements built into the system for meeting a major part of the development needs of the states after an assessment of their total requirements and resources. In our country, besides a regular process for determining grants-in-aid for non-plan needs (including maintenance of completed development schemes) an elaborate exercise is gone through for incremental development, involving the states intimately, as a result of which sectoral outlays are decided and priorities laid down. Grants for the entire state plan are again given by the centre, that for some crucial sectors even being inadmissible for reappropriation. No comparable exercise is undertaken in the countries mentioned above where planning of this nature does not exist. When this process itself gives the centre a great opportunity for influencing priorities it need not be furnished with yet another weapon for imposing its will. Indeed, the use of this weapon does detract from the value of the main planning exercise and by fettering the discretion of the states vitiates the process of consultation by which agreed priorities are arrived at.

8.13 Nor is this the only criticism that can be levelled against this system. Because of its unavoidably faulty mechanism the centrally sponsored sector often does not work well. Its limitations are brought out below:

(i) the total resources available being limited, any expansion of the centrally sponsored sector curtails the states' sector under the plan. The money allocated to the centrally sponsored sector could have been earmarked for the state development plans if the centrally sponsored sector were not there;

(ii) distortion in priorities is rather more of a danger here than in the centrally assisted schemes for it is difficult for any state government to resist the financial bait that the centrally sponsored schemes offer. The argument that this allurement is offered for the good cause of securing acceptance of national priorities cannot hold good for in practice several schemes of obviously low priority have been included in this sector, *e.g.* air-conditioning of mortuaries, rickshaw pullers co-operatives, sammelans and study tours of panchayat presidents, etc.;

(iii) it is in principle incorrect to entrust the settlement of such priorities arbitrarily to the centre when the subject falls within the State List. The objection is not merely theoretical for in practice, as shown in (ii) above, the centre tends to introduce low priority schemes also in this sector;

(iv) the details of these schemes are often not worked out by the ministries till the five year plan is far advanced. As the details are specifically laid down by the centre and as thereafter the states prepare and send up schemes for approval, considerable shortfalls occur. Thus the figure of shortfalls for the agriculture sector in the Third Plan was of

the order of Rs. 10.68 crores the original allocation being Rs. 32.64 crores. Obviously, this system is not successful in securing the proper execution of priority schemes, assuming that they do deserve priority;

(v) the state governments at the time of the preparation of the budgets are not aware of the central assistance that will be forthcoming for these schemes, which is intimated earliest in June every year. The states are, therefore, prevented from planning properly; and

(vi) the patterns prescribed are rigid and the schemes are often not carefully scrutinised either by the centre or by the states. Scrutiny becomes a casualty of divided responsibility and defective schemes are passed.

The illustrations at Appendices 25 and 26 reveal the complexity of the procedure which a case has to go through before decisions are taken, the long delays, and the large shortfalls that occur as a result, and the enormous time and labour consumed in the entire process. These illustrations are taken from a case of the Department of Agriculture, in which the question of establishing agricultural universities was dealt with. A number of committees was set up to examine the question and all of them strongly recommended the establishment of such universities in every state, some even working out details and blueprints. The administrative ministry agreed with this recommendation. The Planning Commission, however, did not initially agree and took a long time in forming its views despite great urgency shown by the administrative ministry. In the hurry shown by the ministry certain necessary stages of consultation were initially omitted, causing greater delay. Too much detail, *e.g.* scrutiny of bills prepared by the state governments cluttered up work at the centre and the last committee took about two years to submit its report. On the whole it took 7 years to finalise the scheme. Thereafter against the express wishes of the Planning Commission, proposals were invited, not from all the

states but only from six states. The illustration at Appendix 27 reveals the extraordinary fact that such schemes are sometimes converted from state plan schemes to centrally sponsored schemes with no intent other than the obvious one of getting the state better financial assistance.

8.14 An argument that was pressed before us was that these schemes helped to correct regional imbalances. There are two facets to this argument. One is that the poorer states are enabled to get higher allocations through this mechanism. This is a fallacious line of reasoning, for financial imbalances are expected to be corrected, in so far as they can be corrected, when determining the size of the state plan and its component of central assistance. There is no justification for attempting a surreptitious feat of balancing through the means of the centrally sponsored sector. Besides this argument is not borne out by facts. The analysis of figures at Appendix 28 belies it and possibly could be so interpreted as to draw the opposite inference. (For instance an amount of Rs. 218 lakhs has been earmarked for the co-operative sector in Maharashtra, where it is well developed as against Rs. 15 lakhs for Assam or Rs. 4.6 lakhs for Kerala). The second prong of this argument is that the states administratively and technically weak are helped by central involvement. The argument sounds good in theory, but in practice the schemes are executed by the states with whatever administrative and technical apparatus they have. The centre does not really involve itself in execution. Its involvement is limited to the scrutiny of schemes costing more than Rs. 10 lakhs (or Rs. 25 lakhs over a five year period). In the formulation of the schemes the centre is vitally concerned, but good technical advice does not need financial inducement to be accepted or even sought.

CONCLUSION

8.15 The centrally sponsored sector thus has substantial defects. The concept itself is assailable. The mechanism by which it is implemented is clumsy and dilatory. It encourages irresponsibility both in formulation and execution. In the latter, there is an unhealthy desire to spend the money to earn the assistance rather than to see that the money is well

spent. Thus a large amount was invested in various plans on schemes of soil conservation a large number of which it would appear from the report of the Programme Evaluation Organisation, were improperly executed. Indeed so inherently defective is the entire process that it has pertinently been called "planless planning". We see no necessity of continuing with a system whose capacity for good is outmatched by its demerits and would therefore recommend that the centrally sponsored sector should be abolished altogether.

SUBSTITUTES

8.16 Obviously the genuine objects that this category purports to serve must continue to be served and it is by no means the intention to throw out the baby along with the bath water. It is as innovator and as inter-state co-ordinator that the centre could legitimately resort to central sponsoring. The abolition of the centrally sponsored category will terminate all chances of its misuse but need not prevent the centre from living up to its appointed role, for the discharge of which two devices will be available. One of these is central schemes, which can be selectively pressed into service and should be used more frequently than it is. An advantage gained will be that the responsibility of the centre to the Parliament for money spent will become well-defined where now it is dispersed and that there will be no financial baiting to gain acceptance of centrally determined priorities. Criteria for qualification for inclusion in the central sector have been spelt out in Chapter XI. The other device is that of tying assistance to schemes of crucial importance. Where the planners, viewing the plan as a whole, consider any programme to be of crucial importance, central assistance for that can be tied. Priorities for programmes will then be determined after taking an overall and not a sectoral view, and in consultation with the states. The advantage here will be that the priorities will be settled by a national consensus and will have a moral binding on the states. In both cases execution will be greatly facilitated.

8.17 Although our proposals will give the states an added measure of responsibility some of them might demur to such a step and prefer the present situation in which cent-

ral sponsoring gives them money over and above the state plan ceiling. This would be a short-sighted view. It must be assumed that the abolition of the centrally sponsored category will be taken account of when determining the total size of plan assistance to the states.

CHAPTER IX

THE FORMULATION OF PLANS AND THE SCRUTINY OF SCHEMES

9.1 The decentralization proposed in the previous chapters will bear the best fruit only if it is accompanied by (1) a strengthening of the process of plan formulation so that plans are well thought out beforehand and (2) a greater relaxation of the existing conditions for obtaining the administrative and technical clearance of the Central Government before executing certain schemes. Both these pre-execution stages of planning are dealt with in this chapter.

FORMULATION OF PLANS

Present Procedure

9.2 Preparatory work on a five year plan starts well in advance of its commencement. At the outset, a perspective paper on the dimensional aspect is prepared in the Planning Commission which indicates a broad outline for hammering out a five year plan. Normally this perspective planning covers the forward period of 15 years.

9.3 Two types of working groups are thereupon set up to help formulate state five year plans, one sectoral and the other territorial. The first group deals on an all-India basis with a particular subject like education, health, transport, and suggests the broad approach, the kind of schemes, the pattern of assistance etc., and ultimately works up these into the framework of a national plan for that activity. The second is an inter-departmental group for the state as a whole which is responsible for preparing the state plan. Both these groups are linked at the base and at the apex. Thus in every state there is a departmental group for each activity which provides the connection at the base between the inter-departmental group of the state and the main functional group at the centre. The links at the apex are the Planning Commission and the National Development Council.

9.4 Sectoral groups set up at the centre for various subjects consist of representatives of the Planning Commission and the central ministries concerned and normally meet under

the chairmanship of their secretaries. These groups do not generally associate state representatives, though some, *e.g.* those in the field of education and village industries, have done so in the past albeit inadequately. The bigger departments set up sub-groups which, in a few cases, include representatives from the states also. The central working groups and their sub-groups are expected to formulate proposals for the ensuing five years of the plan keeping in view the perspective plan documents and current and previous plan appraisals. The Third Five Year Plan had 22 such central working groups while 43 groups helped in the formulation of the Fourth Five Year Plan. On the basis of the studies done by the various working groups and of its estimate of resources, the Planning Commission gathers the main features of the plan and the principal magnitudes in the form of a "Memorandum" which contains the tentative composition of sectoral programmes.

9.5 Side by side, the states work through their own departmental working groups for formulating proposals, within the general framework, to cover their needs in the various sectors during the five year plan period. A rough indication of the size is given to the states for this purpose. The results of the studies at the centre and the states are pooled and drawn upon when preparing the Draft Outline of the Plan but specific conclusions are not arrived at at this stage on the details of the plans of individual states. On the basis of the discussions on the "Memorandum" and the studies of the working groups a "Draft Outline" is prepared and placed before the Council, after approval by the Central Cabinet.

9.6 After the draft outline of the all-India five year plan is published by the Planning Commission, a second exercise is undertaken by the states to review priorities and fill in details within revised estimates of financial resources. In some states, the draft plan prepared by the inter-departmental group is referred to a committee of the members of the state legislature or leading public men for advice before it is submitted to the Planning Commission. Some states also get this draft plan approved by the state legislature before coming up for discussion with the Planning Commission.

9.7 After the preparatory stages are over, special central working groups are set up by the Planning Commission for examining and discussing the draft plans of the states. Each working group consists of representatives of the central ministries concerned, the appropriate division of the Planning Commission and the departmental officers of the state governments. These working groups are presided over by the secretaries of the ministries concerned. The position of resources for the state concerned is determined by the working group on "resources" after discussions with the State's Planning Secretary and Finance Secretary. The sectoral working groups make their proposals in the light of the position of financial resources available by that time. These proposals are then scrutinised by the Programme Adviser of the Planning Commission in consultation with the senior officers of the state government headed by its Planning Secretary. The recommendations of the Programme Adviser are finally discussed in a meeting between the Planning Commission and the Chief Minister of the state as a result of which the plan allocation for the state concerned is finally settled. On the basis of the detailed discussions with the various states, all the state plans, together with the central plan, are collated in the form of a fresh memorandum which is placed before the National Development Council after clearance from the Central Cabinet. The conclusions reached on this memorandum become the basis of the final report on the five year plan. The five year plan is published and presented to the Parliament. Likewise every state publishes its plan and this is discussed by the state legislature. The state legislature is, technically, not bound by this plan and can change it if it is willing to forgo central assistance to that extent.

Weaknesses

9.8 These procedures, evolved after experiment over a period of fifteen years, have led to a gradual improvement in the processes of formulation and inter-governmental consultation. And yet some weaknesses remain. Basically the objects of this entire exercise with the states are

(i) to consult the states on and secure their commitment to the goals and objectives and the strategy of the plan;

(ii) to ensure that the schemes evolved are well-conceived; and

(iii) to ensure that the inter-sectoral and intra-sectoral priorities are properly determined.

These objects however are not always achieved. The first has been discussed in Chapter VI. As for the other two, a complete discussion will take us over the entire range of the organization and process of planning, a subject more appropriately for the Study Team on Planning to examine. We propose to confine ourselves to those weaknesses that have a bearing on centre-state relations.

9.9 Shortcomings in the framing of schemes can broadly be ascribed to the following reasons:

(a) the plannnig process at present involves some degree of hurry and hustling and there is not that degree of cool and thorough consideration in conceiving and scrutinising schemes that can come only if continuous attention is devoted to the subject;

(b) at the incipient stages of formulation there is inadequate involvement of the lower levels from which practical proposals, not necessarily fitting into specified patterns, can often emerge; and

(c) the central ministries tend to insist on the incorporation of the schemes framed by them and the departmental groups establish a client relationship with the central working groups. They tend to accept the schemes framed by the central group without proper scrutiny.

9.10 The state inter-departmental group does not in fact do much real planning. Ideally it should work out the projected increase in the rate of income growth, go intensively into the question of co-ordination and inter-relation of different activities, show the capital-output coefficient and determine priorities in relation to the forecast of income and expenditure. In practice it is difficult for this group to plan on this basis because relevant information is not available as

there is no knowledge of central resources likely to be available till the national plan is roughed out and also perhaps because it is not as a rule supported by properly equipped expertise. Its efforts are therefore reflected in the collection rather than the selection of schemes presented by the various departments on the recommendation of the departmental groups. Some effort at indicating priorities is made but is rather rudimentary. Its plan assumes astronomical proportions and often does not have much coherence. The working of the functional group at the centre is not always of much assistance to the state group as it itself acquires, in part, the aspect of a pressure group. Determination of priorities is to that extent rendered more difficult.

The departmental working groups in the states do not quite fulfil the expectation that they will formulate their own schemes to suit local requirements, keeping in view, of course, the guidelines provided by the corresponding working groups at the centre. In practice, they tend to adopt wholesale the schemes suggested by the central working groups. An examination of the Third Plan of three states, selected at random, shows that in the programmes under "agriculture" 80 to 90% schemes suggested in the central group reports were adopted while "health" and "education" plans were almost totally built upon the centre's thinking. Many schemes are included in state plans not because the states consider them inherently important but because they carry patterns of assistance. A major defect in the entire process is the absence of proper technical scrutiny of schemes which becomes a casualty of divided responsibility, the functional group at the centre not being competent to consider them in the background of local needs and capacities and the one at the state level inclined to follow rather than to innovate. The performance of different states in this matter is unequal but the observation has proved true in many instances.

9.11 The working group exercise, far from being brushed aside, has proved useful but can prove much more so with better procedures, especially for consulting and involving the states, which should be encouraged, indeed made, to take

initiative and responsibility. Recognising this the National Development Council appointed five *ad hoc* committees to examine and assist in the formulation of the following aspects of the Fourth Plan:—

(1) Agriculture and Irrigation;
(2) Industry, Power and Transport;
(3) Social Services;
(4) Development of Hill Areas; and
(5) Resources.

This does mark an effort to involve the states more closely but this effort ought to be supplemented.

RECOMMENDATIONS

9.12 Improvement could be thought of along the following lines:—

(i) the central working groups and their sub-groups should invariably have an adequate sprinkling of representatives from the state governments with different problems and varied political colouring. The central working groups should only lay down or locate the national needs, priorities and broadly the physical targets to be achieved. It should preferably not indicate or list individual schemes and it should be the function of the state working group to propose detailed schemes within the broad guidelines and framework suggested by central working group;

(ii) every major department in a state should have an adequately manned planning cell headed by a senior officer responsible directly to the head for doing the work of planning on a continuous basis;

(iii) the departmental officers concerned in the states should keep meeting their counterparts in the ministries for the exchange and clarification of ideas regarding future planning. Before the states' working groups actually finalise their schemes, their accredited representatives should have more than one opportunity of discussing the feasibility and

technical soundness of the schemes with the group or the sub-group at the centre;

(iv) to enable them to perform their functions effectively (a) the officers constituting the group at the state level should be freed from routine duties for a few months so that they can devote their entire attention to the formulation of the five year plan; (b) where adequate expertise is not available with a particular state, suitable technical officers should be deputed to it for formulating and scrutinizing schemes and for training local officers and (c) state officers may be given training at the centre, both on the job and through training courses; and

(v) evaluation as recommended in another chapter should continuously be done and its results taken account of when formulating plans.

Planning and Finance Portfolios in the states

9.13 It would facilitate co-ordination and the development of realistic views if an integrated view of planning and finance were also taken at the state level for which purpose the departments of finance and planning should be placed under a single minister and a single secretary.

ANNUAL PLANS

9.14 All the later motions prescribed for the five year plan are repeated for the annual plan. As the guiding context is the annual performance and the resources available it is unnecessary to repeat the entire working group exercise in the course of the annual plan discussions. As within the state plan it is proposed to give the maximum practicable discretion to the state governments the annual plan discussions should be confined to the determination of the size of the plan after taking into account the relevant factors and for this purpose it is unnecessary to have discussions except with the Planning and the Finance Secretaries and, at most, with one or two other secretaries *e.g.*, irrigation and power with whom the progress of work in their sectors may need to be discussed. It should not be necessary to form departmental working groups and to associate departmental officers in

annual plan discussion. The allocations between the different sectors can be settled by this small team in consultation with the Planning Commission.

9.15 During the mid-term new proposals can arise for fulfilling plan targets. Even otherwise, in a dynamic economy, new situations have to be faced. The present procedure for the inclusion of a new scheme in a five year plan is rather cumbersome. After a state government has decided to introduce a new scheme, by financial readjustment within the plan ceiling, it is required to approach the central ministry concerned and the Planning Commission for clearance. In obtaining this much wrangle and delay can occur, often purposeless for a persistent state is quite likely to win its point in the end with nothing but procrastination gained by tossing the case back and forth. The states should be allowed a freer hand in the matter than they are at the moment. As a matter of convention, the centre should accept any new scheme suggested by a state government as long as the scheme is of a developmental character. It may also be worthwhile to limit central clearance to one authority, say the central ministry, if the plan ceiling is adhered to.

9.16 Organisationally liaison with the states is maintained, besides the National Development Council, through the institution of the Programme Adviser. It would appear that the territorial jurisdictions of these officers are too wide and that their number needs to be increased. Indeed to facilitate the speedy disposal of business, the Planning Commission have posted, on an experimental basis, Planning Advisers in two states *viz.*, U.P. and Bihar. The results of this experiment are not yet available. If successful perhaps the strengthening and extension of this institution to all the states would be desirable. It may however be pointed out that with the decentralisation proposed, the work of the Planning Adviser will decrease. To that extent he could be utilized in an *ad-hoc* manner by the Central Government for other work also particularly of the liaison or co-ordinating variety.

SCRUTINY AND SANCTION OF SCHEMES

9.17 The large measure of decentralisation proposed in Chapter VII needs corresponding measures in the matter of scrutiny and sanction of individual schemes. Indeed, to an

extent, decentralisation in plan financing must inevitably be, and can have meaning only if it is accompanied by decentralisation on the administrative side. Past practice in the Planning Commission would itself seem to recognise this principle. In the earliest stages of planning every individual scheme in the state plan required financial sanction from the centre and was subjected to central scrutiny. This procedure continued to be applicable to a majority of schemes right till 1958 when the condition of scheme-wise financial sanction by the centre was generally dispensed with. This step was accompanied by the removal of the condition of specific technical and administrative clearance of these schemes from the ministries or their agencies before execution. Certain exceptions, listed later in this chapter, were, however, made. The general tendency, therefore, has been towards decentralisation and the step taken in 1958 was in the right direction. This step, however, did not go far enough and another is required to synchronize with the other decentralising measures proposed.

SCRUTINY WHERE CENTRAL CLEARANCE NOT NECESSARY

9.18 State plan schemes can be divided into two categories:—

(a) those not requiring any specific central scrutiny after inclusion in the plan; and

(b) those requiring central scrutiny and sanction even after inclusion in the plan.

A large number of schemes fall in category (a) as a result of the decentralisation effected in 1958. This does not, however, mean that scrutiny is not a problem here for as we have noted even in this sector there is all too often insufficient scrutiny before inclusion in the plan and the execution of the scheme. Centralising scrutiny is no solution, as has been found by experience, for neither at the time of the formulation of the five year plan nor at the time of the framing of the annual plan can any meaningful scrutiny of schemes be done without seriously clogging up work; discussion here is wide-ranging and takes place in general terms only. In fact, discussions with state officials last only about 24 hours and although the state governments send their proposals two to

three weeks in advance of the discussion much attention cannot be given by the Planning Commission or the central ministries within this limited period. Far from being a solution centralisation can only aggravate the problem. The only practicable solution while continuing to conduct scrutiny on a decentralised basis as far as possible is to strengthen state units where required and to streamline the processes of plan formulation as suggested earlier in this chapter.

SCHEMES WHERE CENTRAL CLEARANCE REQUIRED

9.19 The second category of schemes consists of the exceptions which require specific clearance from the centre before they can be included in the annual plan and put into execution. These schemes are listed below.

(i) New irrigation projects costing more than Rs. 15 lakhs are examined by the Central Water and Power Commission, the Ministry of Irrigation and Power and the Planning Commission, on the basis of information given on prescribed forms if the cost does not exceed Rs. 2 crores and in detail if the cost exceeds Rs. 2 crores, in which case the scheme has to be cleared by the Technical Advisory Committee of the Planning Commission and the letter of approval issued from the Planning Commission.

(ii) Flood control, drainage, anti-water logging and anti-sea erosion schemes costing Rs. 25 lakhs or more, or having inter-state or international implications require clearance from the centre. In the case of schemes costing Rs. 1 crore or less, examination is done by the Central Water and Power Commission on the basis of information given in the prescribed forms only.

(iii) All schemes for the generation and transmission of power of the order of 33 KV and above as also all distribution schemes and overall projects of rural electrification are required to be submitted to the Central Water and Power Commission and the Planning Commission for detailed scrutiny and clearance.

(iv) Rural water supply schemes and urban water supply and drainage schemes whose estimated costs exceed Rs. 5 lakhs and Rs. 10 lakhs respectively have to be cleared by the Central Public Health Engineering Organisation. Schemes costing more than Rs. 1 crore have to be cleared by the Central Ministry of Health.

(v) For setting up industrial estates, the administrative approval of the Development Commissioner, Small Scale Industries has to be obtained. In addition, under the Industries (Development & Regulation) Act 1951, industrial projects are required to be licensed or registered by the centre as follows:—

(a) scheduled industries with fixed assets exceeding Rs. 10 lakhs need licence while those below this require to be registered at the centre. The same is the position in regard to industries involving coal, textiles, roller flour mills, oil seed crushing, vanaspati and matches;

(b) other industries, with fixed assets exceeding Rs. 25 lakhs need to be licensed and registered at the centre;

(c) all medium industries, with fixed assets exceeding Rs. 5 lakhs have to be registered with the Directorate General of Technical Development.

At the time of considering an application for licence or registration, the scrutiny takes into account manufacturing programmes, requirements of raw materials and capital equipment, the extent of fixed assets and capital structure, the number of shifts intended, the amount of foreign exchange involved, the market demand for the item proposed to be manufactured, the availability of material for manufacture and the technical feasibility of the scheme.

(vi) New schemes under technical education have to be examined and approved by the All India Council of Technical Education.

(vii) In April 1965 the Ministry of Finance (Department of Co-ordination) laid down that before any project involving an outlay of Rs. 5 crores or more was included in a state plan, the state government should obtain prior clearance from the Central Government (*i.e.* the administrative ministry and the Department of Co-ordination of the Ministry of Finance) before any demands were made or expenditure was incurred. Later on this requirement was extended to those projects the cost of which, though originally estimated to be less was found to have escalated to Rs. 5 crores or more. This procedure was introduced in order to ensure that—

(a) projects involving large outlays (particularly in sectors like irrigation, flood control, power, industry, minerals and transport) were scrutinised in greater detail, expenditure was properly phased in the light of the available resources to reduce the time-lag between the completion of the scheme and the accrual of benefits, and large escalations in costs did not strain the states' financial resources and force them to reduce substantially outlays in other important plan schemes;

(b) the state governments did not abuse their overdraft facilities and did not utilise the funds on huge projects without satisfying the centre about their economic and financial viability. In practice it is largely power and irrigation schemes that are covered by this circular as in other sectors there are very few schemes costing Rs. 5 crores or more.

9.20. The questions that need to be considered here are:—

(i) what kind of schemes should come up to the centre for scrutiny?

(ii) where should this scrutiny take place and what should the channel of correspondence be?

In answer to the main question the principle may be enunciated that where state governments have developed or can without much difficulty develop the required expertise for scrutinising schemes and where major financial issues are not involved, the responsibility for scrutiny and sanction should devolve wholly on the states. (Financially productive loan schemes discussed in Chapter III will provide a limitation to this principle). Regarding the residual schemes that may still have to come to the centre, the general principle should be that only technical scrutiny by the technical organisation concerned should be required and no administrative sanction should be necessary.

9.21 On these principles only the following schemes should come up to the centre for prior scrutiny:— RECOMMENDATIONS

(a) new irrigation projects costing over Rs. 1 crore, for scrutiny in the prescribed form if the cost does not exceed Rs. 2 crores and for detailed scrutiny as at present by the CW&PC and the TAC of the Planning Commission if it exceeds Rs. 2 crores. For schemes costing less than Rs. 1 crore no approval should be necessary although information in the prescribed form should be sent to the CW&PC which need interfere only if there are inter-state implications;

(b) flood control, drainage, anti-water logging and anti-sea erosion schemes on the same criteria as irrigation schemes;

(c) all schemes for the generation and transmission of power of the order of 33 KV or above;

(d) all industrial schemes costing more than Rs. 25 lakhs;

(e) all new schemes of technical education;

(f) all schemes in any sector costing more than Rs. 5 crores; and

(g) financially productive loan schemes referred to in Chapter III and not covered by the above.

An item-wise discussion is at Appendix 29.

This degree of decentralisation assumes that the necessary expertise will be developed in those states which are at present deficient in them and that consultancy services to be availed of on a voluntary basis by the states will be provided by the technical organisations at the centre.

SUMMARY OF CONCLUSIONS

9.22 To conclude:

(1) the central working groups and their sub-groups should invariably have representatives from the state governments;

(paragraph 9.12(i))

(2) the central working group should only lay down or locate the national needs, priorities and broadly the physical targets to be achieved. It should preferably not indicate or list individual schemes and it should be the function of the state working group to propose detailed schemes within the broad guidelines and framework suggested by the central working group;

(paragraph 9.12 (i))

(3) every major department in a state should have an adequately manned planning cell headed by a senior officer responsible directly to the head for doing the work of planning on a continuous basis;

(paragraph 9.12 (ii))

(4) the departmental officers in the states should keep meeting their counterparts in the ministries for the exchange and clarification of ideas regarding future plans. Before the states working groups actually finalise their schemes their accredited representatives should have more than one opportunity of discussing the schemes with the group or the sub-group at the centre;

(paragraph 9.12 (iii))

(5) to enable them to perform their functions effectively

(a) the officers constituting the group at the state level should be freed from routine duties for a few months so that they can devote

their entire attention to the formulation of the five year plan;

(b) where adequate expertise is not available with a particular state, suitable technical officers should be deputed to it for formulating and scrutinising schemes and for training local officers; and

(c) state officers may be given training at the centre, both on the job and through training courses;

(paragraph 9.12 (iv))

(6) evaluation as recommended in another chapter should continuously be done and its results taken account of when formulating plans;

(paragraph 9.12 (v))

(7) the annual plan discussions should be confined to the determination of the size of the plan after taking into account the relevant factors and for this purpose discussions with the Planning and Finance Secretaries and, at most, with one or two other secretaries may take place. The allocations between the different sectors could be settled by this small team in consultation with the Planning Commission;

(paragraph 9.14)

(8) during mid-term the centre should, as a matter of convention, accept new schemes suggested by a state government, as long as the scheme is of a developmental character. It may also be worthwhile to limit central clearance to one authority, say, the central ministry, if the plan ceiling is adhered to;

(paragraph 9.15)

(9) the territorial jurisdictions of Programme Advisers are too wide and their number needs to be increased;

(paragraph 9.16)

(10) the following schemes should come to the centre for prior scrutiny:

(i) new irrigation projects costing over Rs. 1 crore, for scrutiny in the prescribed form if the cost does not exceed Rs. 2 crores and for detailed scrutiny as at present by the CW & PC and the TAC of the Planning Commission if it exceeds Rs. 2 crores. For schemes costing less than Rs. 1 crore information in the prescribed form should be sent to the CW & PC who need interfere only if there are inter-state implications;

(ii) flood control, drainage, anti-water logging and anti-sea erosion schemes on the same criteria as irrigation schemes;

(iii) all schemes for the generation and transmission of power of the order of 33 KV or above;

(iv) all industrial schemes costing more than Rs. 25 lakhs;

(v) all new schemes of technical education;

(vi) all schemes in any sector costing more than Rs. 5 crores;

(vii) financially productive loan schemes referred to in Chapter III and not covered by the above.

(paragraph 9.21)

CHAPTER X

EVALUATION

10.1 Evaluation is an essential aid to planning. The term has come to be used for two different activities—short-term evaluation and long-term evaluation. The first relates primarily to execution and is used during the currency of a plan period for checking progress, locating bottle-necks and taking remedial measures. This is also sometimes called "internal evaluation". Long term evaluation aims at assessing the degree of success or failure of programmes, analysing the causes of their success or failure, assessing their practicability, impact and worth-whileness and suggesting the application of policy correctives both in formulation and in execution. In this sense evaluation is a forward looking tool and not merely a post-mortem of the past. It postulates, therefore, that it should be done effectively and independently by an agency not charged directly with the responsibility of administering programmes. This chapter spells out arrangements for long term evaluation. Short term evaluation has already been discussed in Chapter VII.

10.2 Evaluation is at present looked after by the following organisations:—

(i) the Programme Evaluation Organisation (PEO) attached to the Planning Commission;

(ii) the Committee on Plan Projects (COPP) located in the Planning Commission;

(iii) special teams set up on an *ad hoc* basis by the various ministries for making assessments of specified programmes; and

(iv) evaluation organisations at the state level set up by some states.

10.3 This set-up, as it operates, has certain noticeable shortcomings. The states and the central ministries are not sufficiently involved. The total network of evaluation does not comprehensively embrace all major programmes. The selection of programmes does not follow any recognizable or

rational system of priorities. Several unimportant programmes are assessed while many major programmes remain untouched. There is insufficient co-ordination between the different agencies responsible for evaluation. And finally, there is inadequate follow-up of the evaluation reports.

FUNCTIONS OF THE EVALUATION ORGANISATIONS—THEIR CHARTER

10.4 The need for strengthening the evaluation organisation has been increasingly felt by the centre and by some of the states and the decentralisation proposed by us will provide an opportune moment for laying down the principle that as far as possible all major programmes should be assessed. There will naturally be physical limitations to the application of this principle and therefore some degree of selectivity will have to be resorted to. The mechanism for selection is suggested in a later paragraph. What is important is to stress the need for selecting the crucial programmes in their entirety and as many of the major programmes that remain as are physically possible.

10.5 In response to the growing need for evaluation, a working group under the chairmanship of Dr. V. K. R. V. Rao was set up by the Planning Commission in 1963 to study the evaluation set-up in the states and to make recommendations. This group after an elaborate study furnished an excellent report. Briefly, the report recommended that—

(i) every state government should have an evaluation organisation as an integral part of the planning machinery. The evaluation organisation should function either as a wing or division of the Planning Department. It should not be under the administrative control of any other department;

(ii) the Director of the organisation should be a technically competent and responsible person and given a status high enough to enable him to function effectively;

(iii) the Bureau of Economics and Statistics and the evaluation organisation in the states should work in co-operation but be kept organisationally distinct and separate as the nature of work and the scope of function of the two were different.

(iv) the evaluation organisation should have field units of its own for the collection of data and the field staff of the Bureau should not be utilised for this purpose;

(v) a model pattern for the evaluation organisation (reproduced in Appendix 30) should be commended to the states but there might be some room for adaptations to suit local conditions;

(vi) there should be an Evaluation Committee in each state with the Chief Secretary as Chairman, the Planning Secretary as convener and the secretaries in charge of the finance and one or two other departments as members; and

(vii) 100% central grant to the states should be given to facilitate immediate action by the state governments during 1965-66. (Central assistance to the tune of 50% of the cost was approved for 1966-67 and the subsequent pattern of central assistance on this scheme is to be reviewed from year to year).

10.6 While commending this report, we would like to lay stress on the need to involve the departmental officers and experts both in the states and in the central ministries, to spell out with clarity the co-ordinating role of the central organisations and to avoid duplication of effort. Another look at the requirements of the evaluation organisation, supplementing that of the Rao Group, is therefore necessary.

10.7 Evaluation must be objective. Therefore, those conducting it must have a considerable degree of independence of outlook. Evaluation must give the correct results and must, therefore, have an insight into the actual working of the departments. Evaluation ought to be effective and therefore requires proper follow-up. There is some degree of conflict between the first two of these requirements and there can be a difference of opinion over their relative importance. It is important therefore to evolve an arrangement that harmonises the different considerations.

POSSIBLE PATTERNS OF EVALUATION ORGANISATIONS

10.8 There can be the following possible patterns of an evaluation organisation:—

I—Evaluation may be entrusted to agencies totally outside government, like universities etc. This is not practicable for two reasons—

(i) our universities are not properly equipped to take up this work; and

(ii) evaluation from a totally outside point may not win governmental, and in particular departmental, co-operation and may therefore give an inaccurate analysis.

II—All evaluation may be done by a single centralised evaluation organisation under, say, the Planning Commission. This organisation could have expert groups for special subjects and teams in every state. Such an organisation would make evaluation too centralised and divorced from the realities of the situation and would not involve the states sufficiently to induce them to help in arriving at correct conclusions.

III—Evaluation may in the main be done by the central ministries concerned, their work being co-ordinated by a small central unit under the Planning Commission, the central ministries either having their own units in the states or securing information from the state departments concerned direct. This pattern suffers from some of the drawbacks listed under II above and is therefore not altogether workable.

IV—The set-up may consist of an evaluation cell in each of the major departments in the states, their work being co-ordinated by an evaluation organisation under the Planning Department of the state. There may be corresponding organisations in each ministry at the centre and in the Planning Commission. The basic work of evaluation would be done by the state departments under the guidance of the state planning evaluation agency

and with the help of experts from the central ministries. This alternative, however, suffers from the drawback that the executing departments might not take an objective view of their own programmes.

V—There should be a three-tier arrangement consisting of a Central Evaluation Agency (CEA) under the Planning Commission, an evaluation unit in each ministry, and an evaluation agency under the Planning Department of the state government. This structure (which is an extension of what the Rao Group proposed) seems to offer the best solution to the problem. The functioning visualised for this set-up is briefly spelt out below.

10.9. (i) *State level*

FUNCTIONS OF DIFFERENT AGENCIES IN THE EVALUATION Network

There will be a strong organisation at the state level headed preferably by an officer on deputation from the centre. This deputation is required not only for providing the necessary expertise, which at present most states lack but also the necessary independence of outlook. (This officer deputed, however, need not necessarily go always as the head of the state agency. In what capacity he goes will depend on the strength of the state organisation). This unit, to be attached to the Planning Department, will evaluate major programmes in the state and will associate in each evaluation task—

(a) one or two officers to be deputed by the specialist department concerned in the state;

(b) an expert from the central ministry concerned if required or if this is otherwise indicated by the Central Evaluation Agency; and

(c) one or more non-government specialists on payment of fee or honorarium if this is feasible and is likely to help.

Programmes to be evaluated will be selected by a committee on evaluation (whether purely official or mixed). Such programmes as are indicated by the National Development Council or the Central Evaluation Agency should be included in any case.

(ii) *Central ministries*

(a) Each central ministry will be responsible for indicating to the Central Evaluation Agency the programmes in different states that should be evaluated and on which the association of an expert from the centre is necessary. The ministry will also be responsible for sending a technical expert for this evaluation in different states.

(b) The ministry will be responsible for evaluating in conjunction with the Central Evaluation Agency, programmes executed by the centre or programmes of an inter-state character.

(c) On the basis of the evaluation reports of all the states and of the centre, the ministry will be responsible for bringing out all-India reports of the evaluation of the individual programmes assessed, *e.g.* agriculture, health etc.

(iii) *The Central Evaluation Agency* will be responsible for—

(a) obtaining the clearance of the National Development Council or one of its standing committees to the programmes to be assessed by itself in conjunction with the central ministry and thereafter evaluating them [same as ii(b)];

(b) indicating the essential programmes to be evaluated by the different state governments through their evaluation organisations;

(c) co-ordinating, in consultation with the ministries concerned, the time-table of evaluation programmes;

(d) test checking, at its discretion, programmes already evaluated by the state agencies; and

(e) the training of personnel for evaluation organisations in the states and in central ministries.

Follow-up

10.10 All reports of evaluation conducted by the state unit should go to the Planning Department of the state, the departments concerned in the state, the Planning Commission, the central ministries concerned and the Central Evaluation

Agency. They should also be placed before the state legislature. Reports of evaluation conducted by the centre should go to the Planning Commission, the ministries concerned, the states concerned and should also be placed before Parliament. It will be primarily for the state government and central ministries concerned, and eventually for the Planning Commission to apply correctives on the basis of these reports. It would be helpful if Parliament and the state legislatures were to develop procedures for scrutinising and discussing the more important of the evaluation reports presented to them. The sectoral parliamentary committees, visualised by the Study Team on the Machinery of the Government of India, could play a significant role here.

10.11 The machinery proposed by us would overcome the weaknesses in the existing system. It would, in the first place, involve the states and the centre intimately in the task of evaluation, an involvement that is necessary if the evaluation is to be realistic and forward looking and if its results are to be paid any heed. It would ensure a systematic coverage of the major programmes, their selection taking place on the basis of settled priorities. It would remove overlap between different evaluating agencies. Most important of all, by inviting discussion in the legislatures, it would redeem the evaluation reports from the neglect that is so often their fate today, and would thus enhance possibilities of effective follow-up.

10.12 This set-up differs slightly from that suggested by the Rao Group and can be considered as carrying their proposals a stage further. The main difference is that we envisage an integrated network with roles earmarked for each level and arrangements for co-ordination provided for, whereas the Rao Group visualised the continuance of separate and uncoordinated evaluating agencies under the Planning Commission. Besides, we have emphasised the last and clinching stage of follow-up which has not been covered by that Group's proposals. We have also placed a certain emphasis on the personnel to be associated with the evaluation unit and the evaluating studies, an emphasis designed to secure both objectivity as well as intimate and expert knowledge of the activity studied.

SUMMARY OF CONCLUSIONS

10.13 To conclude :

(1) there should a three-tier arrangement for evaluation, consisting of a Central Evaluation Agency (CEA) under the Planning Commission, an evaluation unit in each ministry and a strong evaluation agency under the Planning Department of the state government;

(paragraph 10.8)

(2) the state evaluation agency, preferably headed by an officer on deputation from the centre, should be attached to the Planning Department and should evaluate major programmes in the states;

(paragraph 10.9)

(3) (a) each central ministry should be responsible for indicating to the Central Evaluation Agency the programmes in different states that should be evaluated and on which the association of an expert from the centre is necessary. The ministry should also be responsible for sending a technical expert for this evaluation in different states;

(b) the ministry should be responsible for evaluating, in conjunction with the Central Evaluation Agency, programmes executed by the centre or programmes of an inter-state character; and

(c) on the basis of the evaluation reports of all the states and of the centre, the ministry should be responsible for bringing out an all-India report of the evaluation of the individual programmes assessed;

(paragraph 10.9)

(4) the Central Evaluation Agency should be responsible for—

(a) obtaining the clearance of the National Development Council to the programmes to be assessed by itself in conjunction with the

central ministry and thereafter evaluating them;

(b) indicating the essential programmes to be evaluated by the different state governments by their evaluation organisations after obtaining the clearance of the National Development Council;

(c) co-ordinating the phasing out of the evaluation programmes where experts from the ministries are to be associated in consultation with the ministries concerned;

(d) test checking, at its discretion, programmes already evaluated by the state agencies; and

(e) the training of personnel for evaluation organisations in the states/ministries;

(paragraph 10.9)

(5) all reports of evaluation conducted by the state planning unit should go to the Planning Department of the state, the departments concerned in the state, the state legislature, the Planning Commission, the ministries concerned and the Central Evaluation Agency. Reports of evaluation conducted by the centre will go to the Planning Commission, the ministries concerned, the states concerned and will also be placed before Parliament.

(paragraph 10.10)

CHAPTER XI

THE ROLE OF CENTRAL AGENCIES DEALING WITH MATTERS IN THE STATE AND CONCURRENT LISTS

BASIC APPROACH

11.1 The specific mention in our terms of reference of "the growth of central agencies handling Concurrent and State List subjects" emphasizes the administrative effects of planning the centralising tendencies in which have resulted in a continuous expansion of these agencies. Before the plan, the task of the central agencies was to function as observers, co-ordinators and advisers. After the arrival of national planning, their role expanded greatly and although they have not quite acquired hierarchical supremacy over their counterpart organisations in the states they have tended to assume functions outstripping their legitimate jurisdiction. Some part of the expansion of their functions and size was inevitable and even desirable but much of it unnecessarily accrued to the centre and is unfit for retention there.

11.2 The existing role of the central ministries will undergo a considerable alteration in the new pattern of planning relationships suggested in this report in which for formulating plans the role both of the states and of the ministries will be strengthened, for executing them the states will be unfettered by any except minimal restrictions concerning the scrutiny of schemes, and, in which in particular there will be no place for centrally sponsored schemes or patterns of assistance for centrally aided schemes. In the new situation central ministries will be able to jettison a good deal of their present work and will need to concentrate on some important matters which now tend to get neglected. Which in specific terms will be the items that the central agencies will shed and which are those that will require their proper attention? With the guidelines worked out in this section, we have carried out functional studies of seven central organisations to see what in practical terms will be decentralised, what retained, and what

out of that which is retained will need more aggressive attention than in the past.

ORGANISATIONS STUDIED

11.3 The organisations thus studied deal with:—

(i) school education;

(ii) small scale industries;

(iii) minor irrigation;

(iv) the National Co-operative Development Corporation;

(v) animal husbandry;

(iv) agricultural marketing; and

(vii) social welfare.

The sample is fairly representative, covering both state and concurrent subjects and if it is weighted in favour of the former it is because it is there that the problem mainly lies. The detailed reports of these studies illustrate on the one hand the extent to which tasks have grown at these central points and, on the other, the neglect many of the most important matters have suffered from. Because of the concretised insight they provide of the working of these agencies we have considered it advisable to append the seven studies to our report and they appear as a special appendix in Volume III.

ECONOMIC AND SOCIAL PLANNING —ENTRY 20 IN LIST III INTERPRETED

11.4 As was to be expected, these studies reveal that not nearly enough is being done by the central ministries and their associate organisations in relation to the states in certain spheres and too much has been taken on in certain others. The first is possibly a result of the second. The second, in turn, is basically the result of too great and too direct an involvement with actual schemes and is sometimes sought to be explained by the occurrence in Entry 20 of List III of the Seventh Schedule to the Constitution of the term "economic and social planning". The purpose of this entry sometimes tends to get obscured. Some have tried to interpret this entry so as to include within it all activities relating to planning and development pursued by the centre and the states. According to this interpretation "economic and social planning" being a subject of very wide import by which almost any activity falling

completely in the state sphere can be covered, the Central Government can encroach on most of the fields assigned to the states by the Constitution. This interpretation would lead to an obviously anomalous situation and would hardly conform to the intention of our federal Constitution. The entry must, therefore, be interpreted in a limited way and its meaning confined to charting schemes making provision and laying down methods for the co-ordination of activities and institutions, providing methods and guidelines by which new institutions designed to promote development may be brought into existence and fostered and even making provision for methods by which these institutions may be financed. It cannot be so construed as to embrace the actual foundation and maintenance of institutions like hospitals or schools. Even if the Central Government has predominant legislative powers in this regard it has not in practice resorted to these under Entry 20. The ambiguity of the term as well as political and administrative reasons would suggest the exercise of this restraint in the future also.

ROLE OF CENTRE

11.5 It is not that the centre must shed every scheme that it is handling. As our studies show some degree of direct central involvement is desirable, indeed inescapable. This gives rise to a two-fold problem: to define the scope of this involvement and to discover the correct mechanism for it. The centre's true role in this context is as an innovator and co-ordinator, and with the abolition of centrally sponsored schemes, this role can be discharged—and discharged better—by central schemes. This mechanism, besides overcoming the disadvantages of centrally sponsored schemes, will have the additional advantage of clearly locating responsibility. A central scheme itself could either be implemented by the Central Government or through the agency of the state governments concerned. To see that this mechanism in turn is used properly and with restraint, criteria have to be developed for the entertainment of schemes in the central sector. These criteria, our study suggests, should be that:—

Central Schemes

(i) the scheme should inevitably have all-India or inter-state administrative implications and should be

such as can administratively be handled only centrally; or

(ii) the scheme should be an experimental one to be made applicable to other states if the results are successful. It should continue as a central scheme only as long as it is experimental; or

(iii) the scheme should be a model one. Here central functioning should ordinarily find expression in Union Territories only as otherwise a means would again be made available for the centre to start encroaching on the state sphere.

11.6 A distinction has to be made between experimental schemes where the centre acts as innovator and other schemes which can operationally be run by the centre only. The principle here needs to be propounded that in the latter category of schemes, while the actual operational tasks may be undertaken by the central organisation, payment should be made for them by the states benefiting. This is necessary to ensure that schemes taken on by the centre, at present with the cheerful concurrence of the states, are really beneficial and pass the only objective test of being considered so by their clients. This will ensure that there is no empire building and that no schemes are thoughtlessly put on the ground. Although the principle does not so require in practice a distinction may be observed between training schemes of a foundational nature and other training schemes. At this developing stage it should be the role of the centre to encourage, at its own cost, the strengthening of weaker development departments in the states and for this purpose foundational training undertaken by the centre *i.e.*, training of planners, training of trainers, should be considered as a legitimate charge on Central Government funds. Other training undertaken by the centre for operational reasons should invariably be paid for by the states in the form of capitation fees or in any other way.

Strengthening State Administrations

11.7 A favourite argument with central ministries for keeping with themselves the work that ought to be devolved to the states is the administrative and technical incapacity of

some among the latter. A reference to the details of the items suggested for decentralization here will show that they do not involve any serious personnel or organisational difficulties for the states and the pragmatic principle is not, in this sense, offended. (The other sense in which the pragmatic principle is urged, namely adherence to priorities, has already been discussed in previous chapters). The argument even otherwise is not to be readily accepted. The weakness of a state department is not an adequate reason for transferring responsibility from the state to the centre. Nor is spoon-feeding likely to develop the organisation sought to be saved from the burden of this responsibility. The proper role of the centre in such situations is to undertake measures, in co-operation with the states, to strengthen their weaker departments. This can be done by a variety of methods. One of these is by undertaking training of a foundational nature to which a reference has already been made. The other is to step in to fill gaps even in substantive professional training, either by conducting such training itself (at the cost of the states) or by deputing trainers to the states, or by arranging for such training abroad. Still another is the strengthening of such departments by a system of deputations from the centre to the states, which should be operated with the consent of the states after locating weak spots. The formation of new all-India services will also assist in such a programme. This entire area is one in which central endeavour can be most fruitful and to which sufficient importance has not been attached hitherto.

Other Aspects of Centre's Role

11.8 There are other important aspects of their legitimate role which have not received enough attention in the central ministries. Performance varies from organisation to organisation but the role of the central agency as leader, technical guide, disseminator of information, planner and evaluator needs more systematic attention than has been generally given. The centre here needs systems to keep itself informed of developments and progress in the states, as well as of relevant developments abroad, to train personnel for planning and to adopt techniques of planning based on adequate data and an analysis of different alternatives available.

11.9 These do not cover the entire range of legitimate central functioning in state subjects. An enumeration could here be attempted of all the functions that should come within the ambit of a central agency and such a list, to be true to the concepts evolved here and to cater to practical needs, should in our view consist of the following functions:— List of Functions for centre

(i) serving as a clearing house of information intimating details and data about good programmes and techniques adopted in one part of the country to the rest of the country;

(ii) undertaking the responsibility for drawing up the national plan for the development sector in question in close collaboration with the states, and developing for this purpose well-manned planning and statistical units;

(iii) undertaking research at a national level, confining attention to matters which are beyond the research resources of states or which have a national import;

(iv) taking the initiative in evaluation programmes with the object of checking progress, locating bottlenecks, taking remedial measures, making adjustments and so on;

(v) undertaking directly activities or schemes which cater to regional or all-India needs;

(vi) undertaking experimental projects;

(vii) undertaking co-ordination with foreign governments and of programmes executed in agreement with them;

(viii) undertaking training programmes of a foundational nature, *e.g.* training of planners and administrators and training of trainers and assisting the states in other ways in developing their administrative and technical capacity;

(ix) effecting co-ordination among different state governments;

(x) generally providing initiative and leadership by involvement in the items listed above and, in particular, providing a forum and meeting ground for state representatives for the exchange of ideas on different subjects and for the evolution of guidelines and taking follow up action on the decisions taken in seminars and conferences convened by the centre;

(xi) undertaking all work relating to foreign exchange;

(xii) dealing with matters relating to the Union Territories;

(xiii) dealing with all-India voluntary or autonomous organisations (as distinct from such organisations at the state or lower levels);

(xiv) dealing with all work connected with the constitutional or statutory obligations of the Central Government; and

(xv) parliamentary work.

Everything else should normally go out, mostly by delegation to the states.

Work Jettisoned

11.10 It is important to note that in most ministries dealing with subjects in the State and Concurrent Lists a considerable body of work will be jettisoned by a faithful application of this list, formidable though it looks, and of the principles enunciated earlier in this section. This will be apparent from the studies appended in Volume III which contain recommendations consistent with the approach spelt out here. Mention is made in these reports of the exact items to be decentralised or retained. For each item a judgment is required whether or not it conforms to the criteria proposed here for retention. In some instances there may be valid differences of opinion whether some items satisfy these criteria, although in the main there should not be any controversy. The extent to which schemes are likely to be decentralised on the basis

of our studies can be gauged by the broad financial estimates for each sector in the table below:

Sector	Estimates of schemes decentralised (Rs. crores)	Estimates of schemes retained (Rs. crores)	Remarks
1. School education	38·59	Not available	1966-67 to 1970-71
2. Small scale industries . . .	1·50	Not available	Do.
3. Minor irrigation	94·07	3·90	Do.
4. National Co-operative Development Corporation	102·00	19·00	Do.
5. Animal husbandry including dairying	3·69	17·99	Do.
6. Agricultural marketing . . .	0·71	1·72	Do.
7. Social welfare	26·66	15·24	Do.

Although the itemised recommendations made in these studies are suggestive rather than definitive we recommend that the departments concerned give them serious consideration. We suggest also that Government undertake similar studies in other central agencies and work out the ideas given here to their logical conclusion.

AUTONOMOUS ORGANISATIONS

11.11 The role of autonomous central organisations in state subjects created or largely financed by a ministry must not be allowed to exceed that of the ministry. The possibility of the use of such organisations for a massive encroachment on state subjects cannot be discounted. The National Co-operative Development Corporation and the Central Social Welfare Board provide ready examples. Unless restraints are placed on these similar to those recommended for the ministries, the latter may tend to circumvent these by creating autonomous organisations and channelizing funds through them. The criteria mentioned above for the entertainment of activities by them should *mutatis mutandis* be made applicable to them also.

CONCURRENT SUBJECTS

11.12 The role of the Central Government in regard to state subjects is clear enough; that in regard to concurrent subjects is naturally not so clear. The degree of central involvement in an area of concurrent jurisdiction varies from subject to subject and from situation to situation. There can be

no thumb rule for determining the extent of central involvement in all such subjects, and this determination has to follow considerations of practicality. According to the Constitution the centre has overriding legislative power but until it exercises this legislative power the subject has to be treated as a state subject. This constitutional position itself gives the clue to the approach that the centre should generally have in relation to such subjects. The centre should try to confine itself to laying down laws, rules and lines of guidance but should entrust the substantive activity in the field itself to the states except where urgent practical considerations warrant otherwise.

AGRICULTURE—CONCURRENT SUBJECT

11.13 A word about our studies in the agriculture sector would be pertinent here. By a constitutional amendment (Entry 33 in List III) the production, among other activities, of foodstuffs (including edible oilseeds and oils), cattle fodder, raw cotton and raw jute has become a concurrent subject. These items together form much the largest part of agricultural produce. If the word "production" occurring in this entry has to be given a wide import agriculture for the most part must be deemed to have become a concurrent subject. In that case the amendment of this entry has introduced an element of confusion in that Entry 14 in List II reading "Agriculture including agricultural education and research, protection against pests and prevention of plant diseases" has not been amended. If the term "production" is to carry a limited import, it is not clear at all what that limitation is.

The confusion needs to be resolved through a parliamentary review so that responsibility is clearly defined. It appears to us that agriculture should administratively be treated as a state subject and that central encroachment in the shape of the assumption of responsibility for substantive activity should not be permissible. However, considering the importance of agriculture to the national economy, the centre should have the right to lay down overall policies and, if necessary, legislate for them. In actual practice the entry has been used by the centre, notably through the National Co-operative Development Corporation, for undertaking substantive activity in this sector. It is precisely because of the danger of such use

of this entry, causing a blurring of lines of responsibility, that a clarification of the import of this entry is required. For purposes of our studies in Volume III we have, for all practical purposes, treated agriculture as a state responsibility.

SUMMARY OF CONCLUSIONS

11.14 To conclude :

(1) the central agencies should concern themselves only with items of work listed in paragraph 11.9;

(2) all other work should be decentralised to the states, especially that relating to actual schemes;

(paragraph 11.9)

(3) the criteria to be followed for the inclusion of schemes in the central sector should be as given in paragraphs 11.5 and 11.6;

(4) central ministries should take special steps to strengthen their counterpart organisations in the states;

(paragraph 11.7)

(5) the role of the central ministries as guide, planner and evaluator needs more attention;

(paragraph 11.8)

(6) the criteria mentioned for the central ministries should also be applicable to the autonomous organisations created by them;

(paragraph 11.11)

(7) the ministries concerned should give earnest consideration to the recommendations made in the study reports in Volume III;

(paragraph 11.10)

(8) studies similar to those in Volume III should be conducted in the other departments/divisions concerned;

(paragraph 11.10)

(9) the import of Entry 33 in List III relating to the production of foodstuffs needs to be clarified.

(paragraph 11.13)

SECTION III

CENTRE-STATE RELATIONSHIPS IN SPHERES OTHER THAN PLANNING AND DEVELOPMENT

CHAPTER XII

STATEMENT OF THE PROBLEM

INTRODUCTORY

12.1 The Commission's terms of reference require that centre-state relationships in this field should be studied "with particular reference to the needs of national integration and of maintaining efficient standards of administration throughout the country".

12.2 Public administration does not relate to the doings of the executive alone, but embraces institutions like judicial administration, the Public Service Commissions, and various other constitutional bodies. Therefore, a survey of federal relations in this field must encompass these institutions and cannot be confined to normal executive traffic.

12.3 The area to be covered is thus vast. Also the matters to be dealt with are heterogeneous in character, unlike those in the field of planning and development which though diverse have a common theme holding them together. The Commission's terms of reference imply that there should be a purpose about centre-state relationships in this field. How should this purpose be defined so that there is a unity of approach to such disparate subjects?

12.4 The Constitution provides the setting in which an attempt to work out guiding principles for governing federal relations in this field has to be viewed. This setting has been described in the introductory chapter of this report. Broadly, the conclusions affirmed there are that the Indian polity is not a federation in the traditional sense, and that the federal structure is primarily a functional arrangement, necessary because a large country can be governed only in this way. When the functional arrangement is deficient the deficiencies should be removed, after a full and frank discussion to be sure, but without any inhibitions introduced by rigid and erroneous conceptions of autonomy. Power must be viewed not as the sovereign and immutable right of the authority in which it happens to be located today but as an instrument

for providing good administration, which ought, therefore, to lodge where it can best be used. The division of powers in the Constitution attempts, in its judgment, to secure precisely this, devolving on the centre powers that can best be handled by the centre and on the states those handled best by the states. If the experience acquired during the last seventeen years regarding the use of these powers by both sides points to the need for adjustments, either way, such adjustments should not be shied from.

GENERAL APPROACH

12.5 In this setting attention has to be focussed on the two items specifically mentioned in the terms of reference. In regard to national integration, four landmarks may first be taken note of in a quick survey of past events. The first was the spectacular integration of the erstwhile princely states with the rest of the country. The second was the reorganisation of states on linguistic lines in 1956, followed by a series of steps, of unproven efficacy, to offset the separatist effects of setting up linguistic states (the most important being the creation of zonal councils). The third was the setting up of a National Integration Council in 1961 following linguistic tensions and disturbances: this has not met since June 1962 and is now in a moribund state. The fourth was aggression on the country first by China and then by Pakistan, which brought out a degree of national fervour that seemed for a while to render all talk of national integration superfluous. But the problem is still there, as is recognized by the terms of reference, and may well acquire difficult proportions in future now that the father figures of independence have gone and single party rule at the centre and in the states is no longer a permanent feature. Aspects of this problem concerning policy (linguistic or other) or the constitutional framework (involving such issues as whether there should be states at all) are clearly outside the Commission's terms of reference. But aspects that are basically administrative must be considered, and these seem to call for a strengthening of institutions at the national level.

12.6 There is, next, the consideration of maintaining efficient standards of administration throughout the country. This must be viewed in the background of the circumstances

that have given rise to this as a pressing problem. The functioning of any democracy often places pressures on the administration and produces corrupting effect. This is more so in the early stages of political growth. Here in India such pressures operate more acutely in the states for the reason that the subjects handled by the state governments bring them in direct and intimate contact with the people. The risk of the administration being undermined by unhealthy influences is therefore more acute in the states. The evidence of what has happened in some states lends support to this view. The administration in some states in the past has been perverted and corrupted to such an extent as to shake public confidence. When things begin going wrong in a state the people look to the centre for redress and instances of central intervention are there, sometimes on the political network and sometimes on the administrative and constitutional. Often the intervention has been ineffective or too late. Whether dramatic or reluctant, whether justified or not, such intervention (and even abstention in some instances from such intervention) tends to have political motives ascribed to it. While political discretion has to be exercised in every case on its merits, what is required, on a long term view, is a system that will enable public administration to sustain healthy democratic processes and to withstand corroding influences. There are in the administrative machinery crucial points which if protected against such corrosion can enable the machine to run with some degree of efficiency and can help in preventing the corrosion from becoming all pervasive. These crucial points need to be identified and effective protective arrangements devised for them based on a national approach to the problem of public administration.

12.7 The greater vulnerability of the states to damaging influences must not obscure from view the danger of such influences gaining the upper hand in the centre at certain points where the centre happens to be more exposed to temptation. A consideration of this problem must therefore embrace all such areas where federal relations are or should be involved.

NATIONAL POLICY ON PUBLIC ADMINISTRATION

12.8 This carries the implication that there ought to be a national policy on public administration. A conceptual approach would suggest that such a policy should have two planks. The first would require the administrative institutions of fundamental importance from a national angle to be listed and a national policy spelt out for each clearly indicating the standards and patterns which should obtain throughout the country. This policy would embrace all such institutions towards which a uniform and nationally accepted approach is desirable, even though they might be operating primarily for and within the state complex and may have no overtly federal purpose to serve. The second plank of this policy would require a built-in-machinery to see that the national standards are in fact upheld and that national patterns of administration are not lightly altered.

12.9 This policy of treating selected sectors in administration as of national importance and devising special arrangements for strengthening them is not startlingly novel. It finds tacit recognition in the Constitution itself. Thus special provisions exist in the Constitution regarding the higher judiciary, audit, the all-India services and certain other institutions. What is necessary is to see how the existing arrangements for selective treatment are working and whether there is any need for strengthening and extending them.

12.10 These institutions could conceptually be considered as falling in two distinct sectors. One is what might be called the "environmental sector", an expression connoting those aspects or institutions of public administration which are not integral parts of the executive administration of the states but which, while expected to remain uninfluenced themselves, influence it in various ways. Severally and jointly they provide the environment within which the executive functions, and this underlines the need to keep them in a state of good health. In this sector could be identified the judiciary, the Public Service Commissions, the election machinery and the various institutions at the national level dealing with environmental factors in financial administration (the Comptroller and Auditor General, the Reserve Bank of India etc.). To these could perhaps be added arrangements devised for the

settlement of inter-state disputes. The other sector relates to the executive core where central involvement is at present largely confined to the all-India services and to its limited and special relationship with the Governor. In this sector could also be included basic aspects of administration that have an overall national significance, *e.g.*, the pattern of district administration.

12.11 In both these sectors there are institutions regarding which the statute assigns a role to the centre and enables it to give effect to a national policy that may be arrived at. There are others in which the centre does not have any constitutional responsibility but for which a national policy is nevertheless necessary if a certain basic uniformity in the standards of administration is to be assured and the unity of the essential administrative fabric preserved. Policy on these matters must gain national acceptance after consultations with the states. Links where they do not exist at present should then be forged with the centre, for in implementing any national policy the assignment of some role to the centre is inescapable. This role, besides being co-ordinative, would cast on the centre the duty to take the initiative in evolving standards and patterns for institutions of crucial importance and, in some cases, to see that they are followed. The links thus established with the centre may be statutory or non-statutory depending on the nature of the problem and the limits to which any escalation in central authority should be allowed in a federal set-up. At one end of the scale will be the situation for which it may administratively be best to give the centre a decisive role by furnishing it with statutory powers. At the other end will be the case in which its role will be to think, activate and co-ordinate in accordance with the principles laid down by national policy, the final decision-making power residing with the states. The maxim followed should be that the spirit of the Constitution should be preserved even if the letter has to be changed.

12.12 The first institution to be considered here is judicial administration which must impartially uphold the law and help to contain executive administration within the rule

of law. The health of the judicial system depends a good deal on the men administering justice at the highest level. If appointments of unsatisfactory personnel can be induced through political patronage and manoeuvre, conditions are straightway created for eroding the citadel of justice and destroying the confidence of the people in the entire system. Recognising the key importance of the higher judicial system, the Constitution lists High Courts as a central subject. The actual procedures followed for the selection of judges for a particular High Court, however, allow the assertion of influence by the executive of that state, resulting in subtle encroachments on judicial independence. Here then is an eminently fit point for a national policy to be evolved which ensures the highest possible standards in this sector of public administration.

12.13 Next on the list are the Public Service Commissions which are meant to advise and assist the state governments in certain fields of personnel administration, *viz.*, recruitment, promotion and discipline. The tone of administration depends to a large extent on the quality of the public servant. The calibre of the recruit thus becomes the foundation on which the edifice of administration stands. The healthy functioning of State Commissions is of vital importance in maintaining efficient standards of administration. Although the State Commissions are creatures of the Constitution, their composition and organisation are subjects in the State List. It is as important for Public Service Commissions to function efficiently and independently as it is for the higher judiciary. The safeguards provided by the Constitution to secure this independence have proved rather less effective than those provided for High Courts, and the quality of work done by State Commissions has gone down in recent years. The root cause of the decline appears to be a tendency on the part of some state executives to pack their Commissions with sub-standard members often for political reasons. There is a clear need for evolving a national policy regarding State Public Service Commissions, which ensures that they function with independence and a high degree of competence. And if there is a case for a national policy here, it is difficult to avoid

allotting at least a co-ordinating role in that to the centre and the Union Public Service Commission.

12.14 There is then the Election Commission. Free and fair elections are the cornerstone of democracy. But the Election Commission, although deriving its authority direct from the Constitution, depends entirely on the state executives for the conduct of elections and does not have separate machinery of its own. While by and large the election machinery functions impartially, cases have occurred in which officers charged with the conduct of elections have been guilty of deliberate lapses. Such instances undermine the confidence of the public and injure democracy. The subject is a delicate one, since any defects in the present system are unlikely to be regarded as such by those who have benefited from them. Nevertheless it is worth considering whether the Election Commission can be enabled to exercise closer control and surveillance so that possibilities of mischief are reduced as much as possible.

12.15 Inter-state disputes need to be settled quickly and impartially otherwise they become festering sores which create friction, prevent development, give a perverse direction to the energies of people and governments and generate hard feelings on all sides. These disputes relate in the main to border claims or to the sharing of waters. The first is primarily a political problem and has been left out of this study. The second is basically an administrative matter and needs consideration here. The Constitution makes available to the centre machinery under Article 262 for settling such disputes but in actual practice recourse to this has never been had. Proposals have therefore been made in this section for strengthening the procedure for securing the impartial and quick adjudication of such disputes.

12.16 Two items qualifying for the environmental sector have not been discussed in this section.

The first relates to the redress of public grievances especially against the misdoings of political executives and senior administrators. The Administrative Reforms Commission has separately recommended the establishment of an Ombudsman-type institution and we have, therefore, nothing to say on this

subject except that if and when such an arrangement comes into being it could become a powerful environmental agency inducing high standards of administrative action and behaviour within executive governments.

The second relates to the national aspects of financial administration represented by the functions performed by the Governor of the Reserve Bank, the Comptroller and Auditor General, and the Finance Commission. Any unsatisfactory features relating to the first two are for the study teams on financial administration to go into and concern us at best in a peripheral sense. We have, therefore, desisted from bringing these within the compass of our examination. As for the third, recommendations have already been made in Section I of this report.

12.17 It will be apparent that, highly heterogeneous in character though the different institutions taken up here may be, they are, for the most part, distinguished by the common principle that their quality and the independent functioning must be assured. For each a national policy must be formulated to secure this end, the ingredients of such a policy being arrived at after consultations with the states. What, in our opinion, these ingredients should be, has been spelt out in the succeeding chapters in this section of our report.

The Executive Core

12.18 The strengthening of the environmental sector, however necessary, can have but a limited effect for it is after all concerned only with the environment. Would it be desirable to have a national policy regarding key points in the executive core of public administration? While it is conceivable that the machinery on the environmental side should be tightened from a national angle, it is difficult to have such an approach to the executive core of public administration because the concept of intervention from the centre cuts into that of democratic functioning at the state level. Too much central interference in this sector can wreck any federation and any measures devised here must therefore be carefully considered so that the medicine does not kill the patient.

12.19 One such measure has been prescribed by the Constitution itself in which a clause is inserted about the all-India services. The subject is of paramount importance from

various angles, not least that of centre-state relationships, and an examination of the manner in which constitutional intention has been given effect to and constitutional expectation sought to be realised would not only be relevant but necessary. The two all-India services, the Indian Administrative Service and the Indian Police Service, were constituted to facilitate liaison between the centre and the states, to ensure efficiency in administration, and to provide contentment and security to the higher services. The IAS was intended to provide top management personnel and to be manned so as to give a uniformly efficient administration throughout the country. At the time of launching these services, Sardar Patel was quite clear that they were being instituted to provide high quality personnel who would be enabled to withstand local political pressures and favouritism. In their short existence of twenty years, the existing all-India services have had a chequered history. Although management policies in relation to them have not yet stabilised, the statement will probably bear scrutiny that some of these policies have made such serious inroads into the character and functioning of these services that, if not reversed, irretrievable damage may be caused to their efficiency, impartiality and all-India outlook. What is required is a restatement of the purpose of these services and a reshaping of management policy aimed at ensuring the fulfilment of the stated purpose. In both matters, fresh thinking must commence (and in some matters has commenced) at the centre, for the centre carries a special responsibility in regard to these services. However, no amount of central initiative and vigilance will do any good unless state political executives cease to think of all-India services as alien agencies, which must be broken into what is required of them locally, either through large scale dilution of their ranks or through other measures.

12.20 Allied to this is the question of establishing new all-India services. A move towards new all-India services was first made by the States Re-organisation Commission in 1956. This was confirmed by the National Integration Council in 1961, and the present position is that an Indian Forest Service has been constituted. The formation of other services is at various stages of consideration and it appears that by the time the Commission makes its report a few more services may have

come into being. This is an excellent development, but we would like to stress that when these services do come into being, their management should not suffer from the defects that have been noticed in the case of the existing all-India services.

12.21 The Governor is an important link between the centre and a state. A part of the Governor's role is, or can be, administrative in character and a study of this role and of the conditions requiring the proper discharge of it are relevant in this context. Such a study would be unnecessary if the Governnor's role were wholly formal, never calling for the exercise of his own judgment. But this is not so, for although he is a constitutional head, the Governor does have to exercise his own judgment in certain matters, some of which are of great moment. The study would be beyond our terms of reference if the Governor were to be regarded as merely a part of the state apparatus. But again that is not so, for besides being the executive head of the state he is a link with the centre, as he is appointed by and can be dismissed by the President, and, in certain circumstances, can be asked to act as his agent. It is appropriate therefore to include here a study of his role. In his case, because of the political significance of his role, it will not suffice to place emphasis on freedom from the state executive alone. His independent functioning, to the extent envisaged by the Constitution, requires that this freedom should be secured even from the political executive at the centre so that confidence in the institution is built all round. The most important link of the executive with this institution is the power of appointment which vests in the centre. Some procedures are required to be devised to secure these appointments in as non-partisan a manner as is possible as the entire nation has a stake in them. An important guideline to be observed here is that no basic tenet of the Constitution should be violated or sought to be changed. We have accordingly examined procedures to ensure good appointments and to secure the proper discharge of his duties.

12.22 While we have not included any other aspect for treatment in this sector different aspects will, at different times, be unearthed for consideration by the country for the evolution of a national policy. The instance of district administration

suggests itself. The pattern of district administration has given a certain unity to the structure of Indian administration. Changes in this pattern are technically within the competence of the states and yet it would not be desirable for any state to make radical changes unilaterally. Questions pertaining to such basic matters can arise from time to time. They need not always be the same, for different situations will force different issues. In all such situations, governments at the centre and the states must take note of the fact that the preservation of unity in administration and the prevention of the confusion stemming from a plethora of systems require that the basic pattern in any state should conform to the national pattern which should be determined by a process of national consultation in which the centre and the states participate fully. Decisions thus arrived at should be adhered to by each state as an act of self-discipline necessary in the national interest.

FORUM FOR INTER-STATE CONSULTATION

12.23 This takes us to the question of establishing a regular and institutionalized forum in which consultation with the states in major matters of national importance can systematically take place. The need for such consultations cannot be questioned. At present it is sought to be fulfilled by *ad hoc* arrangements independently made by different organs of the Central Government. Their manner of working often leaves much to be desired. Earlier the need for a regular and systematic forum did not press itself possibly because of the availability for consultation of the extra-constitutional channel of the party in a situation in which a single party was in power in the centre and the states. That being no longer the case the desideratum has to be recognised and provided for. We have accordingly discussed the question of having an Inter-State Council. This subject concerns itself with all the three aspects of centre-state relationships represented by the three sections of this report. It has been taken up in this section primarily because we wished to take it up after traversing all the other ground.

12.24 The matters to which we have addressed ourselves in this section thus relate to:

A—High Court Judges

B—Public Service Commissions

C—The Election Machinery

D—Inter-State Water Disputes

E—The All-India Services

F—The Governor

G—An Inter-State Council.

CHAPTER XIII

HIGH COURT JUDGES

HIGH COURTS INDEPENDENCE OF RELATIONSHIP WITH CENTRE

13.1 Although the administration of justice is a state subject, the constitution and organisation of the Supreme Court and the High Courts have been specifically enumerated in List I (Union List) of the Seventh Schedule to the Constitution of India. The underlying object in the minds of the Constitution-makers seems to have been to insulate apex courts from local influences, thus furnishing the minimum conditions necessary for the independent and impartial administration of justice at these as well as at lower levels. The feeling has however grown over a period of time that the judiciary even at the apex levels is not always as independent as it should be and that there has been a considerable decline in the calibre of judges appointed to High Courts.

OBSERVATIONS OF THE LAW COMMISSION

13.2 The impression is strengthened by the findings of the Law Commission which was set up in 1955 to review the system of judicial administration and examine Central Acts of general application and importance. The Commission furnished its report on the Reform of Judicial Administration in 1958. Its review of the functioning of the High Courts revealed certain unsatisfactory trends. The quality and output of work left much to be desired in many instances. The heavy accumulation of arrears had created "a grave situation". After collecting evidence all over the country and conducting a detailed scrutiny the Commission traced the main cause of this state of affairs to unsatisfactory procedures of appointment which were responsible for delays in filling vacancies in the High Courts and the induction of unsuitable personnel.

Some of the important recommendations of the Commission aimed at remedying this state of affairs remained unaccepted. A review now could well start with the thinking of the Commission, the basic objective being to secure, as completely as possible, the independence of the judiciary and the appointment of men of the requisite quality.

APPOINTMENT OF JUDGES

13.3 The Law Commission attributed unsatisfactory appointments to—

(a) the existing procedure which enabled the political executive at the state level to induce wrong selections;

(b) the paucity of suitable men in some states; and

(c) the existing conditions regarding the eligibility of service personnel which needed alteration.

CONSTITUTIONAL PROVISIONS REGARDING PERMANENT APPOINTMENTS

13.4 The procedure governing the permanent appointment and conditions of office of a Judge of a High Court is laid down in Article 217(1) of the Constitution the relevant portion of which is reproduced below:—

"Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty two years".

MEMORANDUM OF PROCEDURES

13.5 According to a Memorandum of Procedure drawn up as a drill to implement this provision, when a permanent vacancy is expected to arise in the office of a judge, the Chief Justice communicates, as early as possible, to the Chief Minister of the state his views as to the person to be selected for permanent appointment. The Chief Minister, in consultation with the Governor, forwards his recommendation to the Union Minister of Home Affairs, along with full details of the person recommended. When the Chief Minister or the Governor proposes to recommend a person different from the one put forward by the Chief Justice, the Chief Justice is informed accordingly and his comments invited. These comments are forwarded along with the communication from the Chief Minister to the Union Minister of Home Affairs, who, in consultation with the Chief Justice of India

and the Prime Minister, advises the President as to the selection. The same procedure is observed with regard to the appointment of the Chief Justice except that the recommendation for the appointment of a Chief Justice originates from the Chief Minister.

13.6 The correspondence between the Chief Justice and the Chief Minister and the correspondence between the Chief Minister and the Governor is made in writing and copies of the correspondence are forwarded to the Union Minister of Home Affairs along with the Chief Minister's recommendation. The Chief Justice has, however, recently (and after consideration of the Law Commission's report) been authorised to send directly to the Union Minister of Home Affairs and the Chief Justice of India a copy of his correspondence with the Chief Minister.

13.7 As soon as the appointment is approved the Home Secretary informs the Chief Minister, who obtains from the person selected—

(a) a certificate of physical fitness signed by the Civil Surgeon or the District Medical Officer; and

(b) a certificate of the date of his birth.

The Chief Minister forwards the documents to the Ministry of Home Affairs. Medical certificates are obtained from all persons selected for appointment whether they are at the time of appointment in the service of state governments or not. After the warrant of appointment is signed by the President the appointment is announced and the Home Ministry issues the necessary notification in the Gazette of India.

PROCEDURE FOR APPOINTMENT OF ADDITIONAL AND ACTING JUDGES

13.8 The procedure for the appointment of additional judges is substantially the same. The general policy is not to appoint members of the Bar as acting judges and to appoint them as additional judges only if they are likely to be appointed to permanent vacancies during their period of tenure as additional judges.

ROLE OF GOVERNOR

13.9 According to Article 163 of the Constitution the Council of Ministers with the Chief Minister at the head is

to aid and advise the Governor in the exercise of his functions, except in those cases where the Governor is required to exercise his functions or any of them in his discretion. In the matter of appointment of judges of a High Court, the Governor acts not in his discretion but on the advice of the Chief Minister.

LAW COMMISSION ON THE APPOINTMENT OF JUDGES OTHER THAN THE CHIEF JUSTICE

13.10 During the course of its examination of the procedure of appointment of judges of High Courts there was trenchant criticism before the Law Commission of the selection of unsatisfactory judicial personnel. This criticism was made by a large number of responsible and knowledgeable persons representing different cross sections in the world of judicial administration. The Commission considered this criticism valid and came to the clear conclusion that many questionable appointments had been made to the High Courts on political, regional or other grounds. The Commission ascribed the weakness emphatically to the existing procedure which made the influence of the state executive dominant and permitted it to induce unsatisfactory selections. The members of the Commission were unambiguous about their diagnosis notwithstanding the fact that most of the appointments made had the concurrence of all concerned. This concurrence, they felt, was given by Chief Justices to prevent awkward situations from arising in the event of the appointment of persons not recommended by them or of the rejection by the executive of persons recommended by them.

13.11 The Law Commission considered this state of affairs disturbing and debated whether it was not advisable and practicable to prevent the state executive altogether from having a voice in the selection of High Court judges. After a full discussion of this subject, the Commission concluded that consultation with the state executive was necessary before appointments were made to the High Court but that the procedure of consultation should be so modified that while the executive should be enabled to comment its role should not remain dominating. Accordingly it recommended that

(i) while it should be open to the state executive to express its own opinion on a name proposed by

the Chief Justice, it should not be open to it to propose a nominee of its own and forward it to the centre;

(ii) the role of the state executive should be confined to making its remarks about the nominee proposed by the Chief Justice and if necessary asking the Chief Justice to make a fresh recommendation;

(iii) Article 217 of the Constitution should be amended to provide that a judge of a High Court should be appointed only on the recommendation of the Chief Justice of that state and with the concurrence of the Chief Justice of India.

DECISION OF THE GOVERNMENT OF INDIA

13.12 The Government of India considered these recommendations and rejected them. In rejecting the first two recommendations they relied on the facts that no nominee was considered without taking into account the views of the Chief Justice of the High Court concerned and that out of a total of 283 appointments made from January 26, 1950 to August 31, 1961, 266 were made on the unanimous recommendation of all authorities concerned, only one appointment going against the recommendations of the Chief Justice of India (it had the approval of all authorities in the state).

13.13 In placing reliance on these facts the elucidation made by the Commission (paragraph 13.10 above) was ignored. According to this elucidation Chief Justices agree to unsuitable appointments, knowing them to be unsuitable, to forestall awkward situations and could be expected to make more suitable proposals if the procedures were different. While ideally, in matters of such grave import, the occupant of as exalted an office as that of Chief Justice should be expected not to compromise his better judgment and consent to a proposal to which he has a conscientious objection, perhaps the elucidation is realistic in bringing out the situation as it exists in fact and the considerations that actually determine the course of events. It is to be noted that the first two recommendations of the Commission do not amount to by-passing the constitutionally elected executive. The President as the head of the executive will, even in the arrangement visualised

by the Commission, make appointments on the advice of the constitutionally elected government at the centre. These two recommendations envisage a change only in the role of the state executive which is sought to be restricted to commenting on the Chief Justice's proposal instead of making one. Neither of these recommendations jeopardises the existing constitutional provisions.

13.14 It is suggested that these two recommendations be pressed again for acceptance. Their acceptance should have the following consequences:

(i) political influence exerted at the state level in the appointment of judges will decline;
(ii) less blame will attach to the political executive at the state level for unsatisfactory appointments;
(iii) professional competence will be given greater regard.

13.15 It is indeed arguable that these recommendations do not go far enough and that the existing constitutional provision itself should be amended to dispense with the obligation to consult the Governor. Whether the state governments should have any influence at all with the High Courts is a question that could be asked. The spirit of the Constitution is clear on this subject. If its provisions, fashioned expressly to secure the complete independence of the High Courts, have, in actual experience, been found wanting, should they not be amended and the weakness eliminated? The Law Commission had felt that this part of the provision ought to be retained as the state executive met the budget of the High Courts and as their comments on the character and local position of the candidate should in any case be obtained before a judge was appointed. It can be contended that the fact that the budget of a High Court is debited to the state account is no reason why the state executive should constitutionally be given a say in these appointments. As for its comments on a candidate, these should be restricted to—

(a) his local position;
(b) his character and integrity; and
(c) his affiliations.

The constitutional provision prescribing consultation with the Governor places no such restrictions. Once the need for these restrictions is conceded that for statutory consultation goes and the comments of the state government can as well be had by instructions issued through the Memorandum of Procedure. Such a measure will strengthen the independence of the judiciary and help restore its image in the public mind. The principle underlying this recommendation is that a state government should not have, and should not be interested in having, any constitutional right in influencing appointments to the High Court. Nepotism by the Chief Justice is still possible but should be less likely and less frequent as, being outside politics, he is less vulnerable to pressure. The area of nepotism is thus narrowed down to personal prejudices and predilections and these two, in the inevitable processing through a sieve, are unlikely to pass muster very often.

13.16 An additional advantage of thus defining the role of the state executive is that delays in filling vacancies will be curbed to the extent that they are caused by protracted correspondence or hold up at the state level due to differences of opinion between the Chief Justice and the Chief Minister.

13.17 The third recommendation of the Law Commission—that all appointments should have the concurrence of the Chief Justice of India—was arrived at ostensibly to prevent favouritism by Chief Justices of High Courts but has the effect of restricting the authority of the President. This recommendation was rejected by the Government of India as it departed from the spirit of the Constitution and fettered the ultimate discretion of government. There is considerable merit in the reasoning of the Government of India. Besides, the step recommended by the Law Commission while remedying some defects may well introduce others. Thus the compulsion of concurrence can lead to unseemly wrangles and hence to dilation, acrimony and deadlock. For this reason and also perhaps on grounds of intrinsic constitutional propriety we are not inclined to support the Law Commission on this point

WHOLE COUNTRY AS ONE UNIT OF SELECTION —PREPARATION OF PANEL OF NAMES

13.18 The recommendations made so far, if accepted, would help secure the independence of the judiciary but may not suffice to ensure its quality in every case. It is not only from inadequacies of procedure that unsatisfactory appointments result: in some states they can be ascribed to paucity of persons of standing and competence. In such an event the state Chief Justice may not have information of the talent available elsewhere in the country. The Law Commission therefore recommended that the entire country be treated as one single field of selection and that an *ad hoc* body presided over by the Chief Justice of India be created to draw up a panel of names of suitable persons both from the Bar and from the service in each state.

To begin with, and after considering also the recommendation made by the States Reorganisation Commission that one-third of the number of judges should be from outside the state, the Government decided to try the experiment of making "outside" appointments on a zonal basis. The various zonal councils agreed in principle to such appointments being made and an all-India panel of persons from the Bar and the judiciary was to be drawn up for this purpose. However, there was strong opposition from the Chief Justices to the preparation of such a panel and it was decided not to pursue the proposal for the time being.

13.19 While the systematic and regular formation of such a panel will undoubtedly make possible the efficient selection of high calibre personnel from a wide zone of selection, we appreciate the delicate considerations that have led to the general opposition of the Chief Justices to the idea. Besides, the moment for such a reform is not opportune and we would not, therefore, like to press this proposal. We would nevertheless suggest that, without necessarily preparing panels, the recommendation of the States Reorganisation Commission should be given effect to as far as possible. Some "outside" appointments are made even now but these are few and far between. A serious effort to increase their number will make its own contribution to efficiency, independence and national integration. Unlike the suggestion for the panel, this proposal does not affront any canons of delicacy and

discretion. And yet a couple of objections might be raised and need to be dealt with:

(a) obviously, when appointing an "outsider", it will be necessary to consult the Chief Justice and the government of the state from which he hails. As the Chief Justice of the High Court in which the vacancy occurs will not have any personal knowledge of the suitability of the candidate, he will be unable to give his opinion although constitutionally required to do so. The objection is of a technical nature. The spirit behind the present procedure is that the opinion of the Chief Justice who knows the candidate's reputation and ability should be given due weight. We notice that "outside" appointments have been made in the past without any constitutional difficulties arising. The same could continue to happen in the future. Difficulties might arise if Chief Justices of High Courts to which "outsiders" are allocated object frequently to candidates so allocated. But the whole approach recommended here postulates an enlightened national policy on the problem to which Chief Justices can be expected to subscribe. Normally, therefore, a Chief Justice should not object to the allocation of a carefully selected man. There is in any case no virtue in making any Bench the monopoly of the local Bar irrespective of available merit there or not;

(b) it may be thought that the authority and prestige of a High Court would be affected in case members of an outside Bar are appointed to it. This is an insubstantial objection, because a High Court must command respect for the quality of justice that it dispenses and not for its ability to promote members of its Bar to the Bench. Leaving this aside, the proposal in any case does not envisage that more than one-third of the number

of judges of a High Court will come from outside. This cannot seriously affect the prestige and authority of the High Courts and the Chief Justices. Besides, any fancied diminution in the position of the Chief Justice on account of this one-third component from outside will be offset by the fact that candidates from his state may be going to other High Courts through a selection procedure in which he is associated.

Needless to point out, an "outsider" is not meant to be drafted as an acting judge and is to be appointed as additional judge only when he is likely to be absorbed in a permanent vacancy during his tenure as additional judge.

RECOMMENDATION

13.20 We would therefore urge that the recommendation of the States Reorganisation Commission be implemented so that, as far as possible, one-third of the number of judges on a High Court are from outside. We think this recommendation is capable of being implemented despite the difficulties and resistances that may be encountered. It is particularly capable of implementation where service personnel are concerned.

TRANSFERABILITY OF JUDGES— ALL INDIA CADRE FOR JUDGES

13.21 The Law Commission in this context also examined the question of establishing an all-India cadre for judges of the High Courts with the incidence of free transfer from one High Court to another. Article 222 empowers the President to transfer judges from one High Court to another in consultation with the Chief Justice of India. In practice, this provision is sparingly used. Transferability and the formation of an all-India cadre of judges was urged by the Chief Justices on the following grounds:—

(i) that such a cadre would have the advantages of extending the field of choice of High Court judges and of regulating the staffing of the higher judiciary on the same lines as that of the civil service;

(ii) that a judiciary so recruited would be more independent having less local connections;

(iii) that the difficulty experienced in constituting division benches in hearing cases as one or more of the judges recruited from the state had been engaged in the case at an early stage either as counsel or as party or happened to be related to one or more of the litigants would be avoided;

(iv) that a unified cadre of High Court judges with free transfers all over the country would help to break down the barriers of regionalism which held sway in many parts of the country.

The Law Commission however considered transferability and consequently the formation of an all-India cadre of High Court Judges inadvisable largely because these would accentuate the problem of finding suitable men from the Bar for the Bench and partly because transferability might possibly affect the independence of the High Court judiciary. They felt that considerations of national integration would be equally well served by the preparation of an all-India panel and the formation of an all-India Judicial Service.

We consider that it is important to make "outside" appointments a reality, and that once that is done it is not necessary to insist on a regular system of transfers.

APPOINTMENT OF CHIEF JUSTICES

13.22 The procedure for the appointment of the Chief Justice of a High Court is the same as that for the appointment of an ordinary judge except that the proposal in this case emanates from the Chief Minister.

13.23 The Law Commission observed that it had become almost a matter of routine for the senior-most judge to become the Chief Justice of the state. It felt that the senior-most puisne judge, even though competent as a judge, may not be suitable for appointment as Chief Justice, which functionary had also to be "a competent administrator, a shrewd judge of men and personalities and a person of sturdy independence". If the senior-most puisne judge, however competent professionally, was deficient in these qualities difficulties would arise in the event of his appointment as Chief Justice. The High Court would lack cohesion and team work and conflicts between

judges would arise. The Law Commission came across instances where these conditions had arisen by reason of the senior-most puisne judge having been made Chief Justice.

The Law Commission, therefore, felt that

(a) the Constitution should provide for the concurrence of the Chief Justice of India in the appointment of the Chief Justice of the High Court; and that

(b) without making an inflexible rule a person from outside the state should be considered for appointment if the senior-most puisne judge in the state was not considered fit for the post.

DECISION OF THE GOVERNMENT OF INDIA

13.24 The proposal to amend the Constitution to provide for the concurrence of the Chief Justice of India in the appointment of the Chief Justice of the state was not accepted on the same grounds as held good for a similar proposal in the case of other judges of the High Court and on the additional ground that, in actual practice, there had been no instance in which a Chief Justice had been appointed without the concurrence of the Chief Justice of India. The other recommendation was stated to be in accordance with the existing practice and was accepted.

13.25 For the reasons already stated concurrence need not be made constitutionally obligatory. We observe that the Law Commission did not specifically discuss and opine on the Memorandum of Procedure in this case. We would suggest that the procedure for the appointment of Chief Justices should be changed to provide for the initiation of the case by the Chief Justice of India. Comments from the state government should be unnecessary here as the person must already have been commented upon before his appointment as a puisne judge. Only in the event of a direct appointment from the Bar should such comments be obtained. The Memorandum of Procedure should be amended accordingly.

There should, in addition, be a conscious effort to bring competent and suitable judges from outside as Chief Justices so that selection on sheer seniority within a particular High Court does not crystallise as a settled principle.

13.26 The Constitution lays down the qualifications that officers of the judicial service must possess for appointment to the High Court. The qualifications laid down for judicial officers under successive enactments may here be enumerated briefly. QUALIFICATIONS

Under the Indian High Courts Act 1861, the eligibility of service personnel for appointment as judges of the High Court was confined to—

(a) members of the covenanted civil service who had put in 15 years' service including at least three years' service as zilla judge for appointments to one-third of the number of posts; and

(b) civil servants who had served for ten years including three years as district judge and those who had held office of the Principal Sadar Ameen or judge of Small Cause Court for five years for holding, along with barristers and pleaders, another one-third of the number of posts.

The Government of India Act, 1915 altered the qualifications slightly and stipulated that eligibility would be confined to members of the Indian Civil Service of ten years' standing who had served as or exercised the powers of a district judge for three years and officers who had held judicial office not inferior to that of a subordinate judge or a judge of Small Cause Court for at least five years. The Government of India Act, 1935 repeated these provisions.

13.27 The Constitution has effected a change and the relevant Article 217(2)(a) reads as follows:

"(a) has for at least ten years held a judicial office in the territory of India;"

13.28 The Law Commission reported that unsuitable service personnel had been appointed to the High Court under this clause. They pointed out the confusion that had arisen over the interpretation of the expression "judicial office". In the light of official interpretations officers of the

judicial service working in the secretariat (as Legal Remembrancer, Deputy Legal Remembrancer etc.) had been appointed as High Court judges without ever having been district judges and acquiring that necessary variety of experience that could be had only by actually handling difficult and complex cases of different kinds. They, therefore, recommended that sub-clause (a) of clause 2 of Article 217 of the Constitution should be replaced by the following:—

> "(a) has for at least three years exercised judicial functions as a district judge".

13.29 The Government of India have not yet taken a decision on this recommendation although it was made in 1958. We feel that the proposal of the Law Commission, although on the right lines, does not go far enough and that the period recommended by the Law Commission should be extended to five years.

13.30 We feel that it should not be difficult to secure national endorsement for the policy to which the measures proposed here give expression for they are required to ensure the efficiency and independence of the judiciary, its two perenially necessary attributes.

SUMMARY OF CONCLUSIONS
Appointment of judges

13.31 In brief, our recommendations are that

(1) Article 217 should be amended to dispense with the need to consult the Governor in the appointment of judges;

(paragraph 13.15)

(2) the Memorandum of Procedure should be so amended that

(a) while it should be open to the state executive to express its own opinion on a name proposed by the Chief Justice it should not be open to it to propose a nominee of its own and forward it to the centre;

(paragraphs 13.13, 13.14)

(b) the role of the state government should be confined to commenting on the Chief Justice's proposal, the comments being restricted to

(i) the local position of the candidate

(ii) his character and integrity

(iii) his affiliations.

The state government may on the basis of these comments, suggest to the Chief Justice to make another proposal but the suggestion should not be binding;

(paragraphs 13.13, 13.15)

(3) as far as practicable, one-third of the number of judges of a High Court should be from outside;

(paragraph 13.20)

Appointment of Chief Justice

(4) the case for the appointment of the Chief Justice of a High Court should be initiated by the Chief Justice of India and the role of the state government should be restricted to commenting on the Chief Justice's proposal;

(paragraph 13.25)

(5) In the matter of appointment to the office of Chief Justice of a High Court, the seniority of the serving judges should be only one of the considerations and not an overriding one. If the senior-most judge is not considered suitable, the choice may fall on a suitable senior judge of another High Court;

(paragraphs 13.23, 13.24)

Qualifications (serving officer)

(6) a serving officer should have at least five years' experience as a district judge before being considered for appointment to the office of a judge of a High Court. Article 217(2)(a) should be amended.

(paragraph 13.29)

CHAPTER XIV

PUBLIC SERVICE COMMISSIONS

14.1 The need for independence and competence in members of the Public Service Commissions is to be accepted as axiomatic and does not have to be stressed. It was realised by the makers of the Constitution and given forceful expression to in the debates of the Constituent Assembly. Safeguards were consequently provided with a view to ensuring the independent and efficient functioning of the Commissions. These safeguards have, however, proved inadequate, much more so than in the case of High Courts. In many states the Public Service Commissions have deteriorated both in competence and independence. They have consequently not proved to be the successful guardians of standards that they are meant to be and have too often succumbed to unhealthy influence, mostly from the state governments concerned. Usually surreptitious, the existence of such influences has on occasion been demonstrated in courts of law revealing not merely the amenability of the Commission concerned but a measure of incompetence as well.

14.2 Incompetence and absence of independence in the State Commissions were pointed out by the Law Commission also as long ago as 1958. The Commission observed that—

> "Having regard to the important part played by the Public Service Commission in the selection of the Subordinate Judiciary, we took care to examine as far as possible the Chairmen and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence, from the points of view of either efficiency or of impartiality. There appears to be little doubt that in some of the States appointments to these Commissions are made not on considerations of merit but on grounds of party and

poiitical affiliations. The evidence given by members of the Public Service Commissions in some of the States does create the feeling that they do not deserve to be in the responsible posts they occupy."

Since then the impression has gained ground that, with a few exceptions, the working of these Commissions in the states has deteriorated.

14.3 The quality of personnel determines that of the administration, and to ensure uniform standards in the latter care and attention have to be uniformly bestowed on the former. For obtaining the right quality of personnel and maintaining their morale the first and most important step is to ensure uniform excellence in the functioning of those to whom this task is assigned. In view of their decisive impact on the vast and vital area of personnel administration and on the calibre and morale of the public services, their healthy functioning becomes a matter of national concern. Because they are meant to fulfil a national objective, a national policy regarding the Public Service Commissions is most desirable if they are to succeed in their task.

14.4 The germs of a national policy are to be found in the Constitution itself which mandatorily provides for such Commissions for all the states and which makes certain uniformly applicable provisions governing the terms and conditions on which the members of these Commissions serve. If these Commissions have not functioned with the degree of efficiency and impartiality expected of them it is because the basic idea underlying the constitutional provisions has not been articulated into a national policy and given the statutory teeth required to implement that policy. Thus there is no uniform policy regarding the qualifications and experience of the persons to be appointed to these Commissions. There are wide disparities in the salaries offered to them with startling disparities in calibre as a result. An enunciation of a national policy is overdue to bring about uniformity in these matters.

14.5 This enunciation must take account of the total problem. The basic principle for the formulation of such a

policy must be that as the Public Service Commissions have a crucial role in maintaining the efficiency and integrity of the public service it is a matter of national importance that they should be enabled to do so and that no inroads into their effectiveness and independence should be allowed. It would follow from this that

(a) there should be nationally accepted standards in regard to the calibre and experience of the members of these Commissions;

(b) there should be nationally accepted procedures for making appointments to make possible the enforcement of these standards;

(c) there should be co-ordinating and reviewing arrangements at a central point.

QUALIFICATIONS

Officials

14.6 According to the present qualifications prescribed by Article 316(1) for officials appointed to Commissions any person who has held any office in government for a period of ten years is eligible for appointment as member. A strict construction would permit any government servant—even at the lowest rung of the hierarchy—who has had ten years' service to be appointed as member and in actual practice, as mentioned earlier, there have been instances of questionable appointments in this category. Besides providing, therefore, for a minimum length of service, it seems necessary also to prescribe other qualifications indicating the kind, level and quality of experience that should be required of persons filling such posts. We suggest the following minimum qualifications for an official member. He should be

> "a person who has served in the Government of India or under the government of a state for at least 10 years and held the office of Secretary to Government or Head of Department under a state government or an office of equivalent rank under a state government or the Government of India or the principal office in an institute of higher learning."

Non-Officials

14.7 The Constitution prescribes no qualifications for non-officials to be appointed to a Commission. This is a major lacuna to which can be ascribed several unsatisfactory

appointments. We consider that the lacuna should be filled by the laying down of suitable qualifications. The provision for the induction of non-officials into the Commissions is meant to introduce talent and fresh outlook from that section of the public that has itself undergone professional discipline or possesses management experience. Leaning on this as an underlying principle, we would recommend two things. The first is in the nature of a convention which we suggest that all state governments should earnestly try to maintain. This is that Commissions should be kept non-political in character and consequently political personalities should ordinarily not be considered for appointment to them. The second is in the nature of a formula of qualifications which should govern the eligibility of those to be appointed from amongst non-officials. We consider that the formula should be as below:—

(1) a candidate for appointment from the non-official category

  (a) should be a graduate in Arts or Science or should hold an equivalent degree; and

  (b) should be or have been a *bona fide* practitioner in any of the following professions for a period of ten years:

    (i) education
    (ii) medicine
    (iii) science, technology and engineering
    (iv) law
    (v) accountancy
    (vi) administration, public or business;

(2) at least one of the members of the Commission from either of the two categories (official and non-official) should as far as possible be or have been an educationist. The Commission will then have on it a person who has acquired experience in dealing with young men and women in colleges and universities.

14.8 As to the manner in which these qualifications should be made effective the ideal arrangement, and one

which we recommend, would be to make a suitable provision in the Constitution. One way of doing so would be to amend Article 316 to provide for prescription by the President of qualifications by regulations to be issued from time to time. This may require amending the Seventh Schedule to include as a Union or Concurrent subject the determination of qualifications for appointment to the Public Service Commissions. Should a constitutional amendment not be favoured, the concept of uniform qualifications could be accepted and the qualifications suggested above prescribed by the state governments.

14.9 Unlike the High Courts, the State Public Service Commissions figure in List II (State List) of the Seventh Schedule to the Constitution. Appointment to Commissions is governed by Article 316, the relevant portion of which reads as follows:—

> "316(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:
>
> Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included."
>
> * * * *

14.10 It will be noticed that half the members of a Commission have to be government or ex-government servants. The rest may be government servants or from the public. We discovered during the course of our investigation that this free half, as it were, was filled largely by politicians.

Thus from the particulars collected in respect of 13 Commissions, we found that these seats were occupied by politicians in 12 states. In 6 of them, some of the politicians were defeated ministers or legislators. Even from among officials and ex-officials some of the selections have been questionable. Thus, for instance, officers with experience of a very low level of administration *e.g.* retired deputy collectors or officers who have taken to politics have been appointed. Many state governments have thus not used the power of appointment well.

14.11 The power of appointment is of crucial importance as on its right use depends the calibre of the Commissions. This power has not always been used to achieve the constitutional objective of securing independence and efficiency in the functioning of the Commissions. Not unoften the tendency in some states is just the reverse. As long as this power remains totally with the state governments things are unlikely to improve, particularly at the present developing stage of democracy. Therefore while state governments should undoubtedly have an effective say the final appointing power should reside at a central point. Location of this power at one central point will ensure objectivity and uniformity in appointments. As Public Service Commissions are meant to function independently of the executive this transfer will not have the effect of splitting the state executive in any way or of violating the federal principle. Similar powers regarding the High Courts already vest in the centre and the same principle could with reason be extended to the Public Service Commissions.

14.12 We therefore have the following recommendations to make:

(a) the members of a State Public Service Commission may be appointed by the President through the same procedure as is at present followed for judges of the High Court, the Chairman of the State Commission playing a role corresponding to that of the State Chief Justice and the Chairman of the Union Public Service Commission

playing one corresponding to that of the Chief Justice of India. It will be noticed that we have here recommended the procedure at present followed for the appointment of High Court judges rather than the new one suggested in the previous chapter. This is because the argument of insulating High Courts totally from the influence of the state governments is not completely valid when applied to the Public Service Commissions;

(b) the Chairman of a State Commission should be appointed by the President in consultation with the Chairman of Union Public Service Commission and the state government. The case should be initiated by the state government. The Chairman of the Union Public Service Commission should have an opportunity of commenting on the proposal and making an alternative one before the appointment is made by the President;

(c) as far as possible one-third of the members of a State Public Service Commission should consist of persons belonging to another state. Guided by the consideration that "the principal organs of the State should be so constituted as to inspire confidence" and to help arrest parochial trends the States Reorganisation Commission made a similar recommendation for High Court judges. We believe this consideration to be even more forcefully applicable to appointments to the Public Service Commissions. The induction of outside element will undoubtedly infuse a wider outlook and should therefore be welcomed. An argument preferred before us was that members belonging to other states would not have intimate knowledge of local conditions and might not therefore be able to preserve conventional parities and balances between different sects and groups. An argument of this nature makes the case for "outside" appointments stronger, if anything, as they

are designed to promote the merit principle and to prevent the supremacy of sectional considerations. Besides it is not difficult for an experienced, educated and intelligent person to understand and assimilate the social ethos of a region of what is after all the same country. Another advantage of this policy will be to make traffic easier between a State Commission and the Union Commission (or another State Commission). The need for such mobility may arise in some instances where a Commission requires to be strengthened, as pointed out later in paragraph 14.16(d).

If the recommendations at (a) and (b) are accepted, it will be necessary to amend the Constitution and to bring appointments to the State Commissions on to the central list of subjects.

14.13 We are aware that the changes recommended are rather drastic and may prove unpalatable. But we feel that having regard to the record of some state governments in this matter, the recommendation is justified. In as crucial a matter as the quality of recruitment to the public service it is important not to allow standards in any state to slip and the need for uniformity in standard of administration requires national safeguards evolved as a result of the experience of the weakest rather than the best states.

TRANSFERABILITY AND AN ALL-INDIA OUTLOOK

14.14 Then, a question arises whether the services of these members should become transferable from one Commission to another. Free transferability should certainly assist in breaking down regional barriers. It should also reduce accessibility and possibilities of the exertion of influence because of local connections. On the other hand, free transfers may result in a State Commission being manned largely by outsiders who despite their capacity to assimilate the basic elements of the local situation will not have an intimate knowledge of local matters and machinery which would be required of a majority of the members of the Commissions to furnish it as a whole with the correct perspective for its day to day functioning. It would not be desirable, therefore, to exceed the proportion of one-third in appointing members from outside. It may not be

necessary to resort to transfers to adhere to this proportion. Transferability may not be acceptable to many suitable persons who may be willing to accept appointment in their home states only and it may, therefore, inhibit consideration of their names and narrow the field of selection. Transferability would also carry with it the inherent possibility of the exertion of pressure and interference by the executive. On the whole, therefore, it would be desirable not to have any regular system of transfer.

SALARIES OF MEMBERS

14.15 There are at present wide variations in the calibre and experience of persons appointed to Commissions in different states. A major cause of this is disparity in scales of pay. Some state governments pay their Chairmen of Commissions as much as Rs. 3,000. Some pay them less than Rs. 2,000. It seems to us that Commissions in the latter category cannot easily attract members of the right quality and experience. If Public Service Commissions have a key role to perform in maintaining nationwide standards in public administration, we consider it essential that there should be some degree of uniformity all over India in the salaries and pensions admissible to members. One possibility would be to build the wage-structure of Chairmen and members into the Constitution as in the case of High Court judges. Another would be to amend Article 318, with a consequential amendment in the Seventh Schedule, if necessary, to empower the President to issue regulations on the subject from time to time. What the salaries and pensions should be is something for the Government of India to work out after reviewing the existing scales and consulting the state governments.

AGE OF RETIREMENT

14.16 We have considered whether the age of retirement of members of State Commissions should also be raised from 60 to 65 and brought on to a level with the age of retirement of members of the Union Public Service Commission. It may at first appear that the reasons operative in the case of judges of High Courts, namely the unwillingness of leading members of the Bar to accept appointments to the Bench at a younger age, are not operative in the case of Public Service Commissions, where suitable personnel especially from the services should be available. But on closer examination it will be

found that there are good grounds for considering a raise in the retirement age of members of the Commissions:—

(a) the age of retirement of members of the Commissions was fixed at 60 when government servants retired at 55. Since then general health and life expectancy have improved, and the age of retirement of government servant has been raised to 58. It would be appropriate to consider a corresponding raise for members of the Commissions;

(b) senior government servants attain ripeness and maturity between the ages, say, of 50 and 58. It would be wasteful deployment not to utilise them in top flight executive jobs. It is only after retirement that the best among them should be considered for appointment to Commissions. But with the retirement age of members fixed at 60, they would get two year spells only. Such short term appointments would not be desirable from the Commission's angle. What is worse, the best government servants may not wish to be considered because of this factor. If only to attract the most suitable men amongst retired government servants, and to retain them for long enough, a raising of the retirement age of members is inescapable;

(c) a member of the Commission requires independent mindedness and judgment born of experience more than dynamism. He can continue to exercise both even after the age of 60;

(d) to ensure uniformity in standards and especially to improve the working of State Commissions that are deficient in standards, it may be necessary now and then to appoint members of the Union Public Service Commission as Chairmen of the State Commissions. Such moves would, however, be inhibited by the existing disparity in the ages of retirement;

(e) it has been mentioned that educationists should always be well represented on these Commissions.

In many universities educationists retire after the age of 60 and go up to 65 in some. Several persons in this field attain ripeness and prominence at a late stage and would be suitable and willing for appointments only in their late fifties or early sixties. In order to draft some of them into Commissions at this stage it is necessary to create conditions of parity for them as between a career in a Commission and a good career in the universities. Depriving the educational institutions of some of their best men at an earlier stage while they are actively engaged in creative work would be a course of doubtful merit. Also a good educationist may be unwilling to come to a Commission at an early age, as after a six year break he may find it difficult to go back to a teaching job at the age of 60, and may not find a suitable administrative job. Raising the retirement age of members would enable good material from among educationists to be tapped at the right stage, and retained long enough;

(f) eminent persons from professions like medicine, law etc., will be difficult to secure at an early age.

On the whole, therefore, it would be advisable if the age of retirement of the members of State Commissions were raised to sixty-five. But this measure should apply only to those who are appointed under the new procedure suggested above. It could also be made applicable to those out of present members who fulfil the test of qualifications suggested above.

ROLE OF THE UNION PUBLIC SERVICE COMMISSION

14.17 The Union Public Service Commission should assume a new and active role in relation to the State Commissions. Broadly speaking, it should be analogous to that recommended in this report for the central ministries handling state subjects in relation to the state departments in that the Union Commission should provide leadership and co-ordination in various ways. At present the Union Public Service

Commission performs little of this function for the understandable reason that it has not been specifically assigned to it. We feel that the Union Public Service Commission should so organise itself that it can take the initiative in collecting and disseminating information to the states, in giving them guidance especially in the matter of selection techniques, in undertaking experiments to test new selection techniques, in evolving evaluation techniques, in organising training, through seminars and otherwise, of the staff of the State Commissions in various aspects of personnel administration, in holding seminars for the members of the State Commissions, in conducting research and generally in providing the leadership expected of an apex body and transmitting the impulse to improve performance to all the members of the system.

14.18 To sum up:

SUMMARY OF CONCLUSIONS

(1) the Chairman and members of a State Commission should be appointed by the President in consultation with the Chairman of the Union Public Service Commission and the Constitution should be amended for the purpose;

(paragraph 14.12)

(2) the procedure for appointment should be the same as the present procedure of appointment for judges of the High Court, the Chairman of the State Commission playing a role corresponding to that of the State Chief Justice and the Chairman of the Union Public Service Commission playing one corresponding to that of the Chief Justice of India;

(paragraph 14.12)

(3) the President should by regulation prescribe the qualifications for official and non-official members of the Commissions;

(paragraph 14.8)

(4) an official member should be a person who has served in the Government of India or under a state government for at least 10 years and held the office of Secretary to Government or Head of

Department under a state government or an office of equivalent rank under a state government or the Government of India or the principal office in an institute of higher learning;

(paragraph 14.6)

(5) a member drawn from the non-official category

(a) should be a graduate in Arts or Science or should hold an equivalent degree; and

(b) should be or have been a *bona fide* practitioner in any of the following professions for a period of ten years:

(i) education
(ii) medicine
(iii) science, technology and engineering
(iv) law
(v) accountancy
(vi) administration, public or business;

(paragraph 14.7)

(6) the subject "determination of standards/qualifications in the appointment of members of State Public Service Commission" should be made a Union or Concurrent subject by amending the Seventh Schedule to the Constitution. In the alternative a consensus should be developed;

(paragraph 14.8)

(7) as far as possible one-third of the members of a State Public Service Commission should consist of persons belonging to another state;

(paragraph 14.12 (c))

(8) the age of retirement of members of State Commissions should be raised to 65 and the Constitution amended;

(paragraph 14.16)

(9) the Union Public Service Commission should keep in constant touch with the states and their Commissions and give guidance to the latter.

(paragraph 14.17)

CHAPTER XV

THE CONDUCT OF ELECTIONS

INTRODUCTORY

15.1 Among the most important items of "environmental" administration is the machinery for holding elections. The superintendence and control of elections is entrusted by the Constitution to an Election Commission appointed by the President. But the Election Commission depends entirely on state executives for the conduct of elections and does not have any machinery of its own. What organisation the Commission should have figured prominently in the debates when the Constitution was being hammered out and the need was urged, among others, by Dr. Ambedkar himself of giving it an agency of its own to ensure impartiality in the conduct of elections. It was and is administratively impossible to furnish the Commission with a complete agency to run the general elections and Article 324(6) of the Constitution therefore rightly permits the use of the administrative machinery of the state governments for this purpose. The Commission invariably draws upon this machinery and, as is generally felt, it does by and large perform its functions impartially. The experience of the last general elections in which the ruling party was defeated in several states would strengthen this impression. But cases of impropriety or of wrongful exercise of discretion do nevertheless occur and are not always uncovered by election petitions. The characteristic understatements in the reports of the Election Commission seem to support this surmise. So does the odd coincidence that large scale transfers of officials in the districts appear to become necessary in certain states just before the elections. Attempts to use the official machinery at the district level to serve the ends of the ruling party at the time of elections may increase with the decline of standards in state administrations and the ever-present possibility of unscrupulous actions by political parties in power in the face of election dangers.

15.2 The reliability of election administration should be a matter of national concern, because without this there can

be no health in the system of governance and public administration. It is the public vote that is the ultimate check and corrective for bad governance, and its full and unfettered expression must therefore be ensured as a question of national policy. We are fortunate to have had fair elections so far, on the whole, but the stray items of evidence on the other side mentioned above could be precursors of worse things to come. It is accordingly necessary to make a review now in order to strengthen that which is good and eliminate that which is bad.

NATIONAL POLICY FOR ELECTION ADMINISTRATION

15.3 The broad elements of a national policy for election administration could be spelt out as below.

(1) Fair elections are basic to the success of parliamentary democracy in the country, and it is a matter of national importance that the election machinery throughout the country should be totally independent and reliable.

(2) This casts a responsibility on the centre, which should

—continue to appoint men of the highest calibre as Election Commissioners

—assist the Election Commission in locating and obtaining officers of integrity and competence to serve in his organisation

—take the initiative with the states in promoting national reviews of election procedures and practices from time to time, based on reports of the Election Commission or otherwise.

(3) It also casts a responsibility on the states which should

—assist the Election Commission in every way in the conduct of elections

—eschew the use of the state administrative machinery in furtherance of party ends, and in particular avoid making large scale transfers in the districts on the eve of elections

—constantly strive to maintain fairness and impartiality in the conduct of elections

—take part in periodic national reviews of election procedures and practices.

REVIEW OF EXISTING PROCEDURES

15.4 We have tried to make a review of procedures and practices in this field in the hope that what we have to say may become the starting point of a national review aimed at tightening up the machinery and eliminating possibilities of mischief.

In the main, error, *malafide* or otherwise, appears to occur at five stages:—

(1) in the preparation of electoral rolls;

(2) in the selection of polling booths;

(3) in the scrutiny of nomination papers;

(4) during polling, at the polling booth, where there are instances of impersonation; and

(5) at the time of counting of votes when the Returning Officer may influence the result by improper counting.

Lapses at the fourth stage are generally the result of official helplessness rather than official error or connivance and can be rectified only through an election petition. Lapses at the other four stages, particularly the last, are more dramatic and, as they are not as widely dispersed as the third, are more easily controllable. The approach could be to—

(i) provide some machinery to the Election Commission through which it can secure better and more impartial supervision, and

(ii) introduce modifications of procedure that will help prevent such lapses and rectify matters before damage is irrevocably done.

It is important to devise protective measures for keeping the election machinery in good shape, because the only other means of redress—an election petition—proves long drawn out and here, more literally than anywhere else, delay in justice becomes a denial of it.

Strengthening the supervisory machinery

15.5. Efficient though the administration of elections generally has been in every other way, a recurring defect has been inadequate supervision by an agency independent of the state executive. Supervision is, in the main, exercised by officers of the state executive and cases have occurred in which Returning Officers and their supervisory authorities have invited criticism, sometimes justly, for being partial. What is required therefore is to provide the Election Commission with a supervisory machinery of its own. This is possible by an extensive use of Article 324(4) of the Constitution which provides for the appointment of Regional Commissioners, in consultation with the Election Commission, to assist it in the performance of the functions conferred upon it. Four posts of Regional Commissioners were created for the first general elections but only two Regional Commissioners were appointed, one in Bombay and the other in Patna. No Regional Commissioner was appointed during the second, third and fourth general elections and the Commission was dependent for supervision upon the Chief Electoral Officers, who were officers of the state governments.

15.6 To make up for the present deficiency in supervision we would recommend that whole time Regional Commissioners should be appointed for a temporary period of, say, six months for groups of neighbouring states. The Regional Commissioner and the Chief Electoral Officer will then be able to inspect much of the polling and counting. Where necessary, the Regional Commissioners will intervene on behalf of the Election Commission and could, for this purpose, be delegated the requisite powers by suitable amendments of the Representation of the People Act. The Regional Commissioner is not intended to be a regular intermediary between the Election Commission and the Chief Electoral Officer. The latter will normally correspond direct with the Election Commission except in matters where the Election Commission specifically delegates its functions to the Regional Commissioner or desires that a matter be routed through him. It is not necessary to spell out here all the delegations required for these will be determined by the Commission. Some of these, however, have been mentioned later while examining specific aspects of the election arrangements.

15.7 The essence of this arrangement requires that the number of such Commissioners should not be too small and that each Regional Commissioner should have a manageable charge. Probably one state per Commissioner will not give him an adequate load of work except, may be, in the case of a large state like Uttar Pradesh. But an average of two per Commissioner should give him enough work and will be a manageable proposition as far as distances and supervision are concerned.

15.8 Regional Commissioners should be persons of high status. They should be drawn upon from outside the state executive and there should be no objection to appointing retired officers for this purpose. The persons appointed should either have been Judges of a High Court or officers of wide administrative experience in senior capacities, equivalent to or higher than that of the Chief Electoral Officer of the state. They should not have had any political affiliation. The voice of the Chief Election Commissioner should be decisive in their selection and Article 324(4) should be amended to provide for their appointment by the President "on the recommendation of" rather than "in consultation with" the Chief Election Commissioner. A distinction in this context has to be made between this office and that of, say, a judge of the High Court for this office exists only for temporary supervision, to assist the Election Commission.

Selection of polling stations

15.9 The law requires the Returning Officer for each constituency to provide, with the previous approval of the Election Commission, a sufficient number of polling stations for the constituency and to publish the approved list before the elections are held. Instructions are issued by the Commission from time to time laying down general principles for the guidance of the Returning Officers when selecting polling stations. The list of polling stations selected by the Returning Officer is scrutinised by the Chief Electoral Officer and forwarded to the Election Commission for notification. As the Election Commission has no means of verifying whether the selection is fair, the recommendations emanating from the district and state levels are normally accepted. Although as a rule no *malafides* are alleged or suspected.

sometimes the selection may seem unfair to certain candidates. Effective scrutiny of the recommendations of Returning Officers and Chief Electoral Officers is therefore desirable. A suitable way of doing so would be to entrust the task to the Regional Commissioners suggested earlier.

Scrutiny of nomination papers

15.10 The scrutiny of nomination papers is a crucial stage in an election, for the rejection by the Returning Officers of a nomination paper debars the candidate from contesting and, if the rejection is faulty, redress is available only much later through an election petition whereafter the entire process of election in that constituency has to be gone through all over again. The repercussions of faulty admission are less serious than those of faulty rejection, for faulty admission, even if pronounced so by an election tribunal, does not necessarily lead to a fresh election. Section 36 of the Representation of the People Act, 1951 gives the power to reject any nomination paper to the Returning Officer. The grounds on which the nomination can be rejected are also laid down. Sub-section (4) of Section 36 of the Act provides that the Returning Officer should not reject any nomination paper on the ground of any defect which is not of a substantial character, but leaves the discretion to accept or reject the nomination paper entirely with him. He is only required to record in writing a brief statement of his reasons for rejection, if he decides to reject. A large number of nomination papers were rejected in the first general election particularly as the law and procedure at that time were rather complex and difficult. These have since been simplified progressively and the task of the Returning Officer as well as of the candidate made much easier. Nevertheless, many cases of improper rejection still occur. At times, the rejection, although not wholly groundless, is not strictly necessary, nor therefore proper, for a liberal view can and should be taken by a Returning Officer if there are only technical omissions.

Incorrect rejections may occasionally be the result of ulterior motives although these can never be proved. At other times they may well be the result of *bona fide* error. In either case too much discretion and responsibility devolve at present on the Returning Officer whose decision to reject a nomination paper can have far reaching consequences. It is

felt, therefore, that there should be independent scrutiny at a higher level in cases in which the Returning Officer proposes to reject the nomination papers.

15.11 We reccommend that while the Returning Officer should after the scrutiny of nomination papers be empowered to accept them, as at present, the final decision for rejection should not lie with him. If, in his opinion, any nomination paper is so defective that it should be rejected he should record his findings and a decision in this behalf should be taken by the Regional Commissioner. Section 36 of the 1951 Act should be appropriately amended.

15.12 In 1955 a proposal was considered by Government to introduce a provision in the Representation of the People Act for appeals to a judge of the High Court against the decisions of Returning Officers accepting or rejecting nomination papers. It was also provided that the decision of the judge on appeal, and subject only to such decision, the decision of the Returning Officer accepting or rejecting the nomination of a candidate would be final and conclusive and that the decision could not be called in question in any court or tribunal including an election tribunal. When the Bill was introduced in Parliament, the Select Committee made the procedure even more elaborate. Amendments were suggested for the appointment of judicial officers of ten years standing, known as Scrutiny Officers, who would scrutinise the nomination papers. A more detailed scrutiny extending to two weeks was proposed and even after such a detailed scrutiny an appeal to a judge of High Court was suggested. It was also provided that in certain cases where the judge considered that there had not been a full inquiry into the matter, he would have the power to issue a certificate that the matter in appeal might be taken to an election tribunal, after the completion of the election. Several members of the Select Committee expressed grave doubts about the workability of the scheme and recorded minutes of dissent. The Bill was subsequently withdrawn by Government on the advice of the Chief Election Commissioner who felt that such an elaborate procedure would make the simultaneous holding of elections all over the country impossible.

We agree that the procedure evolved in that proposal was unworkable. The proposal made by us, however, is simple and, in our view, practicable, for it envisages a reference to a higher authority only in cases in which a nomination paper is proposed to be rejected. The procedure even on this reference will be summary and it is not the intention to oust the jurisdiction of the election tribunal.

Strengthening the counting procedure

15.13 Mischief sometimes occurs at the time of counting votes when the Returning Officer may influence the result by improper counting. Counting has been singled out as improprieties here most adversely affect public confidence and as reform is more easily possible here than in other aspects of elections, *e.g.* in the matter of preventing impersonation of voters.

15.14 The procedure for the counting of votes is set out in the Conduct of Election Rules, 1961. The substance of it is that all the valid votes polled in a constituency are counted under the supervision and direction of the Returning Officer. Each contesting candidate; his election agent and his counting agents have a right to be present at the time of counting. After the completion of counting the Returning Officer is required to record the total number of votes polled by each candidate and announce the same. Thereafter a candidate or, in his absence, his election agent can apply to the Returning Officer for a recount of all or any of the ballot papers already counted stating the grounds on which he makes such a demand. When an application for recount is received it is left to the discretion of the Returning Officer to decide whether the application should be allowed in whole or in part and to reject it if it appears to him to be frivolous or unreasonable. His rejection is final. If he decides to allow an application he orders a recount of the ballot papers and, if necessary, amends the result announced by him earlier. Once a recount has been made no application for further rechecking of the votes is entertained. The Returning Officer then declares the result of the election.

15.15 The actions of a Returning Officer are challengeable only in an election petition which is often a long drawn

out and expensive affair. It is because instant decisions are required at the time of counting that this measure of authority has been given to the Returning Officer. What needs to be seen is whether the existing arrangements can be so fortified as to diminish substantially the chances of improper action on the part of the Returning Officer without in any material way rendering the decision making process dilatory or difficult, and, in the event of improper action in counting, to make available speedy redress. An amendment has already been carried out in the Representation of the People Act, 1951 providing for intervention by the Election Commission, upon the report of a Returning Officer, in the event of unlawful or accidental destruction or tampering with ballot papers at the time of counting. This will look after cases in which the Returning Officer makes a report to the Election Commission. It will not, however, apply to cases in which the Returning Officers' own actions are improper. Such exigencies are sought to be taken care of by another amendment. Section 66 of the Act at present directs the Returning Officer to "forthwith declare" the result of the election as soon as the counting of votes is completed. Interventionist powers have been given to the Election Commission by an amendment according to which "the Returning Officers shall, in the absence of any directions by the Election Commission to the contrary, forthwith declare the result". While this does give power to the Commission to withhold the declaration of a result it does not spell out the consequential procedure for completing the election.

15.16 It is difficult to devise any perfect measures in this field of counting, but a few suggestions are given below which, individually or in conjunction, could help strengthen the existing arrangements considerably.

(1) The amendment to Section 66 of the Act, referred to above should be amplified to provide for

(a) the appointment, if the Commission thinks fit, of a new Returning Officer, without consulting the state government (at present a Returning Officer is appointed in consultation with the state government);

(b) a fresh count altogether, without prejudice to any other remedy that may be available under the Act.

This amplification seems necessary as Article 324(1) of the Constitution vesting powers to superintend, control and direct the election may not be considered as inherently vesting in the Commission the powers sought to be given to it here.

(2) This power to withhold the declaration of result should also be exercisable by the Regional Commissioners.

(3) The Canadian practice of a fresh count of votes, in the event of a challenge, by an independent authority before the announcement of a candidate's return to the legislature is made, should be substantially introduced. The provisions of the Canadian law regarding fresh count are given in Appendix 31. The procedure in a nutshell is given in the following paragraph.

The Canadian Practice of Fresh Count

15.17 The Returning Officer, after completing the count, declares and certifies in writing the name of the candidate obtaining the largest number of votes and gives a certificate giving the number of votes cast for each candidate to all candidates or their representatives. He does not, however, forthwith declare the candidate elected. If, within four days after the date on which the Returning Officer has declared the result, it is brought to the notice of the regional judge that an impropriety has been committed, the judge conducts a recount. When the recount is completed the judge gives his own certificate regarding the votes polled by the different candidates and informs the Chief Electoral Officer as well as the Returning Officer about the result. The Returning Officer thereupon declares to be elected the candidate who has obtained the largest number of votes according to the certificate given by the judge. One result of such a procedure will be that the declaration of election of the candidate will take place after a specified interval, say six days, if the count is not challenged and if it is challenged after the result of the fresh count is available. This delay in the return is not of any consequence and should not materially affect the time

schedule for the Presidential election. The advantages of this procedure should more than compensate for the minor delay involved.

A necessary corollary of this arrangement is that the return of the candidate to the legislature is never announced immediately and is inevitably kept pending whether the count is challenged or not. If the Returning Officer does not receive notice from the regional judge to attend for purposes of a recount, he returns the candidate on the sixth day after completing the count. Where the count is challenged and a recount is held by the judge, the return is announced after the recount is over.

Under the Canadian law, any omission, neglect or refusal of the judge to comply with the provisions is appealable to a higher court.

15.18 Such a procedure, if introduced in its essentials, will certainly help to prevent the improper return of candidates to the legislatures. A possible difficulty might be that defeated candidates would be tempted to invoke this provision, with reason or without, on a wide scale. To check this, it could be provided that recount would be permissible only in cases in which the margin of difference in the votes polled by the winning and the appealing candidates does not exceed a certain limit, say 2%, of the valid votes polled. The percentage could be decided by the Election Commission, based on the results of the 1967 elections. A suitable security deposit, say Rs. 2,000, would be an additional safeguard preventing candidates from making frivolous requests for a fresh count.

15.19 The power to conduct the fresh count should be delegated here not to a judge but to an officer appointed by the Election Commission. It will not be necessary to provide for an appeal from the decision of the officer conducting the fresh count. If this recommendation is accepted, it will not be necessary to follow the course suggested at (1) (b) in paragraph 15.16.

15.20 A distinction will always have to be made between this fresh count and the recount that is at present permissible at the discretion of the Returning Officer. The existing provision of recount should remain.

SUMMARY OF CONCLUSIONS

15.21 In brief, our recommendations are—

(1) a Regional Commissioner should be appointed for a temporary period of six months or so for a group of neighbouring states;

(paragraph 15.4)

(2) the status of the Regional Commissioner should not be lower than that of the Chief Electoral Officer;

(paragraph 15.5)

(3) he should be drawn upon from outside the state executive and there should be no objection to appointing retired officers. Article 324(4) of the Constitution should be amended to provide for his appointment by the President "on the recommendation of" rather than "in consultation with" the Chief Election Commissioner;

(paragraph 15.8)

(4) the Regional Commissioners should be delegated such powers under the Representation of the People Act to intervene in the conduct of elections, as the Election Commission considers fit. The Act should be amended to provide for this;

(paragraph 15.6)

(5) the following special functions should be performed by the Regional Commissioner—

(a) scrutiny of list of polling stations before they are notified by the Election Commission;

(paragraph 15.9)

(b) making a final decision regarding the rejection of a nomination paper by a Returning Officer;

(paragraph 15.11)

(c) withholding the declaration of the result of election when such a step becomes necessary;

(paragraph 15.1

(6) to strengthen the counting procedure and to avoid mischief at the time of counting of votes, Section 66 of the Representation of the People Act may be amplified to provide for the appointment, if the Commission so thinks fit, of a new Returning Officer without consulting the state government;

(paragraph 15.16)

(7) the Canadian practice of a fresh count of votes, in the event of a challenge, by an independent authority before the announcement of a candidate's return to the Legislature, should be substantially introduced.

(paragraphs 15.16, 15.17)

CHAPTER XVI

INTER-STATE WATER DISPUTES

NEED FOR EXAMINATION

16.1 In the settlement of inter-state water disputes the centre has been assigned a significant role by the Constitution and by the legislation enacted under it. The need for an examination of this role arises from the fact that a number of major disputes have remained unsettled.

16.2 Disputes broadly relate to the use, control and distribution of waters of inter-state rivers for purposes of irrigation and the generation of power. There is no codified law prescribing rights and the notion of "equity" has come to prevail restraining the upper states from drawing such quantities of water as would injure the lower states. The general principle of equitable apportionment is simple to propound but complex in application and each contending state can give to this principle an interpretation that suits it. The magnitude of the problem will be apparent from a glance at the list of unsettled disputes and the problem is likely to become more acute in the future for two reasons :

(i) the great increase in irrigation involving large scale exploitation of river waters; and

(ii) the disappearance of the phenomenon of uni-party control all over India which has so far provided an extra-constitutional means for settling disputes.

Jealousies and wrangles over rights over waters will increasingly become a source of friction and acrimony between states. It is important therefore that adequate legal and administrative arrangements should exist for the settlement of such disputes. Administrative measures calling for some form of joint management (examples being Damodar Valley Corporation, Bhakra Control Board, measures under the River Boards Act) can conceivably help, although have

not always helped, solve such problems. But these measures depend on co-operation and while they are to be welcomed, wherever possible, they cannot be substituted for any adequate legal procedure available to the contending states to settle their disputes. A distinction must therefore be made between provisions for settling disputes and between provisions for joint management even though the latter may incidentally resolve conflicts.

BRIEF HISTORY OF CONSTITUTIONAL PROVISION

16.3 A brief historical outline of the legal arrangements so far made may here be given. With the introduction of the federal system of government in India, provisions were made in the Government of India Act, 1935 for resolving inter-state water disputes. When the Bill was being drawn up the question was examined in considerable detail whether property rights over water in the provinces should be recognised or not and whether disputes should be determined by the Federal Court or by a special tribunal. The correspondence that ensued between the Secretary of State, the Governor-General and the provinces is illuminating and can be seen at Appendix 32. The conclusion arrived at was that the jurisdiction of the Federal Court should be barred and that disputes should be settled by the Governor-General after obtaining the advice of a special tribunal. Provisions were framed accordingly and inserted in the Government of India Act, 1935. In brief, this Act provided for—

(i) complaint by a province to the Governor-General with respect to the use, control or distribution of water ;

(ii) compulsory reference by the Governor-General of that complaint to a Commission (unless he was of the opinion that the issues involved were not of sufficient significance) ;

(iii) compulsory decision by the Governor-General (or in certain circumstances by His Majesty in Council) on the report of this Commission; and

(iv) freedom to the Governor-General to vary his decision on the application of an affected province.

16.4 In the draft Constitution originally prepared these provisions of the Government of India Act, 1935 were incorporated *mutatis mutandis* but were, at a later stage, dropped as it was felt that—

(i) the original proposals were too hide-bound and stereotyped to allow elastic action; and

(ii) a large number of different kinds of disputes could arise and it would be necessary to appoint one permanent body to deal with them.

Accordingly the present Article 262 of the Constitution was adopted by the Constituent Assembly which reads as follows:—

"262(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-state river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)".

16.5 Under this Article, Parliament has enacted the Inter-State Water Disputes Act, 1956, which, briefly, provides for:

—a request by a state government to the Central Government for the reference of a dispute to a tribunal for arbitration;

—reference by the Central Government to such a tribunal if in its opinion the dispute cannot be settled by negotiations;

—the constitution of a tribunal consisting of one person from among judges of the Supreme Court or a High Court nominated in this behalf by the Chief Justice of India;

—the competence of the tribunal to appoint assessors to advise it;

—the finality of the award by the tribunal;

—the exclusion of the jurisdiction of the courts once a dispute is referred to the tribunal.

16.6 The notable departures in the existing law from the Government of India Act, 1935 are:

(i) the Government of India has to refer a dispute to a tribunal only if, in its opinion, it cannot be settled by negotiations. Thus discretion is left with the Government of India whether to appoint a tribunal or not. The 1935 Act did not leave such discretion to the Governor-General;

(ii) the award of the tribunal is binding. Under the earlier law the findings of the Commission were recommendatory, the final order being passed by Government; and

(iii) the jurisdiction of the courts was wholly excluded under the 1935 Act. It is only partially excluded under the existing law, that is, it is excluded only when a dispute is referred to a tribunal. Until then it is not excluded.

APPROACH OF GOVERNMENT OF INDIA

16.7 The Government of India need appoint a tribunal only when it is satisfied that a dispute cannot be settled by negotiation. This discretion has always been exercised negatively in that the centre has never appointed such a tribunal and has relied for the settlement of disputes wholly on the process of negotiation. The reasons for the centre's total reliance on negotiation to the exclusion altogether of arbitration are:

(i) a judicial arbitrator may not be sensitive to the socio-economic situation involving the welfare and the intense reactions of vast numbers of people—a defect which becomes serious when no appeal is allowed against the award of the arbitrator;

(ii) issues concerning the shareability of water often require to be determined by a number of complex factors not necessarily legal, and a tribunal is not the correct forum for considering them; and

(iii) arbitration proceedings can produce stay orders, which could interfere with the execution of projects.

The policy of negotiation has met with limited success. While agreement has been arrived at, or seems to be on the point of being reached, in the disputes listed at Appendix 33, there has been little success in the large number of disputes listed in Appendix 34, many of which are very old.

16.8 Admittedly, settlement by negotiation is the best possible settlement. It has the consent of the contending parties, leaves no bitterness behind and can be expected to be implemented faithfully. Where, however, negotiations do not bear any fruit, the issue cannot be left undecided. The process of negotiation has resulted in the settlement of some disputes. In the total context, however, this technique has not been wholly successful as a large number of disputes, despite protracted wrangles, have remained unsettled. Where a dispute continues unresolved for long it is best to refer it for impartial adjudication rather than allow it to linger on and generate bitterness and ill-feeling. The fear of possible interim injunctions and consequent delays in the execution of projects cannot be a decisive argument. It may be assumed that the adjudicating body will exercise its power to issue interim injunctions intelligently and with restraint. Where justice obviously demands such a stay order there is no reason why it should be shirked and an offending state allowed to injure the rights of others.

POSITION IN OTHER FEDERAL COUNTRIES

16.9 It would in this context be interesting to have a brief glance at the arrangements in other federal countries.

The United States of America

The adjudication of disputes is entrusted to the Supreme Court, and contending states have in the past gone there with their problems. A noteworthy feature here, however, is the navigation law of the U.S.A. which gives power to the Congress to make laws for the use, distribution and control of waters for the purposes of navigation. Using these powers the Congress enacts legislation under cover of which the use and control of waters for irrigation is also effected. The competence of the Congress to pass such laws has been confirmed by the Supreme Court. The tendency in the U.S.A., therefore, appears to be to have a legislative-cum-administrative solution to such problems in preference to a judicial solution wherever possible.

Canada

A distinction is drawn here between the right to legislate for works, which resides in the Federal Government, and the ownership of river beds which vests in the provincial governments. The ownership of water has not been conclusively defined and rights in it appear to vary according to the purpose for which it is utilized. When inter-provincial water disputes arise they are normally litigated before the Canadian Exchequer Court.

Australia

As in the U.S.A. the power to settle disputes vests in the Federal Court. However, disputes have rarely occurred for the simple reason that there are very few inter-state rivers.

West Germany

Inland water-ways and water conservation are federal subjects. Although the jurisdiction of the Supreme Court is not barred, there appears to be little scope, in fact, of serious inter-state water disputes.

POSSIBLE ALTERNATIVES

16.10 There are broadly three possible alternatives to the present arrangements in India :

(i) a provision for the settlement of disputes by the Supreme Court in the same manner as the provision for the settlement of other disputes under Article 131 ;

(ii) the transfer of rights in rivers (whether intra-state or inter-state or, in any case, the latter) to the centre and making irrigation and hydro-electric power central subjects; and

(iii) adherence broadly to the existing constitutional position but tightening the existing legal provisions and administrative arrangements.

The three alternatives are discussed below.

16.11 It is a conceivable proposition that water disputes between the states should simply be settled by the Supreme Court under Article 131 which provides for the settlement of other kinds of inter-state disputes. It can be argued in favour of this approach that it would ensure that there is a

decision (for once referred to the Supreme Court the matter must be adjudicated upon), that the decision is impartial, and that the political and therefore possibly an interested government at the centre is relieved of all onus. It can also be argued that similar provisions exist in the Constitutions of the U.S.A., Australia and West Germany and there is no reason why India should make a departure. It must be presumed that the Constitution-makers were aware of these arguments. They nevertheless decided to have a separate provision. In the debates in the Constitution Assembly it was never urged even once that the power to settle water disputes should be given to the Supreme Court. What are the grounds justifying a departure from the normal procedure in the case of water disputes? The answer is to be found in the correspondence at Appendix 32. Briefly the grounds in favour of a procedure other than judicial pronouncement may be stated as follows:—

(a) there is no settled or codified law by interpreting which judicial pronouncement can determine disputes;

(b) prior to 1935 river waters were apportioned not according to legal right but according to expediency, that is, according to the most profitable utilisation of waters. Even states with no riparian rights were given waters, *e.g.*, Bikaner. This was done under *ad hoc* orders or through agreements secured under the mantle of executive authority. The concept of rights and the adjudication of these by courts will disturb these arrangements, create serious practical complications and open up vistas of litigation;

(c) the merger of the erstwhile princely states, and the reorganisation of states in 1956 and thereafter resulted in certain decisions regarding the sharing of waters. These will lose their sanctity and may be reopened on the basis of legal rights; and

(d) decisions regarding the sharing and distribution of waters even in the future should be based not

so much on rights as on expediency, that is, on the best economic use of waters. Considerations of optimum utilisation may require the use of waters by a state without any rights or in excess of the rights that a legal pronouncement may vest in it. These issues should be decided by considerations of national economy and not of individual judicial rights. It may be difficult for the Supreme Court to give pronouncements based on such an elastic principle.

For these reasons determination by the Supreme Court is considered undesirable.

16.12 The second alternative envisages a central take-over of all waters for irrigation. This would certainly eliminate all inter-state disputes. It could, however, result in a crop of centre-state disputes. Possibilities of these would seem particularly relevant in matters like land acquisition, collection of levies and taxes and utilisation of waters. The Canadian context is not altogether relevant because of diffrent land laws and the precise difficulties that can be encountered in India may not therefore be experienced in Canada.

16.13 The only practical alternative, therefore, is the third one which contemplates the tightening of existing arrangements. Present provisions suffer from two kinds of lacunae, legal and administrative. These are discussed in the succeeding paragraphs.

LEGAL LACUNAE

16.14 There is at present no time limit for negotiations. The Central Government can keep making efforts at negotiation indefinitely without a contending state obtaining redress. This in fact is what frequently happens, and yet if a state does ask for a reference to an arbitral tribunal its request is not accepted. If this legal loophole were to be plugged the main source of indecision would be removed. As mentioned earlier, the original draft of the Constitution reproduced the provisions of the 1935 Act providing for compulsory reference to a Commission. The Constitution-makers adopted a different provision, but it was not their idea to eschew reference to a Commission or a tribunal. Indeed,

Dr. Ambedkar had thought of a permanent body for the settlement of such disputes. Again when the Inter-State Water Disputes Act, 1956 was enacted the original Bill envisaged an option to the Central Government to constitute a water disputes tribunal. It said that "on a request received in this behalf from any state government, the Central Government *may* .....constitute a water disputes tribunal .....". On reference of the Bill to the Joint Select Committee of Parliament the word "may" was replaced by the word "shall" and the section redrafted, the relevant portion reading as follows:—

> "4. (1) When any request under section 3 is received from any State Government in respect of any water dispute and the water dispute cannot be settled by negotiations, the Central Government *shall,* by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute".

By changing "may" to "shall" Parliament clearly did not wish to leave the Central Government with any option except to refer such disputes to a tribunal. To allow for negotiations in the earlier stages it introduced the clause "and the water disputes cannot be settled by negotiations". It is the flexibility provided by this clause that furnishes room for exploitation and the indefinite postponement of the constitution of a tribunal and thus defeats the very purpose of the Act. Clearly scope for negotiations must be allowed. Equally clearly a state cannot indefinitely be refused the right of redress on the plea that negotiations (yielding no result) are afoot. The solution appears to lie in prescribing a time limit to negotiations and making reference to an arbitral body compulsory thereafter.

TIME LIMIT FOR MEDIATION

16.15 Thus the best procedure where mutual negotiations have not borne fruit (they should always be attempted by the contending sides) and a state makes an application for arbitration would seem to be to provide for mediation by the centre or any person or authority nominated by it so that a final attempt at a settlement is made with the help of a third party, to prescribe a time limit, say three years, in the Act for such mediatory efforts (the period to be reckoned

from the date of application) and to refer the matter to an arbitral tribunal upon the expiry of this period if mediation also proves unsuccessful. Further, in view of the arguments given in paragraph 16.10, the Supreme Court's jurisdiction should be wholly barred. We recommend that the Act should be amended accordingly.

SINGLE OR THREE-MAN TRIBUNAL

16.16 Issues on the determination of which depends the fate of large numbers of people should preferably be determined not by one man but by a group. The main advantage of having a tribunal of one is that there is no dissenting judgement which could lead to bitterness and controversy. Considering the stakes involved, however, it may be advisable to have a three-man tribunal. This would also enable representation on the tribunal of persons having practical knowledge of the subject.

16.17 We have considered how such a tribunal should be composed. A suggestion is that it should be headed by a judge to be selected by the Chief Justice of India (as provided for in the existing Act) and that the other two members should be appointed by the Government of India from among persons having special knowledge and experience in the administration and law of irrigation. There could be an objection that the Government of India might itself be politically motivated in the appointment of the other two members and a tribunal so constituted may not thus command the same confidence as one composed solely of a judge selected by the Chief Justice of India. A solution could possibly be that the other two arbiters should also be selected by an impartial body, say the chairman of the tribunal himself, or by the nominees of the state governments, the chairman nominating them in the event of a difference of opinion. Still another alternative that could be considered is that the contending states may nominate one person each to such a tribunal. If the number turns out to be even, one person could also be nominated by the Government of India. The possibility here of some states combining to the detriment of another cannot be ruled out. Taking everything into account we consider that there should be a three-man tribunal, the chairman being a judge of a High Court or the

Supreme Court, or a former judge of the Supreme Court (as at present), to be nominated by the Chief Justice of India and the other two members being judges or experts appointed by the Government of India. The Act would need amendment for this purpose. By convention, the Government of India should always keep ready a panel of names out of which the chairman of the tribunal may select the two members for the tribunal. This method of selection would inspire confidence.

FACT FINDING COMMISSION

16.18 While the ordinary procedure of evidence being laid before the tribunal by the parties concerned would be there, it may become necessary for the tribunal to have studies conducted on its own. Some provision is therefore called for to enable the tribunal to set up a fact-finding commission for this purpose. At present the tribunal is empowered to appoint two or more assessors to advise it in the proceedings before it. These assessors may not be able to undertake the task of conducting studies themselves. We would, therefore, recommend that the Act should be amended to empower tribunals to set up fact-finding commissions.

LEGISLATION UNDER ENTRY 56 OF LIST I

16.19 Another approach, within the existing constitutional framework, is to pass, in the event of the failure of negotiations within a specified period, a central law for constructing works on an inter-state river, for the use, control and distribution of its waters and for the management of the river valley. Such a law is permissible under Entry 56 of List I of the Seventh Schedule to the Constitution which reads as follows:—

> "56: Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".

Such an approach would enable seizure of the problem by the highest forum of the country, namely, Parliament, and is based on the hope that construction work as well as the development of the river valley (both central responsibilities

in such an exigency) would be carried on speedily and unhampered. This arrangement would include provision for the financing and sale of water as well as of electricity. The law could, if necessary, also provide for boards to take operational decisions. Some of the difficulties mentioned in paragraph 16.12 would be encountered in this arrangement also. These may pertain to the acquisition of land, the collection of revenues, the resettlement of displaced persons, labour problems to name a few. If water is sought to be sold to a state at the source the possibility of a state refusing to buy it does, in theory, exist. On the whole this alternative does not appear to be practicable and should certainly not be adopted as a measure supplanting the measures recommended above.

ADMINISTRATIVE LACUNAE

16.20 At present an obstacle to the settlement of water disputes—whether by negotiations or otherwise—is the absence of reliable data. This has been commented upon notably by the Gulhati Commission in its report on the Krishna-Godavari waters. It is for consideration, therefore, whether the central government should itself be engaged on the collection of these data.

16.21 Correct and dependable technical data inspiring all-round confidence are not only helpful in bringing about mutual agreements between the contending states but are required by an arbitral tribunal for arriving at conclusions. Besides, they are of great value in planning river projects. The charter of the Central Water and Power Commission prescribes the collection and publication of such data as one of the duties of the Commission. However, the Commission did not discharge these functions until recently when, on the recommendation of the Krishna-Godavari Commission, 76 "key gauging stations" were set up in June 1963. Thereafter, 7 key stations were also provided in the Chenab basin. The Ministry of Irrigation and Power has projected 159 key stations on the 21 remaining river systems at an estimated cost of Rs. 3.33 crores with an annual recurring expenditure of Rs. 30 lakhs per annum. "Key stations", we are informed, are those set up at the confluence of a tributary and the river to check the quality of water, its discharge and the silt charge.

The states are often reluctant to establish such stations and where they do the data collected by them are not only liable to be disputed by the contestants but are often collected for a different purpose (for regulation and maintenance) and are hence not always identical with the data required for resolving disputes or for the long range development of the basin. Collecting data obviously costs money but the burden on the exchequer is light compared to the benefits it can secure by assisting both planners and arbitral bodies. In our view the centre should be charged with the responsibility of collecting these data for those inter-state rivers over which disputes exist or are likely to arise. Whether these will include all the 21 river systems mentioned above is something for the Central Government itself to work out.

POWER DISPUTES

16.22 Disputes regarding the sharing of hydro-electric power arise in the same way as those regarding the sharing of water, although the factors governing their resolution may be different. Article 262 and the Inter-State Water Disputes Act, 1956 speak of "the use..... of waters" and do not mention the purpose for which the waters are to be used. It would appear, therefore, that the existing law applies not only to irrigation but also to hydro-electric power. If this interpretation is correct the arrangement proposed in this paper would automatically be applicable to hydro-electric power. If, however, it is not (and this point Government may examine) and power is not covered by the enactment, arrangements similar to those outlined in this chapter should be brought into being for settling power disputes also. A separate Act will, in that case, have to be passed and this is possible as power is a concurrent subject.

SUMMARY OF CONCLUSIONS

16.23 To sum up :

(1) the Inter-State Water Disputes Act, 1956 should be amended to

(a) provide for compulsory arbitration by a tribunal in the event of failure of negotiations by—

(i) providing a time limit of three years for mediation by the centre from the date of receipt of an application from a state

for the reference of a dispute to an arbitral tribunal; and

(ii) compulsory reference of the dispute to such a tribunal upon the expiry of this time limit;

(paragraph 16.15)

(b) oust the jurisdiction of the courts altogether;
(paragraph 16.15)

(c) provide for a three-member, instead of a single member tribunal, the chairman being selected by the Chief Justice of India from among judges of a High Court or judges or ex-judges of the Supreme Court, and the other two members being appointed by Government. By convention, the chairman should select the two members from a panel prepared by Government; and

(paragraphs 16.16, 16.17)

(d) empower the tribunal to set up a fact-finding commission;

(paragraph 16.18)

(2) it is not advisable as a matter of general policy to utilise Entry 56 in List I of the Seventh Schedule to the Constitution to pass central acts for an inter-state river regarding which negotiations do not yield any result;

(paragraph 16.19)

(3) the Government of India should be charged squarely with the responsibility for collecting data for inter-state rivers, where disputes are likely to arise, and should set up data-collecting stations for this purpose;

(paragraphs 16.20, 16.21)

(4) hydro-electric power should be considered as falling within the scope of Article 262 and the Inter-

State Water Disputes Act. If it does not, similar legal arrangements should be made for it, utilizing central legislative jurisdiction under the Concurrent List.

(paragraph 16.22)

CHAPTER XVII

THE ALL-INDIA SERVICES

17.1 The Indian Civil Service was the first all-India service. It was followed by the Indian Police. Gradually, and through a process that was unimpeded owing to the unitary nature of the control exercised by the centre at that time the concept of having services common to the centre and the provinces was extended to other fields like engineering, agriculture, forestry, health and education. With the progressive introduction of a federal set-up after 1919 all such services catering to the transferred subjects were wound up, the only exceptions being the Indian Civil Service and the Indian Police. These two had to be retained partly because they were the indispensable instruments of British rule and had, therefore, to be controlled by a central authority, partly because some of their activities extended beyond the transferred subjects and partly because they represented a personnel system in which crucial posts in the administration, central and provincial, could be manned by a body of officers of high calibre who underwent a uniform system of training and were informed by common traditions. The latter two considerations were applicable more emphatically to the Indian Civil Service. INTRODUCTORY

17.2 With independence, and the coming into force of the new Constitution, these two services were retained in the form of the Indian Administrative Service and the Indian Police Service. Besides specifically retaining these two services the Constitution provided also for the establishment, by parliamentary legislation on a resolution of the Council of States, of all-India services in other spheres.

17.3 In a federal set-up to have an all-India service that serves the needs of the states but is controlled ultimately by the Union is an unusual feature. The feature becomes all the more unusual because of the specific constitutional sanction for the Indian Administrative Service and the Indian Police Service. The provision cuts across the true federal

principle and, unless one believes it to have been made in a fit of absent-mindedness, it must have been inserted by the makers of the Constitution for considerations strong enough to override the classical federal concept.

OBJECTIVES OF ALL-INDIA SERVICES

17.4 The considerations that weighed then with the authors of these cadres deserve to be recapitulated to see how valid they are today and are briefly stated below:

(a) all-India recruitment makes possible a minimum and uniform standard of administration throughout the country. It enables the induction of talent. In a developing country like ours, in which the government necessarily has to assume a heavy burden on itself, the services should have the best available talent in the country and the states are not able to provide manpower of the requisite strength and calibre. To strengthen their own administrative and technical capacity, the need for which is pressing, recourse to all-India recruitment can be of great benefit;

(b) the all-India composition of the services with personnel drawn from all the states emphasises the unity of India and helps national integration. Every state gets a leavening of senior officers from outside whose vision and outlook transcend local horizons;

(c) such a service enables systematic deputations from the states to the centre, which broadens the officers' vision, brings to the centre an experience close to actual realities, and is of benefit both to the centre and the states;

(d) just action and independent advice can more easily be expected of the officers of an all-India service than from those locally recruited and controlled. The joint control of these officers by the states and the Union Government and the location of the ultimate authority over them in the latter provides a measure of remote control which by its very nature is more objective, and

which is meant to enable the officers to fulfill their responsibilities without succumbing to stresses and strains of local influence.

NEED FOR ALL-INDIA SERVICES — SARDAR PATEL'S REASONS AND FORESIGHT

17.5 When constituting the Indian Administrative Service, Sardar Patel was emphatic on the last point. An all-India service scheme required the consent of the provinces as well as their moral commitment to make it succeed. A conference of the Premiers of all the provinces was, therefore, called by the Home Minister in which this scheme was put forward and its acceptance urged. There was opposition to it from some of the Premiers, mainly because of the central control that was a necessary part of the scheme and partly also for purely parochial reasons. The proceedings of the conference make illuminating reading and striking in them is Sardar Patel's insistence on the need for a service that could withstand undesirable local influences. His entire address to the conference (extracts from which, along with an extract from the minutes of the conference, are at Appendix 35) foresaw with unerring accuracy the interaction of forces that, in a nascent democracy, would tend to deflect the civil servant away from administrative rectitude, the pressures that would prey on him, and the increasing exposure to corrupt influences that would seek insidiously to undermine the health of administration. He saw with equal clarity the need for a strong and countervailing system in which such tendencies could be resisted, both to secure a just and efficient administration and to foster an all-India outlook in it.

17.6 The Indian scene has changed in many ways since then, but in this respect the change that has occurred over the years serves only to confirm all that Sardar Patel said with prophetic insight many years ago. It should be needless to affirm the continued validity of all the objectives underlying the all-India services and yet, in a country in which the constituent parts are possessed with a pre-emptive desire to assert their separateness, such an affirmation is sorely needed. The value of a system considered necessary for the administrative unity of the country despite the ubiquity of Congress Party rule and found indispensable for securing fair

play and competence in administration, despite the acute awareness of their need in the most potent political figures at a time when their power was untrammelled and their writ ran through the length and breadth of the land, can, in the less favourable conditions of today, be ignored only on pain of perilous consequences. Continuity alone demands a system which can maintain links in administrative behaviour throughout the country while political changes visit different states and the centre.

NEW ALL INDIA SERVICES

17.7 To the extent that they too could help attain these objectives in their spheres the formation of new all-India services, wherever practicable, is to be welcomed. It is important however that the policies fashioned for them are such as can secure the fulfilment of the ends for which these services are created. We say so advisedly for our scrutiny of the policies followed for the Indian Administrative Service has revealed deficiencies that tend to defeat its purpose. Later in this chapter we have discussed these deficeincies and suggested remedies and, although policies for the Indian Administrative Service do not have to be strictly duplicated in other services, the discussion could also be treated as a case study to illustrate the kind of pitfalls that the management of such a service has to avoid.

THE INDIAN ADMINISTRATIVE SERVICE

17.8 The Indian Administrative Service is the all-India service par excellence for it is this that has to cope with all the complex interplay of factors that have brought to light the need for such a system. The objectives recited in paragraph 17.4 are applicable in their completeness to this service. To these objectives could today perhaps be added another—that of the exploitation of the service for meeting specialised managerial needs in a growing techno-economic society. There is possibly a conflict between this last-named purpose and the system of an all-India administrative cadre meeting various kinds of generalist requirements. But the conflict is by no means incapable of resolution and, in a situation in which the need for an all-India administrative cadre to combat growing centrifugal tendencies is primary and paramount, the only practicable course is to so order the development of the cadre that it harmonises with the needs of a modern society. Policies

of recruitment, training and deployment may therefore have to be fashioned to work out a gradual and continuous evolution of the character of the service so that it is able to adapt itself to changed requirements and yet remain itself, the stress on its different attributes changing according to the ethos of the era.

17.9 If all the pious objectives described here have to be fulfilled certain pre-conditions have to be satisfied as without them the most enlightened policies will fail to produce results. These pre-conditions, intangible and yet all-important, pertain to the helpfulness of the attitudes of the different actors in the scene. First and most important of all, the states must accept the service (as indeed other all-India services) as their own, and not treat it as an imposition to be accepted reluctantly and blunted where it can be. A service is an instrument that, like the surgeon's knife, must retain its sharpness if it is to be effective, and the instrument is not to be disedged or condemned for a wrong cut, or for the discomfort caused in a right one. Minor day-to-day irritations can be occasioned by mistakes or the wrong-headed obstreperousness of some members of the service, who must then be subjected to correctional measures, or by right-minded adherence to principles and *bona-fide* resistance to projects that undercut these principles for the sake of temporary political expediency, a resistance that, far from being magnified into a major complaint against the service, should be honestly recognised in a broader perspective as a purpose of its existence. PRE-CONDITIONS

Secondly, the Central Government must keep a vigilant eye on the health and vigour of the service for which it is, in the ultimate analysis, responsible. For too long in the past did it adopt a policy of an acquiescent spectator. Although of late it has shown regard to its obligations, it must in the display of this concern become more firm in its stance, more dynamic in its motions and more comprehensive in its embrace.

Thirdly, the officers of the service must perpetually strive to act in a manner befitting the trust and responsibility reposed in them. The transitional stage through which our society is passing renders this task difficult but it will be facilitated if

they were assiduously to cultivate an *esprit de corps* among themselves and make earnest efforts, at the same time, to win the confidence of all those whom they have to work with and for—the people, the other services which should be able to find in them the example of leadership, and the political executive that forms the government. This demands, among other traits in social demeanour, a deliberate eschewal of whatever vestiges of exclusiveness and snobbery that remain in their heritage from the past, for besides being a hindrance to efficient performance, these have no place in a democratic society. All this they have to do without sacrificing either professional competence or any of the principles from which their sustenance is legitimately derived. This is a rather big bill, but the very size of the task should inspire challenge rather than dismay. It is certainly possible of fulfilment given the right attitudes.

And, finally, the Union as well as the state governments must themselves step in and discourage resentful attitudes in other services, both state and central. There is room in administration for all the different kinds of services, and each should bend its entire energy in the performance of its allotted task rather than fritter away so much of it in bickering and recrimination. The actors on the administrative stage should view themselves as players in a concert combining in harmony to produce a symphonic effect rather than as jousters in an arena each seeking to cause the discomfiture or destruction of the other.

ENQUIRY INTO POLICIES

17.10 Given these attitudes an enquiry into the policies that can help in the fulfilment of the objectives enunciated earlier should prove useful. Basically these have been sought to be achieved through an elaborate mechanism the main features of which are that the cadres are common to the centre and the states, fixed after assessing the needs of both, that recruitment to them is done centrally to catch young and promising material all over the country, that the recruits are dispersed and allocated to the states permanently, there being a built-in provision enabling the centre to borrow officers, and that major disciplinary control is exercised by the President, who is also the appointing authority. This mechanism, through

the details of rules and regulations as well as through the policy of which they are an expression, plays a decisive part in securing these objectives.

17.11 To what extent the policies followed and the mechanism fashioned have helped to serve the basic concept of the service and the purposes for which it was formed is the subject of discussion in the paragraphs following. This discussion has the advantage of taking account of the changes, that have taken place in the scope of administration at the centre and the states and consequently in the duties expected of the cadres, the changes in the educational and economic base resulting in a flight of a large proportion of the best material to other walks of life, and the ways in which the political system of the country has developed, affecting the environment in which these cadres operate.

17.12 It is not our intention to undertake a comprehensive review of all aspect of the management of the Indian Administrative Service. Nor is every aspect of importance to centre-state relationships. Our attempt here has been to abstract the major issues of relevance in our context and to focus attention on them. These may be identified as ISSUES

A—the quality of the officer

B—problems of deployment, career development and central deputation

C—training

D—morale

E—national integration.

17.13 The successful working of the IAS scheme depends, in the ultimate analysis, upon the calibre of its officers. This problem has two aspects, induction and maintenance. The first consists of ensuring high calibre at the point of recruitment. The second relates to the fulfilment of the promise and is touched upon in the paragraphs dealing with deployment and training. The first must be considered as the corner stone of such a service and deserves a full discussion A—QUALITY

Original mechanism for securing quality at the point of entry

17.14 It would be worthwhile to note how, in the original IAS scheme, it was intended to maintain quality.

The first method was by structuring the cadre in such a way that 75% of the senior posts including the central deputation quota, went to direct recruits and the remaining 25% to the promotees from the state services. The underlying idea was that the combined competitive examination, limited to candidates in the age group 21—24, should throw up 75% of the senior officers of the cadre. This policy was to pay dividends because the annual examination would offer the best products from the universities and these recruits could be shaped, through a process of intensive training, into first class administrators.

The second way in which quality was planned to be maintained was by a recruitment policy that controlled numbers and selected only the select for this service. Till 1954 the number of annual recruits to the IAS was kept below 50. Since then, with the advent of planning, the intake has increased, rather dramatically since 1958.

The third way of attracting quality was by ensuring an attractive environment of work, the attractions in the main being, possibly in the order stated here, high prestige, challenging work and good pay and other conditions of service.

Later distortions

17.15 Over a period of years, however, this mechanism has undergone severe distortions attributable to

(a) too heavy a rate of recruitment;

(b) imbalances in the structure and composition of the service, diluting the original concept; and

(c) deterioration in the environment of work.

These distortions, we fear, have affected the quality of the recruitment rather sharply.

Over-large regular recruitment

17.16 To take the first among these, the number of regular recruits to the IAS has reached enormous proportions, the annual recruitment having increased from 33 in 1947 to 138 in 1965 and being targeted now at 160. There has been some debate whether any appreciable decline in the quality of the regular recruit has occurred on this account. The Ministry of Home Affairs, in their evidence before the Estimates Committee, maintained at one place that quality had

not declined but admitted in another that it had. This is an issue of such crucial importance that a definitive opinion ought to be formed.

17.17 A systematic and comparative assessment, based on performance, of candidates selected over the course of the past 19 years has not been attempted. Such an analysis would in any case exclude from its purview candidates appointed during the last six years or so, when the problem has really been aggravated as these recruits have yet to work in positions of responsibility. In the absence of such an analysis, conclusions regarding quality have to be based on other yardstick and tested by the opinion of knowledgeable persons.

17.18 Having regard to the current method of selection of regular recruits, *i.e.* through an elaborate written competitive examination, any yardstick must assume that, on the whole, there will be some correlation between the calibre of a candidate and his academic attainment in the university. Admittedly, performance in a university examination is not by itself a sufficient criterion. For one, standards vary from university to university. For another, many able students may fail to distinguish themselves because of the inadequacies of the examination system. Some may have qualities which an examination cannot test. Written examination and the interview conducted by the Union Public Service Commission are intended to provide the necessary correctives. Commonsense would nevertheless suggest that high calibre is more likely to be expected in students with a distinguished academic record than in others and that quality in the service will consequently depend to a large extent on the proportion of candidates with academic distinction offering themselves for the combined competitive examination.

17.19 If this criterion is accepted, the analysis at Appendix 36 will be found illuminating. It shows that despite a greater turnover of graduates from the universities (in pure Arts and Science) the total number appearing in the combined examination has declined. Again, although the number of first class graduates produced has increased, both absolutely and proportionately, the number of first class graduates appearing has declined, both absolutely and proportionately

(the decline in the latter case being from 29% to 8%). There has thus been a tremendous growth in the number of first class graduates not willing to take the competitive examination. If, to this, we add the increase in the diversion of talent that takes place to professional institutions after the secondary school stage, the comparative paucity of first class personnel competing for the IAS becomes even more marked. There has, at the same time, been a rapid increase in the number of appointments made.

17.20 The Second Pay Commission (1957—59) also went into the question of the fall in the quality of candidates offering themselves for government service. It did note the proportionate decline in the number of first class graduates appearing but felt that as long as three candidates with first class offered themselves for each vacancy (the vacancies being calculated on the total for the combined services, not just the IAS) there should be no cause for alarm. The fall in quality since then has been such that even this somewhat modest criterion has not been adhered to. The number of first class graduates appearing in the combined competitive examinations has come down from 3.8 for each vacancy in 1959 to 1.25 for each vacancy in 1964.

17.21 It is not merely the fact of decline that causes concern but its extent, illustrated more dramatically by a comparison of the figures for 1959, when for every vacancy in the IAS proper 11 first class graduates applied (as against an average of 14 in the period 1950—55) and for 1964, when this number came down to 3.

Of relevance here is the oral evidence of the Chairman of the UPSC before the Second Pay Commission, in the course of which he stated—

> "Our opinion on the experience of the combined results of the written examination and personality tests is that about 80 to 90 top persons every year are suitable for IAS and IPS and about 200 or so would be suitable for central service; I would say that of these, about 40 to 50 candidates are really of good quality and stand out."

And quality, as shown above, has fallen since then although recruitment has gone up.

17.22 This decline in quality is also testified to by the evidence given before the Administrative Reforms Commission. The gist of this evidence is that although the best recruited to the IAS are as good as ever, the average has declined perceptibly owing to the extent of the recruitment.

17.23 At this point a basic question may be asked: is first class material required for the IAS? The answer will necessarily be a matter of judgment. Historically, this has provided the basic reason for the constitution of the civil service. This concept has been challenged and there is a view that the IAS officer need not possess high calibre. It is enough if he is "adequate" or "suitable"—the phrase used by the Chairman of the UPSC. This view takes shelter in the phenomenon of rapidly expanding personnel needs stemming from increasing development and administrative activity. More managerial work has to be done. More men are required to do it. It may not be possible to get first class men to do it. Nor will all middle level managerial jobs require first class men. As the men are required, they must be recruited and the best means of recruitment remains the IAS even if, in the process, the standards of the IAS fall.

17.24 That there is substance in this argument must be conceded—up to a point. The great increase in the volume of governmental activity must call for an expansion of the cadres of higher management. The Second and the Third Plans inevitably subjected the cadres to this strain. As the strain could not be anticipated, expansion could not be made in time and phased. To restore the balance an abnormal degree of recruitment has to be resorted to. Such expansion must result in a dilution of quality. "How much?" is the relevant question. If the admixture of the merely "good" or "satisfactory" with the "very good" is judicious and not weighted against the latter, the role of higher management can still be expected to be discharged with a fair measure of

competence. If the numbers of the "very good" predominate it is they who set the tone which the others try to emulate. The general standard does not fall appreciably as traditions and challenges stimulate energetic responses from all. The role of the higher management is fulfilled. If high quality personnel within a recognised group meant to form an adminstrative elite begin to get heavily outnumbered by the mediocre, the general tone must deteriorate considerably. Here it is not the able who act as setters of pace. It is the mediocre who act as a drag. It is questionable whether higher management should ever, irrespective of its numerical needs, allow itself to come to such a pass. It cannot then play its appointed role. Quality is one of the conditions of its existence. By its large scale sacrifice, higher management loses the right to be itself.

17.25 This precisely is the situation which seems increasingly to engulf the IAS. Its cadres have expanded from 803 in 1948 to 1672 in 1957 and 2402 in 1964. It has been demonstrated how sharp the fall in standards has been. The measure of safety (itself adopted to cope with rising demand and therefore possibly already representing a lowered standard) namely, three first class contestants for each vacancy in the combined services has long since been submerged by the flood of recruits admitted. The figure 90, once the maximum limit of annual recruitment acceptable to an unenthusiastic UPSC, has risen to 160. There is no sign of abatement and yet abate it must if the service is to be enabled to discharge its role properly.

17.26 How is the rising demand for personnel to be reconciled with the necessity of reduced recruitment? An extreme measure is to leave gaps unfilled if candidates of the required calibre are not available. This uncompromising approach is not possible here as genuine demands have to be met. The only alternative then is to curtail the demand.

17.27 This is not as absurd as it sounds. The problem can be seen as having two aspects—the personnel aspect and the broader aspect of administrative improvement.

If work is simplified and reduced, personnel needs are reduced. If a high calibre man is drafted, he must be assigned work requiring that calibre. Techniques of administrative improvement have been fashioned to attain the first objective and, *inter alia,* to secure economical management by thus curtailing the need for skilled personnel whose supply in developing situations always tends to run short of demand. Although this aspect of the problem does need to be underscored as it can have a vital effect on administrative health and efficiency, it is not of direct concern to us and it is the second that is of relevance here. It requires to be emphasized that the demand for personnel should, at this level, be carefully, even cautiously, related to the nature of work.

17.28 Where IAS personnel are asked for, the principle needs to be established, constantly reaffirmed and observed in practice, that they should be asked for only for posts which have a really important managerial and co-ordinative content, with just a very few posts added for giving the requisite training. The specification of these posts becomes a matter of judgment, but this judgment must not be shirked. The tendency to create posts indiscriminately varies from state to state but a rigorous examination of all demands at a central point is necessary. For their inclusion in the cadres the rules do provide for central approval but this has often been given in routine, without searching scrutiny or scrupulous regard for this principle.

Causes of Excessive Growth

17.29 Studies carried out by the Department of Administrative Reforms show that growth has been excessive and has been caused by

(a) the absence, at times, of a proper evaluation, quantitative and qualitative, before creating posts at a level that are customarily manned by IAS officers. Thus posts are created with inadequate workload. Or they are created at an unnecessarily high level, when the kind of work involved could well be done by personnel of a lower category. To give an illustration, it

would appear that in some states posts have been created at the Deputy Secretary level—some by upgrading posts of Under Secretary—without the quantitative and qualitative justification required. Not everywhere is scrutiny sufficiently strict;

(b) the inclusion in the cadre of specialised posts which, because of their managerial and co-ordinative content and because of the absence of suitable technical personnel, come to be manned by IAS officers but which, in the long run, should be manned by technical officers. In this category come well-defined specialities like posts of Director of Agriculture, Director of Fisheries etc. to which suitable technical men, as soon as they are available, should be inducted;

(c) the inclusion of foreign service posts and posts of a semi-specialised character which do not necessarily have to be manned by IAS officers, and for which there should be a flexible manning policy i.e. the posts should not be reserved for IAS officers but IAS officers along with others should be considered for manning such posts. Thus for posts like the Director, Town and Country Planning, or for posts in government-owned companies and public enterprises, there should be an open staffing policy. In view of personnel shortages in the IAS and of the increasing degree of specialisation required in some of these jobs it should be worthwhile adopting a flexible recruitment policy which drafts the person considered suitable from a wide field of selection for such posts;

(d) pressures exerted by those awaiting promotion so that with the multiplication of senior posts increased opportunities of promotion may become available.

17.30 The remedy would appear to lie in

Remedies against Excessive Growth

(1) excluding from the cadre the type of posts mentioned in (a), abolishing them where necessary, and where not, manning them by other categories of personnel;

(2) excluding from the cadre the type of posts mentioned in categories (b) and (c) and manning them either by IAS officers or by technical personnel according to suitability.

17.31 This approach conceptually differentiates between an essential cadre consisting of posts that necessarily have to be manned by IAS officers, and a group of posts whose demands on IAS officers are 'flexible' and are to be met by the deputation reserve of the latter. Once adopted, it will relieve the pressure on IAS cadres to a considerable extent. The essential cadre will be fairly uniform all over the country and will have posts—this is not an exhaustive list—like the Chief Secretary, Home Secretary, Commissioners of Divisions, Collectors, Members of Board of Revenue, Secretaries, Deputy Secretaries, (not all of these need be in the IAS) and certain heads of departments. The main question here will be to scrutinize the additions or deletions required carefully. The "flexible cadre" will really be nothing except a group of ex-cadre posts some of which may require IAS officers at a particular juncture. When, after exclusion from the formal cadre, these specialized posts have to be manned by IAS officers, the latter will be deputed to hold them and there will have to be an adequate deputation reserve which can be increased depending on the requirements of the state. This reserve need not be uniform for all the states and future expansions will occur mostly in this, although some could occur in the basic cadre also.

17.32 Phased and timely recruitment in anticipation of growth, and well in advance of it, is essential so that trained bodies are available when the need for them arises. This is done at present by means of what are called "triennial reviews" in which decisions regarding the posts to be added

Personnel Planning

and the recruitment to be done are taken for a projective period of three years. Planning for recruitment suffers from the handicap, however, that long term projections of requirements are not easy to make with accuracy. As an IAS officer normally takes 4—5 years to mature before he can hold a senior post, forecasting ought to be done 5 to 10 years in advance as is the practice in some progressive commercial houses. This is possible for them as their economic plans are known to them more or less accurately for a period of 5 years and broadly for a period of 10 years at any given point of time. As plans can undergo changes these requirements are reviewed annually and the annual review takes into account the projected need for a period of 10 years following. Such an exercise, with this degree of reliability, may not yet be possible for government in the current context of our economic planning.

17.33 Nevertheless a start in this direction is urgently called for and the Chief Secretary of a state should be squarely entrusted with the responsibility of making forecasts in consultation with the Planning Secretary and the various departments. Personnel planning at the managerial level should be an inevitable concomitant of economic planning so that events do not overtake the administration by surprise. This must take into account both projected needs and other aspects of personnel planning e.g. opportunities for and bottlenecks in promotion and the correction of imbalances in cadres.

17.34 The present system of triennial reviews should therefore be replaced by annual reviews and a quinquennial assessment which should in every case be systematically preceded by informal discussion between officers of the Central Government and the officers of the state governments. This suggestion makes possible assessment of required posts and personnel over a perspective of five years and has the advantage of subjecting it to a yearly check in the context of the actual situation. During these reviews the criteria mentioned above for inclusion of posts in the cadre and for

determining the size of the cadre should be borne in mind, and considering the great expansions that have already taken place, the approach should be conservative rather than otherwise. Where within the Central Government this function should reside is a question that the Study Team on "The Machinery of Government" has addressed itself to and we have no comments to offer.

Imbalance in the structure and composition of the service—dilution in the original concept

17.35 Non-adherence to the original policy of recruitment which envisaged a recruitment of the order of 75% of the senior cadre from the regular competitive examination held by the UPSC has proved an equally serious cause of the decline in quality. The mixture in the senior scale of IAS of various state cadres, as surveyed on 1-11-1965, shows that state service officers appointed to the IAS through methods of recruitment other than the annual competitive examination accounted for anything from 27.6% of the state cadre (Madras) to 52% (Rajasthan). (This excludes the J & K and the Delhi-Himachal Pradesh cadres).

17.36 In addition to this there was the War Service Recruitment in 1947, the Emergency Recruitment from the open market in 1948 and the Special Recruitment from the open market in 1956, which together admitted from the various fields a large number of recruits in relaxation of the normal principle of the open competitive examination and which thus correspondingly reduced the proportion of the regular recruits. As on 1-11-1965 (eighteen years after the first regular examination) the recruits admitted as a result of the open competitive examination accounted for only 43.2% of officers of the IAS in the senior scale and above instead of the original expectation of 75%.

17.37 As a result of this heavy dilution, the IAS has lost, or was never allowed to develop, its character. It has never existed as a homogeneous service. If high expectations have been belied in some instances this absence of homogeneity must bear a considerable share of the blame. It may be that there were historical reasons for this dilution. And yet it seems to us that the extent of dilution was not

wholly unavoidable. Studies carried out suggest, for instance, that the Special Recruitment of 1956 was considerably overdone. But instead of drawing the correct lessons the Central Government has embarked upon a new scheme of War Service Recruitment to the IAS through a simplified three-paper test followed by interview from amongst the officers recruited to the short service commission after the Chinese invasion of 1962. As many as 20% of the vacancies have been reserved for recruits through this source.

Recruitment of short service commissioned officers

17.38 Here again the principle of an open competition is being departed from. It is true that the country owes it to the short service commissioned officers to rehabilitate them in suitable jobs but it is most questionable whether, irrespective of real merit, a substantial proportion of the vacancies in the highest services should be reserved for them. This kind of reservation, as a measure of rehabilitation, would have been more appropriate in lower categories. For the highest services, in which calibre is always a paramount need, the more appropriate concession would have been one of waiving age restrictions to permit the officers to compete with the rest. The steps taken to ensure "minimum" quality namely, insistence on a degree and a three-paper test have little meaning when the test is confined to this small class. We have pointed out earlier the general decline in the intellectual calibre of the candidates appearing even in the regular examination. By those criteria the calibre of the candidates appearing in the short service commission is far lower, the proportion of first class graduates among them being less than one for every ten vacancies in the combined services and one for every three vacancies in the I.A.S. The figures given in Appendix 37 show that most of the vacancies in the combined services will have to be filled by second and third class graduates and that considering the paucity of competition even the last category will stand a considerable chance of success. (The comparative figures for the regular examination are at Appendix 36).

17.39 This scheme, we fear, will result in the recruitment of sub-standard officers, and the fact that this method of

recruitment will continue till 1971 should be a cause for concern. The efficiency of administration depends very much on sound personnel policies and we would suggest that the scheme of reserving vacancies for short service commissioned officers for the IAS should be reconsidered and that, if it cannot be abolished, at least the limit on the vacancies reserved for it should be reduced from 20% to 10%.

Attracting recruits to the IAS

17.40 The third factor affecting quality is the diversion of talented young men to spheres other than government service. In some measure this is not an unwelcome trend as other spheres also have important contributions to make to the life of the country. It is the extent of this flight that causes concern. We feel that for a long time to come the government services will have to play a vital role in the development of the country and in their higher echelons will need ability of the highest order and that steps should be taken to diminish the extent of the diversion that is taking place. The present trend has been occasioned partly by the siphoning off of promising material at the secondary stage to technical spheres and partly by the greater attractiveness of the private sector with more immediate possibilities of absorption for some. It is outside our competence to examine what is perhaps the single most effective measure for rectifying the balance—increase in emoluments, especially at the start of the career—for. the emoluments of the all-India services cannot be considered in isolation but we would advocate that the point be seriously gone into. For our present study other remedies have to be sought, even if their individual impact may not be striking.

Proposals of Study Team on "Recruitment etc."

17.41 Of importance here are the suggestions made by the Study Team on "Recruiment, Selection, U.P.S.C./State P.S.Cs. and Training" for having a special examination for first and high second class graduates and for effecting better publicity among and better liaison with university students. Both these suggestions we fully endorse.

Raising the upper age limit to 25

17.42 With the introduction of the higher secondary system at the school leaving stage, the minimum age stipulated for passing the higher secondary is 16 plus. With three years spent in graduation and two years in post-graduate studies (it has been found that a large number of candidates prefer to appear in the combined competitive examination only after a post-graduate course), a prospective candidate will be 21 plus in any case and will be 22 plus in many cases. The present rule about the age limit is that one should not have attained the age of 24 on the first of August of the year of examination. This may in some cases deprive a candidate of his two chances. Ordinarily some time for preparation has also to be allowed. In order, therefore, to attract this material in larger numbers and to make it certain that almost every one will have two chances, the upper age limit may be made 25 without increasing the number of chances a candidate can take.

Syllabi

17.43 The syllabi for the competitive examination are at present biased heavily in favour of regular graduates from the universities. Those passing out of the technical and professional institutions are at a heavy discount. While, in the main, technical and professional graduates are not likely to compete for the IAS, some of them might be attracted if the syllabi offered them a chance. This number may be marginal but, considering the limited intake of officers into the IAS, even this marginal number could make a difference. General intellectual development and powers of expression, so necessary in administration, can be tested by the three compulsory papers. But there is no reason why the scheme of optional papers should be so structured as to inhibit professional graduates from appearing for the IAS particularly when they have been declared eligible. The scope of choice of optional subjects for the competitive examination should be enlarged to include more technical subjects. There is no real danger of starving the technical professions by this measure as this will at best attract a small number to the service. The service on the other hand will only gain by the introduction of talent which has both a technical background

and a broad enough intellectual base to be able to cope with the compulsory papers as well as those optional papers which do not come within the compass of its particular speciality.

B-CAREER DEVELOPMENT

Manning of District Posts

17.44 We come now to the second and equally vital aspect of the management of the IAS, which has received insufficient attention so far, namely, career development through planned deployment. Development through correct deployment is particularly important in the case of the regular recruits as they have to hold responsible assignments early in their career. It should be a firm principle that an officer after going through the mill of junior training posts should be posted as Collector as soon after six years of service as possible. The post of Collector remains the basic training ground for an IAS officer. It is noticed, however, that some states have not been posting regular IAS recruits as Collectors in sufficient numbers. The outlook has improved because of persistent exhortations by the Ministry of Home Affairs but a considerable leeway is still to be made up. Where such posts are consistently held by select list or non-cadre officers while regular recruits of suitable seniority are available, the Central Government should consider resort to the cadre rules more often.

Need for Specialisation

17.45 Concepts of deployment must be suited to the age of specialisation that has overtaken us and it is of urgent importance that as its impact begins to be felt, the administrative structure should not be found wanting in response. We may quote from the evidence tendered by the Labour Party in the United Kingdom before the Fulton Committee:

> "Government is no longer a refined and restricted field of activity distinct from any other. The Civil Service is now in the business of managing a highly complex techno-industrial society—and this is quite a different job requiring different and more technical skills and an entirely and more positive approach".

The memorandum of the Labour Party therefore advocates "a more forceful concept of public service and a civil servant

who is more professional, adaptive and creative". Specialisation cannot be easily developed or absorbed within the generalist framework except through an imaginative placement policy and a purposeful programme of career planing and development. The practical implication for the IAS is to make an effort to see that, as far as possible, a particular officer is kept within a definable sector of administration with jobs of a related nature.

There are naturally limitations to this kind of specialisation. For one, it may not be desirable for an officer to specialise for twenty years in one group of subjects. Secondly, for certain kinds of posts like the Chief Secretary, seniority and breadth of experience and not specialisation are the most powerful considerations for it will normally not do for the Chief Secretary to have had experience in only one range of subjects.

17.46 But the career of an IAS officer even upto the time that he begins to hold vital superior posts (e.g. Chief Secretary) is likely to be long enough for him to acquire two kinds of specialisation or mix one intensive specialisation with a little experience in other fields. This is so because the span may be as much as 15 years in the senior scale on an average and may extend beyond it into positions above the senior scale in which the programme of specialised development can be continued.

Categories of specialities

17.47 What these broad fields of related subjects should be, and how exactly the development of officers in them is to be organized is a question of judgment. Perhaps the entire field of administration could be classified into four main areas of specialisation, namely, (a) personnel administration (b) financial administration (c) general or regulatory administration (i.e. law and order, revenue) and (d) development adminstration, with sub-specialisations like agricultural administration, economic administration, administration for social services etc. under this group. In allocating actual posts to one or the other group there may be some overlap, especially between categories (c) and (d). Categorization may also be possible on different lines and the one given here is

merely suggestive. The important thing is to decide upon some classification and frame a policy of developing specialization. This principle of specialization, as far as possible, should also be observed when an officer comes on deputation to the Central Government and deployment procedures within the Central Government should be fashioned accordingly.

17.48 It is necessary here to explain the scope and significance of the specialization sought to be developed in the service for manning posts in any sector of administration. It is not the type of detailed, intimate knowledge of every aspect of the field which the 'specialist' invariably has but a broad grasp and understanding of the essentials of that and other related fields to enable him to ask for advice of the right quarters and understand, and process the advice given. What in short this means is that the officer will be a different kind of specialist—one who will see more widely than the specialist in a single field, but more deeply in the field of activity in which he is engaged than a general administrator. His approach though well-informed should not be narrow or academic but practical and administrative.

17.49 The decision regarding the particular specialisation that an officer should be put through may have to be taken about the tenth year of service although it could be made a little earlier if a clear indication of his aptitudes and potentialities is available or a little later if it is not. These decisions need not be irreversible and some running-in period should be allowed for testing them.

Central deputation

17.50 Connected with the question of deployment is that of the system of central deputation. This was evolved so that an exchange of officers could benefit governments both in the states and at the centre. To regulate the system two measures were adopted:

(1) quotas for central deputation were fixed for the states;

(2) tenures were fixed for individual officers.

The idea behind the first was that every state should have a fair share in giving and receiving experience and that of the second was that this share should be spread over as large a number of officers as could be accommodated. In neither aspect has this system been faithfully observed. The table at Appendix 38 shows a considerable imbalance in the proportion of officers drawn from different states at the level of Deputy Secretary and above. Thus there is heavy over-utilisation in the case of one state, possibly due in part to bottlenecks in promotion in that state (although this feature is by no means unique to that state). Relief in such circumstances should not be sought at the centre to more than a marginal extent and it should be for the state government itself in consultation with the centre to devise methods to afford the necessary relief.

17.51 The other serious problem arises from the non-adherence to the tenure principle at the higher levels. At the middle level, although the policy has tended sometimes to vacillate and thereby to generate inconsistencies the principle is being largely observed. At the senior levels (Joint Secretary and above), however, it is observed mostly in the breach and at the levels, in particular, of Secretary, Special Secretary and Additional Secretary officers hardly go back to their own cadres. This breach occurs for a variety of reasons. There is, first, the indubitable fact that the needs of the centre at these rungs have expanded greatly, proportionately much more so than in the states. Coupled with this is the fact that there are more senior men than the states can absorb. There is finally the need for specialisation which we have already discussed and which calls for the retention at the centre of officers in disregard of the normal tenure principle. These circumstances justify a departure from the normal system and it is pertinent to point out that at these levels the tenure principle was not observed with any consistency even in the days of the British.

17.52 While the normal tenure principle may be dispensed with in such circumstances it must be admitted that the gravitation of senior personnel to the centre denudes the

state administrations when it is they in many cases which need strengthening at that level. The states too need senior officers and although the numerical needs of the centre may be greater those of the states cannot be brushed aside. In other words, while it would be wrong to say that all or even most secretaries should be reverted on the tenure principle it would be equally wrong to say that no secretary need become available to the states. On the contrary the state should be enabled to get officers at this level when their administrations need them. The flow of officers may be uneven but must not be entirely one-sided.

17.53 A solution therefore has to be thought of which would recognise the needs of the centre and would at the same time cater to those of the states. One reason why the system of forward and backward movement at the level of Secretary to the Government of India breaks down completely is that he is senior to, and carries emoluments higher than, any officer under a state government. He therefore tends to develop a personal interest in staying as long as possible in Delhi. Nor indeed in actual practice is he forced to return as it is informally recognised that that would amount to a come down for him. Unhealthy attitudes are therefore bred affecting morale, independence of judgment and standards of behaviour. What is required is a flexible approach to the Chief Secretary's post and status so that it can be entertained, if personnel considerations so require, in a rank equivalent to that of a Secretary to the Government of India. This will enable the return to the state government in time of need of a senior officer without carrying any implication of demotion. This could be justified on merit also for the Chief Secretary to a state government today is a far more important officer than his predecessor in the British days. The increasing importance of this post has been realised from time to time and the post itself has experienced upgradation twice in the last 20 years. A similar principle could be followed in the case of the post of Financial Commissioner or Development Commissioner to allow for their equation with the post of Additional Secretary to the

Government of India. With such a measure the rotation required will at least become physically possible.

17.54 Besides providing this flexibility two more measures should be considered in this context:

(a) a state should be enabled to have some choice in the return of its able and senior officers on deputation. This choice should be so exercised that the centre's needs are also kept in view. Thus, out of four or five of such of its senior officers on deputation as it considers outstanding a state should after negotiation with the centre be able to get one for a particular post;

(b) special pools of officers could be maintained by the centre for certain kinds of posts in the states such as Chief Secretary, Development Commissioner, Finance Secretary (and, possibly, in the context of the Indian Police Service, the Inspector General of Police). The formation of such pools would carry no obligation on the part of the states to take officers from them for filling their posts. If they are wanting in men of the requisite experience and desire to draw upon on such a pool, they will be free to do so by negotiation with the centre. In such a case the choice of a state need not be restricted to deputationists from its own cadre.

17.55 Thus the tenure principle needs to be adapted to meet the considerations mentioned in paragraph 17.51. Indeed the need for specialization may demand a modification of the tenure principle at the middle rungs also, leading to its abrogation in some cases, or to a differentiation in the periods of tenure prescribed for different kinds of specialisation. These are naturally matters of detail to be worked out by government.

C—TRAINING

17.56 An important means of developing and maintaining quality in administration is the proper training of

officers. The subject of training needs, however, to be viewed comprehensively and in the context of the entire period of an officer's career. At present formal institutionalised training is imparted to the young probationer in the first year of his service at the National Academy of Administration, Mussoorie, which is followed by practical training "on the job" in the states. The pattern of training imparted to the IAS probationers should be reviewed so that it serves basic professional needs. There is an advisory council for the National Academy of Administration consisting of 25 persons drawn from different walks of life. This is too large and heterogeneous a body and should be replaced by one that is smaller and more knowledgeable about administration. We feel that an advisory organ of this nature should be more compact and strictly professional in character. It need not consist only of government officers but should have only those on it who, by their qualifications and experience, can promote professional training of this kind.

17.57 There are, besides, various *ad hoc* refresher courses conducted at various places for different purposes. Refresher courses should seek to acquaint officers with new techniques and tools of management. In addition to these refresher management courses there should be training arrangements for developing specialized skills.

17.58 At the initial stages of an officer's career, both in the Academy and thereafter, special stress should be laid on the acquisition of proficiency in the language of the state to which he is allotted. We are aware that these languages are taught at the Academy and that on proceeding to their states the officers are required to pass departmental tests in them. We feel nevertheless that this aspect of their training needs emphasis in a context in which administration will be run almost exclusively in the regional language and in which English (or any other link language) may fall into disuse in the administrative life of a state. Incentives like the grant of advance increments should be given to those officers who, on posting to a state with a regional language other than their own, display the requisite command over it.

17.59 Training of officers thus requires much systematization. There should be an Evaluation Committee consisting, say, of the Secretary (Personnel) to the Government of India, one Chief Secretary from any state, the Director of the Academy and one expert from outside, say, from one of the Institutes of Public Administration or Management to evaluate and review all the existing training courses to assess training needs and to evolve a concrete programme to meet these needs.

D—MORALE

17.60 Morale is difficult to define but the concept is generally well understood. Its vital attributes are the confidence of the officer in himself and the group, the confidence of the group in him, the confidence of the administration in him and the group. These and many other less definable attributes depend to a large extent on the calibre of the officers and the homogeneity of the group-factors which have been dealt with earlier and which are vital to the building up of morale in such a service. Indeed all aspects of personnel management affect morale. One of these is the continuance in government service of reluctant officers and of deadwood. Rules have been so structured that once a person enters the service he cannot, except at the fag end of his career, move out of it without incurring heavy loss to himself in the form of losing all pensionary rights. It can happen that an officer does not wish to remain any longer in service but does not resign as he will then lose all pensionary benefits that he has earned. The reluctant officer continues in service, which is fair neither to himself nor to government. On principle, therefore, the existing policy requires to be changed so as to be more beneficial both to government and to its servants.

Voluntary retirement after 15 years

17.61 In this context a scheme under which the officers can voluntarily retire is worth considering. Provision should be made allowing the officers to retire on proportionate pension after 15 years of qualifying service. A limit of 15 years is suggested so that the retiring officer is able to take to an alternative profession if he wishes to. Ordinarily not many officers are likely to exercise this option but the benefits of

such an arrangement can become visible to both sides in certain situations. The option might be exercised, with a sense of relief to both sides, by an officer affected adversely by a situation in which promotions are made on merit and not on seniority. Retaining a reluctant officer, who is passed over and of whose value government is doubtful, is harsh to the officer and is of no advantage to the government which might try fresh blood with profit. Another situation is afforded by bottlenecks in promotion which exist in some states and which, in view of the large recruitment undertaken, will always afflict personnel management in some state or the other. An exodus, as a result of a liberalised retirement rule, is more likely to be realised in cadres where there are such bottlenecks than where there are none and should not be considered an unhealthy development. This scheme may thus help fight frustration and relieve congestion on the one hand and, on the other, help unsuitable officers to make their exit.

E—NATIONAL INTEGRATION

17.62 In order to ensure a proper balance among the officers allotted to a state cadre and to promote national integration, a working formula has been adopted by the Home Ministry under which 50% of the officers allotted to a state on the basis of annual competitive examinations belong to a state other than the state of allotment. A sound formula, it was not adhered to meticulously in the earlier years for various historical reasons. During the last few years, however, the insider-outsider ratio has been followed scrupulously. A new version of this formula could give a larger representation to southern candidates in the northern states and *vice versa*. This will be an effective method for bringing north and south closer at least administratively.

17.63 A suggestion sometimes advanced is that a panel of officers should be maintained by the centre from which Chief Secretaries and Inspectors General of Police should be selected by the Chief Ministers for appointment in their states. This idea, in the sense of a binding panel, to be used exclusively for making such appointments is constitutionally unacceptable as it involves a curtailment of the executive powers of the state governments. As a facility to the state

governments, however, to be used at their discretion this idea is attractive. The pool recommended in paragraph 17.54 will serve this purpose and will enable the deputation to a particular state of an officer with a particular background and expertise which that state lacks and requires. The good offices of the centre could facilitate such arrangements between the borrowing and lending cadres. The scope for such exchanges should expand as the need for specialised personnel increases.

17.64 We feel that with the adoption of the measures recommended by us the Indian Administrative Service can be given a face lift. This, despite its generally good performance, it needs if it is to perform its role adequately in an era of expanding governmental activity.

17.65 We have given a rather detailed treatment to the Indian Administrative Service partly because it is this Service that supplies and will be expected to supply the largest proportion of personnel for manning senior posts in the states and the centre and partly because a detailed treatment could also help draw correct lessons for fashioning policies for other all-India services. On the latter point, however, a word of caution is necessary, for not all the issues discussed here would be of direct relevance to the other all-India services. While it is true that the Indian Administrative Service is the prototype for the other all-India services not all its structural characteristics can or should be repeated in the other services. Internal structures will vary according to the proportion of higher posts and deputation posts available and also according to the flexibility required for manning research, teaching or other specialised posts. The policies evolved for recruitment and deployment will also therefore vary. Whether the area of activity of a uni-functional all-India service embraces research, teaching and other specialization or is confined to administration the cadre mechanism evolved will not in every instance be same as that of the IAS and each service may have to evolve a mechanism and structure suited to its own special needs and problems. It would be a mistake therefore to lift bodily our recommendations made in the

context of the IAS and to apply them to other all-India services. Our examination of the policies followed for the IAS is intended to reveal the necessity of framing and following the right personnel policies if the object of the creation of such a service is to be fulfilled. For each of the other all-India services formed there should be a clear enunciation of policy which should guide and direct their management and with reference to which all personnel measures should be devised. With this broad guideline the discussion in this chapter of the IAS could prove of use to other all-India services also, not in the direct applicability of all the measures recommended but in the relevance of the principles underlying some of them.

17.66 To conclude:

SUMMARY OF CONCLUSIONS

(1) the main objectives underlying the all-India services remain valid today. The continued need for the Indian Administrative Service and the Indian Police Service is affirmed. The creation of other all-India services, where feasible, should be welcomed;

(paragraphs 17.4—17.7)

(2) if the services are to fulfil the objectives it is necessary for the right attitudes to be struck all round. The states must accept these services as their own, the centre must keep a vigilant eye to ensure their health and vigour, the members of the service must act in a manner befitting the trust and responsibility reposed in them, the government must discourage resentfulness in other services;

(paragraph 17.9)

(3) policies concerning recruitment, training, deployment, discipline and other aspects of management should be such that they subserve the purpose for which the services are formed. An illustrative study of the IAS reveals many shortcomings;

(paragraph 17.8)

QUALITY

(4) the quality of IAS officers has deteriorated because of

(a) over-large recruitment and indiscriminate growth of cadres

(b) imbalance in the structure and composition of the service causing a large scale deviation from original policies of recruitment

(c) diversion of talent to other spheres.

This deterioration in quality must naturally also affect the morale of the service;

(paragraphs 17.13, 17.29, 17.40)

(5) for improving the quality of the service and policies of cadre management

(a) the cadres, and therefore recruitment, should be curtailed by excluding from the IAS cadres all generalist posts not strictly required to be manned by IAS officers and by following a flexible policy of staffing specialised and semi-specialised posts;

(paragraph 17.30)

(b) there should be more meticulous advance planning for personnel by the Chief Secretary;

(paragraph 17.33)

(c) the existing triennial cadre reviews should be replaced by annual reviews and a quinquennial assessment;

(paragraph 17.34)

(d) the entire scheme of reserving vacancies for short service commission officers for the IAS should be reconsidered and if it cannot be abolished the limit on the vacancies reserved should be reduced from 20% to 10%;

(paragraph 17.39)

(e) the suggestions of the Study Team on 'Recruitment etc.' for having a special examination for first and high second class graduates and for

effecting better publicity among and better liaison with university students should be accepted;

(paragraph 17.41)

(f) the upper age limit for eligibility to appear in competitive examinations should be raised from 24 years to 25 years;

(paragraph 17.42)

(g) the scope of choice of optional subjects for competitive examinations should be expanded to include more technical subjects;

(paragraph 17.43)

(6) (a) every direct recruit should be posted as Collector as soon after six years of service as possible; DEPLOYMENT AND SPECIALISATION

(paragraph 17.44)

(b) deployment policies should be so fashioned that an officer is enabled to specialise in a group of related subjects;

(paragraphs 17.45, 17.49)

(c) over-utilisation of the central deputation quota beyond a marginal extent should not be resorted to by the states to relieve bottlenecks in promotion in their cadres;

(paragraph 17.50)

(d) considerations of specialisation and of central needs may require some modifications in the existing tenure principle;

(paragraphs 17.51, 17.54)

(e) although flow between the centre and the states cannot be even at the higher levels it should not be wholly one-sided and the states should be enabled to get some of their senior officers by the adoption of the following measures:

(i) there should be flexibility in the states of the post of the Chief Secretary so that it can be entertained in the scale of the Secretary to the Government of India;

(ii) a state should be able to get back an officer out of a panel of its outstanding deputationists by negotiation with the centre;

(iii) a pool of officers should be maintained for posts like Chief Secretary, Development Commissioner, and Finance Secretary which the states may be able to draw upon in times of need;

(paragraphs 17.53, 17.54)

TRAINING

(7) (a) the pattern of training of probationers should be reviewed so that it serves basic professional needs;

(paragraph 17.56)

(b) the existing advisory council for the National Academy of Administration should be replaced by a smaller and more professional body;

(paragraph 17.56)

(c) in addition to the various refresher courses there should be specialised training in particular specialisations for which the officers are earmarked;

(paragraph 17.57)

(d) training in the language of the state allotted should be given greater emphasis in the Academy and afterwards and incentives in the form of advance increments provided for attaining proficiency in them;

(paragraph 17.58)

(e) there should be an Evaluation Committee consisting of Secretary (Personnel), one Chief Secretary, Director, National Academy of Administration and one expert from outside, say, from one of the Institutes of Public Administration or Management to evaluate and review all the existing training courses to assess training needs and to evolve a concrete programme to meet these needs;

(paragraph 17.59)

(8) (a) provision should be made for voluntary retirement after 15 years' qualifying service on proportionate pension;

(paragraph 17.61)

(b) in the matter of allotment of direct recruits to northern states fair representation of southern candidates and *vice versa* should be ensured.

(paragraph 17.62)

CHAPTER XVIII

THE GOVERNOR

DUAL ROLE

18.1 It would be common place, but not mistaken in emphasis, to preface this chapter with the remark that the office of Governor is not meant to be an ornamental sinecure, that the holder of this office is not required to be an inert cypher and that his character, calibre and experience must be of an order that enables him to discharge with skill and detachment his dual responsibility towards the centre and towards the state executive of which he is the constitutional head. This duality in his role is perhaps its most important and certainly its most unusual feature. It would be wrong to emphasize one aspect of the character of his role at the expense of the other, and the successful discharge of his role depends on correctly interpreting the scope and limits of both.

18.2 The Governor functions, for most purposes, as a part of the state apparatus; but he is meant, at the same time, to be a link with the centre. This link and his responsibility to the centre flow out of the Constitution, mainly because of the provision that he is appointed, and can be dismissed, by the President. It is worth noting that while the Constitution prescribes election as the mode of appointment of the President and impeachment as the mode of his removal, in the case of the Governors it vests the power of appointment and removal in the President. The Constitution thus specifically provides for a departure from the strict federal principle, and it is relevant to observe that this departure is not fortuitous or casual. The original proposal before the Constituent Assembly was to have an elected Governor who, having been elected, would be able to exercise influence and power over the state cabinet effectively. This was changed on the motion of Shri Brajeshwar Prasad to the present provision of appointment by the President "in the interest of all-India unity and with a view to encouraging centripetal tendencies".

When moving his amendment Shri Prasad said that it was "necessary that authority of the Government of India should be maintained intact over the provinces". Supporting the motion Shri Jawaharlal Nehru spoke in the same strain. It is clear, therefore, that the Constitution-makers did not intend the Governor to be only a component in the apparatus of governance at the state level: they meant him also to be an important link with the centre. That he does have this other role to perform is confirmed by the existence of certain legislative and administrative provisions in the Constitution discussed later.

18.3 This second aspect of the Governor's role invests it with a significance for national integration and for the preservation of national standards in public administration that has not received enough recognition so far. The reason for this neglect in the past is to be sought in the fact of uniparty rule in the centre and the states. The Governor of a state ruled by the party that also wields power at the centre will always tend to be outflanked and thus reduced to a nonentity. In such a situation the person chosen for the office will, as likely as not, be selected not for his ability to perform his role as visualized by the Constitution but on extraneous considerations, not least of which may be his willingness to endure an abnegation of his role or the need for the accommodation in office of one for whom an acceptable political situation is not available. It is not surprising therefore that the institution has languished from the incognizance it has suffered.

18.4 But the perspective now has changed completely and is never likely to be the same. Different parties rule at the centre and in many of the states and this multiparty situation has probably come to stay. The setting is now appropriate for the institution of the Governor to come into its own and act out its appointed role as otherwise an essential piece in the "environment" in which the states are meant by the Constitution to function will be missing.

18.5 What this appointed role is and properly should be has been subject of much debate. While the broad concept of this role is well understood and generally accepted

controversies have raged over some specific and significant ingredients of it and the manner in which it has sometimes been discharged. It will be our object here to identify the role in its details and to suggest measures for the development of the institution to the level visualized for it by the makers of the Constitution. Underlying all the detailed suggestions that we make later is the need for the evolution of a national policy, to which the centre and the states subscribe, which gives recognition to the role of the Governor and guides the responses of Government and Opposition, in the states and at the centre to any actions undertaken in the discharge of it. Basically such a national policy will require

—the acceptance of the different ingredients of the Governor's role; and

—the spelling out of the implications of this acceptance in the form of conventions and practices necessary to derive the maximum advantage not for parochial ends but for the national objective of defending the Constitution and the protection of democracy.

CONCEPT OF GOVERNOR'S OFFICE

18.6 There is some controversy about the matters in which the Governor can act in his own discretion. The concept of the Governor's office as it emerged from the deliberations of the Constituent Assembly was largely one of a constitutional head and yet the role was not meant to be purely formal or passive. Article 163 says:—

"(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of

anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so, what advice was tendered by Ministers to the Governor shall not be inquired into in any court."

Discretionary action on the part of the Governor is thus specifically envisaged. The Constitution gives discretion to the Governor in so many words only in regard to:—

(a) the administration of an adjoining Union Territory for which he is appointed the Administrator;

(b) in the case of the Governor of Assam, in certain matters pertaining to specified tribal areas.

But other areas of discretionary action or action requiring the exercise of judgment also exist. Dr. B. R. Ambedkar, elucidating the role of the Governor in the Constituent Assembly, made a distinction between the functions of a Governor and his duties and observed that while the Governor had no functions, he had two kinds of duties: one in the matter of making or dismissing his ministry and the second "to advise the ministry, to warn the ministry, to suggest to the ministry an alternative and to ask for a reconsideration".

18.7 All these duties require the exercise of judgment. There are, however, other matters for which the Governor may by implication be called upon to exercise his own judgment. Thus both as central agent (the term is not wholly appropriate and is used in the absence of a better) and as constitutional head of the state apparatus the Governor has duties to perform in the light of his own judgment, although many more are non-discretionary in character. For an appreciation of the range of his functioning, both kinds of duties —discretionary and non-discretionary—performed in both capacities are briefly recapitulated below.

18.8 ROLE AS CENTRAL APPOINTEE

A—DISCRETIONARY AREA

ANALYSIS OF GOVERNOR'S ROLE

(The functions listed are those that are obviously discretionary as well as those which are debatably so. Only those clearly non-discretionary are excluded).

(1) *Reporting to the President*—The duty to report flows from Article 355 and is specifically mentioned in Article 356. The Union Government has the duty to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. It has no agency in a state, other than the Governor, to keep it informed of happenings there and whether the state government is being carried on in accordance with the provisions of the Constitution. In the event of a constitutional breakdown, the Governor is expected to make a report to the President and can advise him to assume the functions of the government of a state. The point is not of academic interest only, for President's rule has had to be promulgated on as many as 9 occasions in the period of 17 years during which the Constitution has been in force.

The action of the President invoking Article 356 not being justiciable, what constitutes a failure of the constitutional machinery and calls for the use of this Article has not been and will not be authoritatively defined. But some of the circumstances (these cannot be claimed to be comprehensively listed) in which this power could be used are—

(a) where there has been a 'political breakdown', *e.g.*, where a ministry has resigned and an alternative ministry cannot be formed without holding a fresh election; or where the party in majority refuses to form a ministry and a coalition ministry able to command a majority in the Legislature cannot be formed;

(b) where a ministry, although properly constituted, violates the provisions of the Constitution or seeks to use its constitutional powers for purposes not authorised by the Constitution and other correctives or warnings fail;

(c) where a state fails to comply with any direction given by the Union in the exercise of its executive power under any of the provisions of the Constitution.

In all such cases the Governor's report has to be objective, according to the facts as he sees and interprets them

and not as his ministers or the centre interpret them. Briefly, therefore, in reporting to the President, whether in routine or in unusual circumstances warranting Presidential intervention, the Governor is expected to exercise his own judgment.

Where Presidential rule is imposed the Governor may be entrusted by the centre with the task of actively carrying on the administration for which he then becomes directly responsible under the over-all direction of the Central Government.

(2) *Reservation of bills for the consideration of the President*—Under Article 200, the Governor can reserve a Bill passed by the legislature of the state for the consideration of the President. There is some controversy about the circumstances under which any Bill can be reserved, and also whether the Governor can act in the matter in his own discretion or whether he has to abide by the wishes of his cabinet. On the first question, a wide interpretation leading to a large number of Bills being reserved for the President's consideration would be contrary to the federal spirit of the Constitution. The Article must therefore be interpreted as enabling Presidential intervention only in special circumstances, such as those in which there is a clear violation of some fundamental right or a patent unconstitutionality on some other ground, or where the legitimate interests of another state or its citizens are affected. The Article also provides an opportunity for Presidential intervention in the event of a clash with a central law. In this view of the matter, Presidential veto on state legislation is circumscribed by certain guiding principles, which the Governor must take account of when deciding whether to give assent to a Bill or to reserve it for the President's consideration. On the second question whether it is for the Governor to reserve a Bill on his own judgment or on the advice of his cabinet, views differ. But it is at least arguable that the Governor could exercise his own judgement, in case he feels and his cabinet does not, that unconstitutionality or serious impropriety is involved. This appears to us the correct and natural interpretation of the Constitution.

B—NON-DISCRETIONARY AREA

There are functions that a Governor may be required to perform under directions issued by the centre under the Constitution. The items in which the centre can assume control or give directions are enumerated below.

I. *General provisions concerning matters falling within the centre's executive jurisdiction*

(a) The Central Government may give directions to a state government to ensure compliance with central laws and to ensure that the exercise of the executive power of the centre is not impeded or prejudiced; [Articles 256 and 257(1)]

(b) The President may, with the consent of state governments, entrust to any officer of the state, functions relating to a matter falling within the centre's executive jurisdiction; [Article 258(1)]

(c) Parliament may by law confer power and impose duties on an officer of a state in respect of matters in the Union or the Concurrent Lists. [Article 258(2)]

II *Specific provisions relating to certain matters*

The Central Government may give directions regarding

(a) the construction and maintenance of means of communication declared to be of national or military importance; [Article 257(2)]

(b) measures to be taken for the protection of railways within the state. [Article 257(3)]

III. *Provisions concerning languages and linguistic minorities*

The President can issue directions

(a) in regard to the language for communication between the centre and a state or between one state and another; [Article 344(6)]

(b) that a language spoken by a substantial proportion of the population of a state should be officially recognised by that state for such purposes as he may specify; [Article 347]

(c) to secure adequate facilities in a state for instructions in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups. [Article 350-A]

IV. *Provision relating to Scheduled castes, tribes and areas*

(a) The President has to notify the castes, races or tribes to be deemed as Scheduled Castes in the state; [Article 341 (1)]

(b) The President has to notify the tribes or tribal communities to be deemed as Scheduled Tribes in a state; [Article 342(1)]

(c) The President can give directions regarding the drawing up and execution of schemes essential for the welfare of Scheduled Tribes in a state; [Article 339(2)]

(d) The President can declare areas to be Scheduled Areas and can issue directions in regard to the administration of these areas. (Para 6 of Fifth Schedule)

W. *Provisions relating to Proclamation of Emergency*

(a) When a Proclamation of Emergency has been made under Article 352, the executive power of the Union extends to the giving of directions to any state as to the manner in which the executive power thereof is to be exercised; [Article 353(a)]

(b) As soon as a Proclamation of Emergency is made the legislative competence of the Union Parliament is automatically widened and Parliament is empowered to legislate for items falling in List II (State List) and to confer powers and impose duties on the Union executive relating to these items;

(c) When the Proclamation is in force the President can, by order, direct that all or any of the provisions of Articles 268 to 279 shall have effect subject to such exceptions or modifications as he thinks fit. He can thus modify the provisions of the Constitution governing the financial relations between the Union and the states; (Article 354)

(d) When a financial emergency is declared, the centre may give directions to a state, *inter alia,* to observe certain canons of financial propriety. [Article 360(3)]

18.9 **ROLE AS HEAD OF THE STATE APPARATUS**

A—DISCRETIONARY AREA

(Here again the functions listed are those that are obviously discretionary as well as those that are debatably so).

(1) *Appointment of Chief Minister*: Constitutionally the Governor can appoint the Chief Minister in his discretion. Politically, he would ordinarily have no option except to invite the leader of the party or of a combination of parties commanding a majority of the members of the state legislature. Where, however, it is not absolutely clear whether any party or a combination of parties has a majority, the Governor can find himself in a position in which he has to exercise his own judgment. His decisions, in such delicate situations, are crucial and can have far-reaching consequences.

(2) *Dismissal of Ministry* : The Governor can dismiss the ministry under Article 164 for the Chief Minister and other Ministers hold office during the pleasure of Governor. His oath of office requires him to defend the Constitution. It has been argued that this places on him the obligation to dismiss a minister or a ministry that, despite warning, is carrying on its government in violation of the law. Even if a view is taken that his pleasure can be withdrawn from other ministers only on the advice of the Chief Minister it is obvious that he is under no such constraint when the Chief Minister himself is involved

(3) *Dissolution of legislature* : The Governor can dissolve the legislature. Here the consensus (although by no means the unanimity) of opinion is that the Governor can dissolve the legislature only on the advice of the Chief Minister. But the right to refuse the Chief Minister his request to dissolve the legislature probably does lodge with the Governor.

Exercise of discretion in items (2) and (3), even if constitutionally possible, is rarely likely to be politically feasible. A dismissed ministry can be re-elected by the legislature. If the legislature is dissolved, there is the problem of finding a care-taker ministry and there is the possibility of the same party with the same persons returning to power. Nevertheless, in law the power exists and in rare instances can conceivably be invoked.

(4) *Right to advise, warn and suggest*: The Governor has the right to advise and warn his ministry and to suggest alternatives. In particular he can direct that the decisions of a minister be reconsidered by the cabinet. These perhaps constitute the most important duties of a Governor. They do not involve the exercise of any powers but do intend the Governor to be a major source of influence.

(5) *Withholding assent from a Bill*: The powers of the Governor here are considerably less than those of the President when a state Bill is reserved for the latter's consideration. The President can virtually veto the Bill. The Governor, however, can only return it with his comments and if passed a second time, he has to give assent. Whether he can return it only on the advice of his minister is questionable. There is no clearcut finding on the issue but, as in the case of reservation, the Governor can be confronted with situations in which he has to exercise his own judgment.

(6) *Statutory functions* : The discharge of functions endowed on the Governor by statute, *e.g.* those as Chancellor of a University, would also seem to fall within his area of discretion, despite contrary current practice.

(7) *Discretionary powers of Governor of Assam* : The Governor of Assam has special discretionary powers relating

to tribal areas. These however he exercises as an agent of the President.

On matters in which the exercise of discretion is debatable, a Governor inclined to exercise it is assisted by the fact that under Article 163 his discretion cannot be questioned.

B—NON-DISCRETIONARY AREA

All other functions are performed by the Governor in his formal capacity, not involving the exercise of his personal judgment.

QUESTION FOR CONSIDERATION

18.10 This analysis brings at one place the various types of functions a Governor has to perform and distinguishes between functions in which personal judgment or discretion is required to be exercised and those in which it is not. The analysis shows that a Governor's role is not necessarily formal or passive in all situations, that there can be circumstances in which he is called upon to exercise his own judgment, that in some situations the exercise of his judgment can be crucial and that the centre's own role in some of these matters depends upon the proper discharge of the Governor's role. It is vitally important therefore that what the Governor is required to do should be clearly understood by him, by the state government and by the centre. And it is equally important that the Governor should discharge his functions judiciously, impartially and efficiently. How these ends can be assured raises four types of questions:—

(i) questions relating to the appointment of Governor to ensure that persons of the requisite calibre are appointed;

(ii) questions relating to the conditions, arrangements and procedures enabling the Governors to perform their duties;

(iii) questions relating to the powers and procedures for keeping the centre informed of happenings in the state;

(iv) questions relating to the clarification and need for extension of areas involving the exercise of his own judgment by the Governor.

APPOINTMENT OF GOVERNORS

18.11 If Governors are to fulfil their obligations properly, nothing is as important as the need to ensure that only the right persons are appointed Governors. A Governor has the difficult task of maintaining a balance between national and state interests. The task is rendered more difficult by the fact that he has to do this more through influence than by the exercise of powers. In order that the task should be performed effectively the Governor must be a person who by his ability, character and behaviour inspires respect. He must be able to display perception and judgment, an understanding of political and social forces and an insight into human motives. He must possess great reservoirs of tact, initiative and patience. He must have knowledge, and preferably also experience, of the affairs of government and administration. Above all he must be impartial.

18.12 These are difficult qualities to find in a single person, and it is not surprising therefore that many of those who have filled posts of Governors during the last 19 years have fallen short of this standard. It is our considered view that the real reason for this state of affairs is not the paucity of suitable persons, but the lowly place given to the post of Governor in the minds of those responsible for making these appointments. This in turn is partly due, as already mentioned, to the existence of uni-party Government at the centre and in all the states, and the consequent development of a direct axis between the centre and a state Chief Minister. Circumstances devalued the post, and with that there was a logical fall in the standard of selection for Governors. The post came to be treated as a sinecure for mediocrities or as a consolation prize for what are sometimes referred to as "burnt out" politicians. Most of the persons selected were old men of the ruling party at the centre. All this should not be construed to mean that no suitable men were appointed, but that their number was small.

18.13 In this background, our first and main recommendation about the appointment of Governors is that the attitude of the centre towards these appointments should undergo a radical change. Instead of these posts being treated as sinecures, they should be given due recognition as vital

offices in the federal fabric of Indian administration. This should result in patronage and politics giving way to merit as the test for selecting Governors. Although unusually high personal qualities are required of a Governor, we cannot believe that enough men of the right calibre cannot be found in this big country for servicing seventeen states. We would recommend that systematic and careful search should be made to locate the best men, and that this should be done not after a vacancy arises but well in advance. We would not go so far as to say that those who have taken part in politics should be totally barred from consideration. But we would suggest that selection should not be confined to the party in power at the centre, and that in fact the search for talent should extend not only outside the ruling party but also outside the political sphere itself.

Consultation with Chief Minister

18.14 As to the procedure for appointment, the present practice is that the Chief Minister is consulted before the selection of a Governor is finalised. There are some who argue that prior consultation with the Chief Minister should be done away with, because there is no constitutional obligation for such consultation to take place and, what is more important, because a powerful Chief Minister tends under this arrangement to get a Governor for himself who is suitably docile. This argument finds support from the fact that the term of a Governor is five years, while Chief Ministers come and go according to political vicissitudes. Consultation with the person who happens to be the Chief Minister at the time that a vacancy occurs in the Governor's post does not, in this context, have much meaning. All these arguments notwithstanding, there is merit in consulting the Chief Minister beforehand, because otherwise the Governor's delicate task would be rendered even more difficult. We do not therefore recommend a change in the present practice by which the Chief Minister is consulted. We would nevertheless stress that the primary responsibility to appoint competent and suitable men as Governors rests with the centre and that consultation with the Chief Ministers must not be allowed to dilute this responsibility or lower the quality of these appointments.

Term of Governor

18.15 One of the qualities most necessary in a Governor is that he must function impartially and independently, not

only in relation to the Chief Minister but also to the centre (except where he must carry out central directions issued under the Constitution). It would promote independence and impartiality if all occasions were removed for the Governor either to seek the support of his Chief Minister for the extension of his term or to curry favour with the centre to obtain an extension or an appointment in another state. The Constitution prescribes that a Governor shall hold office for a term of five years, but goes on to add that he shall continue to hold office until his successor arrives. There have been instances of Governors continuing in office well beyond five years under cover of this provision. There have also been instances of Governors moving from one state to another. We would recommend that there should be an invariable rule that no person will have anything more than a five years' term in all. At most it could be laid down that a three months' extension would be possible in exceptional circumstances, such as the inability of the successor to take over owing to illness or any other cause. There should be no possibility of his reappointment in that state or his appointment beyond this period in any other state. This constraint will take the Governor beyond the pale of patronage of the Chief Minister or the centre. We would recommend that this principle should preferably be built into the Constitution.

18.16 Three suggestions have recently been debated in various quarters with the object of making improvements in the appointment of Governors— Three procedural suggestions

(1) The first is that the appointment of Governors should be made subject to ratification by Parliament. The underlying object is to place a helpful curb on the discretion of the central executive. We consider it unlikely that this suggestion will achieve the end in view, for with a majority in Parliament the party in power will find it easy to get approval for its nominee and ratification will thus become a mere formality. The practice suggested also carries the danger that individual names may be discussed in Parliament. This may not only be unwholesome in itself but may also deter good men from accepting posts of Governor.

(2) An alternative to the above suggestion is that the Central Government should informally consult the Leader of the Opposition in the Lok Sabha on every selection of a Governor before making the appointment. The success of such an arrangement would depend on the health of the working relationship between the Government and the Opposition. Conventions and attitudes in this field are yet to develop fully. While the suggestion could be considered for adoption in due course, our own view is that it is not likely to prove workable at the present stage.

(3) The third suggestion is that the appointment of Governors should not be treated as the prerogative of the Union Government. It is argued that these appointments do not fall within the scope of Article 74(1) according to which the President must act on the advice of his ministers. Since the Governor is not merely a Presidential agent but also the constitutional head of the state apparatus and in that capacity independent of the Union Government, it has been suggested that appointment by the Union Government acting through the President is not consistent with the federal character of the Constitution. The implication is that the President can and should act in his discretion in the appointment of Governors. This suggestion poses a fundamental constitutional question, which has implications going beyond the appointment of Governors only. The issue whether the President possesses discretionary powers under the Constitution or not, and the further issue whether he should possess such powers or not, are not within our competence. We have consequently assumed as constitutionally correct, for the purpose of our study, the existing practice of the President acting on ministerial advice.

GOVERNORS AND POLITICAL CAREER

18.17 There have been instances of persons appointed as Governors continuing their connection with active politics, and in some cases returning to active politics, after ceasing

to be Governors. We have no hesitation in recommending that there should be a firm convention that no person who is appointed Governor should take part in politics after his appointment as such.

ARRANGEMENTS AND PROCEDURES NECESSARY FOR DISCHARGE OF GOVERNOR'S DUTIES

18.18 In order that a Governor should discharge his role effectively, it is necessary that he should keep himself well informed. This requires that there should be an adequate information system in support of the institution of Governor. The most important features of such a system must be a Governor keen to receive and make use of information, and a Chief Minister willing to provide access to all relevant information. With the devaluation of the post the last nineteen years have seen, Governors have tended to retire into their shells and are often content to be given no information whatsoever. A full recognition of their role accompanied by a reorientation of the policy in regard to their appointments should help to correct this unfortunate tendency. Equally in need of correction would be the attitude of Chief Ministers which has in the past tended to be unhelpful and sometimes positively obstructionist. Governors should not only receive certain categories of information in the usual course, but should actively look for information relevant to their duties. They must, of course, do so with tact and delicacy. They should freely meet members of the public, as also members of the Government. They should also keep in touch with important administrative functionaries. Chief Ministers and other ministers should not stand in the way of flow of information to the Governor, and in particular should not have the least objection to their secretaries and other officers meeting the Governor at the latter's request.

18.19 Three specific points need to be discussed in connection with providing Governors an adequate information system—

(a) Article 167 of the Constitution makes it obligatory for the Chief Minister (i) to communicate to the Governor all decisions of the Council of Ministers and all proposals for legislation; and (ii) to furnish such information relating to the administration and to proposals for legislation as the

Governor may call for. In pursuance of this, rules of business in all the states issued under Article 166 provide that the Governor should be shown papers relating to matters which are put before the Council of Ministers and decisions taken thereon, specified classes of cases before the issue of final orders and other cases for information after action is taken. We are told that the centre formulated model rules of business for the guidance of state governments. We would suggest that the model rules should be reviewed with the object of tightening up the provisions which seek to keep the Governor well informed. One of the points such a review should cover is the particular need to keep the Governor informed about the health of key sectors of administration considered important from a national angle. The list of such sectors may vary from time to time but should include items helpful in maintaining national standards of (such as those discussed in this report, whether falling in the environmental category or others) public administration or those of vital importance to national integration or those on which depends the attainment of the more important national developmental targets.

(b) We understand that there have been instances of restrictions being placed on the movement of Governors within their states. The *modus operamdi* is for advice to be tendered to the Governor that it may not be possible to make security and other arrangements if he visits a particular place. Fortunately such instances have been few and far between. But we consider the matter important enough to be made mention of in this report. The tendency that such instances represent is an unhealthy one and violative of the spirit of the Constitution. It is part of the Governor's duty to keep himself fully informed of events and attitudes in his state and he must have free physical access

to every place. It should not be for a state government to place obstacles and thus prevent the mobility of a Governor. We would recommend that any rule, practice or convention that constitutes an obstacle at present should be changed so as to make it quite clear that the Governor may go wherever he considers his duty takes him and that the state government must make the necessary arrangements.

(c) The fall in the importance of the Governor's post has been accompanied by a corresponding decline in the secretariats of Governors. In some states it is not unusual to find that the post of secretary to the Governor is occupied by a military officer or an officer unacquainted with administrative processes of the state. We consider it an essential part of the information system in support of a Governor that there should be a well-manned secretariat in each case. The practice of Governors taking along unsuitable persons known to them earlier and getting them appointed as secretaries should cease. Only persons with administrative experience and training should be utilised as Governors' secretaries. It is necessary for us to stress the obvious, *viz.* that ordinarily such posts should be filled from amongst officers of the Indian Administrative Service because this is the kind of post that the Service is meant to provide men for.

Procedure for keeping the centre informed

18.20 In accordance with a decision taken in June 1948, Governors write fortnightly letters to the President and send copies to the Chief Ministers of their respective states. In that it institutionalises the obligation of the Governor to provide information to the centre and the right of the latter to obtain it, this practice has our full support. The provision about sending copies of fortnightly letters to the Chief Ministers could be construed to mean that Governors are debarred from sending report to the centre unless their contents are also shown to the Chief Ministers. For the removal of any possible misunderstanding, we would like to stress that this would

be a mistaken contsruction. Governors are, in our view, perfectly within their right to send reports to the President without any obligation to send copies to the Chief Ministers. That a practice to keep Chief Ministers informed about the contents of fortnightly letters has developed is only a matter of convenience and courtesy. It has been suggested that the obligation to endorse copies of fortnightly letters to Chief Ministers inhibits Governors from writing frankly. Because of this it is said that the fortnightly letters of Governors have tended to become common-place and the task of writing such letters is treated by Governors as a routine one. We consider that the tool of the fortnightly letter can be put to effective use if Governors take the trouble of posting themselves with facts and information on the basis of which they can make telling reports to the centre. It is our view that the obligation to endorse a copy to the Chief Minister should not prevent a Governor conscious of his duty and responsibility from doing justice to his fortinghtly report to the President. In fact the drafting of the fortnightly letter, if undertaken in the true spirit and with the appropriate skill, could at once post the centre with meaningful information and give timely advice and warning to the Chief Minister. We therefore recommend that the existing practice should continue and that it should be made effective by the task of writing fortnightly letters being given more importance by Governors.

18.21 Occasions may arise when the Governor considers it necessary to make reports to the centre other than fortnightly reports, copies of some of which he may consider it inadvisable to endorse to the Chief Minister. As mentioned above, should circumstances justify the submission of such reports the Governor would be perfectly within his right to do so. We recommend therefore that *ad hoc* reports should be made from time to time whenever the need arises, and that it should be regarded as the Governor's right and duty to make such reports without the obligation of informing the Chief Minister.

18.22 We would like to see a practice developing under which the Governor not only keeps himself informed about key sectors of public administration but also communicates

his impressions about the health of such sectors from time to time to the centre. In this connection we would suggest that, apart from occasional treatment of these matters in fortnightly and *ad hoc* reports, each Governor should make an annual report to the President which includes a review of the working of all key sectors of administration, excluding audit. This should not duplicate or replace the annual reports of the sectors concerned, but should be in the nature of an evaluative exercise to check whether nationally accepted standards have been maintained or not, what the state of affairs is with reference to national integration and whether public administration in the state is well geared to the attainment of national development targets. It would be useful for the centre to work out a format of the annual report. The exercise of evolving this format should be linked to that of reviewing the model rules of business, so that the end is related to the means.

QUESTION OF EXTENSION OF ROLE

18.23 The question whether the Governor's role could be extended so as to make him a useful instrument in keeping up efficient standards in the state administration has been considered by us. The specific suggestion we considered was that the Governor should be given a special responsibility in relation to the services. He should be enabled to see that justice is done to civil servants, that right policies are pursued in personnel management and that the Public Service Commission functions correctly. This would mean, among other things, that memorials from aggrieved civil servants should be decided by the Governor in his own judgment, after taking account of the Government's stand. We are attracted by this line of thinking, particularly in view of the neglect of the services that is apparent in most states. But the authority of the elected Government cannot be cut into by formal entrustment of such executive functions to the Governor. What could be considered is the gradual development of convention under which state governments voluntarily concede a watch-dog status to the Governor in specific areas, agreeing in the process to accept and implement whatever he advises. A practice on these lines was successfully tried in at least one state some time back. The Governor was given the task of considering memorials from civil servants

at all levels and was assisted in the consideration of such memorials by a senior secretary specially assigned for this purpose. A convention was adopted under which the Governor's decisions were accepted without question and faithfully implemented. We understand that the arrangement worked well and succeeded in giving widespread satisfaction to aggrieved government servants. This could well serve as a model for all state governments. In our view it is of national importance to arrest the decline in the morale and quality of state civil servants. It seems to us that a voluntary move on the part of all Chief Ministers in this direction should provide an effective answer. Our specific recommendation therefore would be that the practice described above in regard to memorials should be extended to all states in the shape of a uniform convention accepted by the state governments. This should be regarded as a beginning, and if circumstances do so warrant, the role of the Governor could be widened to other specific matters, again by convention, in the realm of service matters.

18.24 To conclude:

SUMMARY OF RECOMMENDATIONS

(a) instead of treating the posts of Governors as sinecures, they should be given due recognition as vital officers in the federal structure. Systematic and careful search should be made to locate the best men and this should be done well in advance and not after a vacancy arises;

(paragraph 18.13)

(b) the present practice of consulting the Chief Minister before the Governor is appointed could remain but this should not dilute the primary responsibility of the centre to appoint competent and suitable men;

(paragraph 18.14)

(c) the term of a Governor should not be more than five years. In exceptional circumstances such as the successor's illness etc., a three months' extension may be permitted. This principle should preferably be built into the Constitution;

(paragraph 18.15)

(d) no person who is appointed Governor should take part in politics after his appointment as such;

(paragraph 18.17)

(e) in order to provide Governors with an adequate information system:—

(i) the rules of business in all the states issued under Article 166 should be reviewed with the object of tightening up the provisions which seek to keep the Governor well-informed;

(paragraph 18.19 (a))

(ii) no restriction should be placed on the movement of Governors within their states and any rule, practice or convention that constitutes an obstacle at present should be changed;

(paragraph 18.19(b))

(iii) there should be a well-manned secretariat with every Governor in which the key post should be filled from among officers of the Indian Administrative Service;

(paragraph 18.19 (c))

(f) the existing practice of the Governors writing fortnightly letters to the President should continue and should be made more effective. When occasion demands the Governors may send *ad hoc* reports to the President without the obligation of informing the Chief Ministers;

(paragraphs 18.20, 18.21)

(g) apart from the fortnightly and occasional *ad hoc* reports, each Governor should make an annual report to the President which includes a review of the working of all key sectors of administration, excluding audit;

(paragraph 18.22)

(h) the Governors could by convention be voluntarily entrusted with the role in certain specific service matters.

(paragraph 18.23)

CHAPTER XIX

AN INTER-STATE COUNCIL

NEED FOR CONSULTATION WITH THE STATES

19.1 Although the Constitution, in Schedule VII, provides for a three-fold enumeration of subjects and although the centre and the states are free to legislate and carry on activities in their own domains, in practice neither the centre nor the states can function in water-tight compartments. The Union and the units are inter-dependent in numerous ways. The economy of the country being indivisible it exerts a constant pressure towards administrative unity. We have already seen how, in the sphere of planning and development these pressures have tended to weld the three layers of responsibility, central, state and concurrent, into a near monolithic piece. The unity thus brought about has to have the force of consent, not of law. This calls for co-operation and co-ordination on the basis of policies arrived at after due consultations in which the nation as a whole, through the central and state governments, participates. Planning furnishes the most striking illustration but there are others no less pertinent.

19.2 Thus, in the field of financial administration many of the measures taken by the centre and the states from time to time are mutually interactive and so sharply is their influence on one another felt that the need for the co-ordination of financial policies, whether in the matter of the regulation of incomes, or of borrowings, or of aspects of taxation, has been urged in many forums. Here again co-ordination can be effective only if it is based on commonly acceptable policies for which consultation with the states is necessary.

19.3 The entire field of concurrent jurisdiction is one in which such consultation becomes imperative. "Power" and "food distribution" are two illustrative items. Even in purely central subjects the co-operation of the states, calling for a national policy, becomes at times necessary as for

instance when the mobilization of state effort is required for the defence effort.

19.4 We have earlier, in Chapter XII, spoken of national policies on public administration embracing institutions of fundamental importance, irrespective of their classification in the Seventh Schedule. The list of items on which such policies are considered desirable may indeed expand with time and for the determination of these policies a national consensus is indispensable, for only a policy arrived at after such a consensus can have any chance of being put into practice with sincerity.

19.5 The fact is that governmental activity in a federal structure, despite a well-defined division of functions, requires common direction in many spheres and co-ordination and co-operation in many others. This is inescapable in any federation, and federalism everywhere is becoming increasingly co-operative. This need is all the more marked in our federation as it is more than usually well-knit administratively and economically. This co-operation and co-ordination, in turn, require an apparatus for effecting regular consultations between the centre and the states.

19.6 In realisation of the need for such consultations an enabling provision tor setting up a forum for them was made in the Constitution itself. Thus Article 263 enables the President to set up an Inter-State Council to deliberate on matters of common interest and advise him on them. But such a council has not been set up except for two items—health and local self-government—both matters of a technical interest and limited range. No council of this nature has been set up for effecting consultations on any major matter of national importance.

REVIEW OF EXISTING ARRANGEMENTS

19.7 It is not that the need for consultations has not been recognised. It has been recognised in many fields and various methods have been evolved to cope with it. Thus for planning the National Development Council has been established. In other spheres the device of the Ministers' conference—standing or *ad hoc*—has been used. It would

be worthwhile seeing how the existing machinery operates. For this purpose the following areas, which are of vital importance, have been selected for scrutiny:

(1) the National Development Council
(2) the Finance Ministers' Conference
(3) the Food Ministers' Conference
(4) the Labour Ministers' Conference
(5) the National Integration Council
(6) the Chief Ministers' Conference

The National Development Council

19.8 We have already seen in Chapter VI the operational weaknesses in the functioning of this Council. These need not be recapitulated here in any detail. Briefly, we have observed that it meets at very short notice, for very short periods, to discuss and dispose of a number of issues of grave import. We have found, therefore, considerable scope for the streamlining and systematization of procedures for on these really depends the effectiveness of this device as a mechanism for national consultations.

The Finance Ministers' Conference

19.9 The need for an institutional device to discuss financial matters of common interest has often been pointed out and was particularly stressed by the Fourth Finance Commission. No regular institution has been devised and recourse has been had to the Finance Ministers' conferences, called as and when desired by the Union Finance Minister. This device suffers from some major drawbacks as listed below.

(1) Being an *ad hoc* conference, it is called at the will of the Union Finance Minister. Thus between 1963 and April 1967 no conference of Finance Ministers was held, obviously not for want of subjects for discussion.

(2) Items for discussion are suggested only by the centre and this forum has thus not been fully utilised for discussing all matters that should be taken up here. Instances of matters

in which the states are vitally interested but on which consultation with them either has not taken place at all or has been inadequate may be furnished here:

Taxation affecting the States and article 274

(a) at present there is no convention or legal provision requiring the centre to obtain the concurrence of, or to consult, the states in matters affecting taxation in which the states are interested. Article 274 of the Constitution does provide for the prior recommendation of the President for Bills relating to such matters, but the President here acts in his constitutional capacity and accepts the advice of the central ministers. Consequently, this Article does not adequately protect the interest of the states. Thus, income-tax paid by companies was classified as corporation tax in 1959 without eliciting the views of the states thereby affecting adversely the growth of the divisible pool;

Taxes under article 269

(b) Article 269 of the Constitution mentions a number of taxes which are levied and collected by the centre, but, the proceeds of which are to be wholly assigned to the states. Inter-state sales tax and estate duty are the only taxes in this category which are levied at present. As regards the remaining taxes, terminal tax on goods or passengers carried by railway, sea or air and taxes on sale or purchase of newspapers and on advertisements are potential sources of fairly sizeable revenues. There are some other possible taxes which may encounter practical difficulties or may not prove productive. Some of the taxes leviable under Article 269, if levied, may affect central revenues, but where the balance should be struck and why is a matter in which it would have been relevant to elicit the opinion of the states and have a frank discussion with them;

Incomes policy

(c) incomes policy is yet another matter of common interest. Dearness allowance given by the centre affects the states and that given by one state may affect a neighbouring state. The states have been commenting on this from time to time and what is required is a forum where they can discuss this subject collectively and with the centre to some purpose;

Overdrafts

(d) the questions of overdrafts and deficit budgeting were taken up by the Union Finance Minister in the 1967 conference. These were items that presumably could have been taken up earlier also but as already noted, no conference of Finance Ministers was held between 1963 and 1967.

(3) There is, on occasions, some overlap with the National Development Council. The subject of resources for the same plan, for instance, may be discussed at different times in these two different bodies. In the case of the Fourth Plan a discussion on resources in the Finance Ministers' conference in 1967 followed that in the National Development Council. The composition of the two bodies is not identical and it is doubtful if two different forums should be used, even if the Finance Ministers may be assumed to be speaking on behalf of and with the authority of their respective Cabinets.

(4) There is a tendency here also to send agenda late, sometimes almost at the last moment. This indeed is a general defect with all such conferences as the sample of data at Appendix 39 will show.

The Food Ministers' Conference

19.10 The acute nature of the food problem and the need for an all-India policy on food has compelled the convention of a number of conferences of State Food Ministers, and even Chief Ministers, during the last three or four years. Here again meetings are often convened hurriedly, agenda notes sometimes being circulated on the day before the meeting.

The Labour Ministers' Conference

19.11 These are annual conferences (although sometimes they are held oftener). Being a regular annual event the states also suggest items of discussion. A feature noticed is that an item discussed here may also concern ministers other than Labour Ministers. Thus the issue of "gheraos", involving questions of law and order, would concern Home Ministers also and it would not be enough to elicit the

opinion of Labour Ministers only. As Home Ministers are not present a clear-cut national policy cannot emerge on such an issue in a limited conference of this kind.

The National Integration Council

19.12 This forum, established to consider problems of national integration, has been moribund since 1962. It cannot however be said that problems of integration no longer exist.

The Chief Ministers' Conference

19.13 These again are *ad hoc* conferences convened by the Union Minister concerned to discuss problems that are considered urgent and of national importance requiring attention at the highest level. No specific ministry has been given the function of organising or co-ordinating the work of these conferences. The presence of the Chief Ministers in the capital can also be utilised for the work of ministries other than the one concerning the conferences. It has been left to the Minister calling the conference to inform the others and co-ordinate work regarding items that they wish to discuss. Till lately, it appears, there was no procedure prescribed to keep even the Prime Minister informed of these conferences. Latterly the Prime Minister has asked her cabinet colleagues to consult her whenever they propose to call such conferences. But even so, not enough systematic arrangement has been made. As Chief Ministers are concerned with all subjects, their conference tends to suffer from defects besides those of short notice and the late despatch of agenda. Conferences are called by different ministries at short intervals resulting in inconvenience and even waste of time. Thus, in 1964, one Minister convened a conference for the 26th of October, another for the 29th of October. Besides not every item brought up in these conferences would seem to deserve attention at this high level, as will be borne out by the statement at Appendix 40. Many of these items could easily have been disposed of at lower levels and their inclusion could not have resulted in the best utilisation

of the time of the Chief Ministers. But when such conferences are convened by individual ministries there is a natural propensity of the Union Minister concerned to pack, in his enthusiasm, as many items as he can in such a conference to get the opinion of the highest quarters in the states or to get his point of view across to them. And yet those quarters do not have to be burdened with all those items.

There is, furthermore, no co-ordination regarding follow-up action. Thus the conclusions of the Chief Ministers' conferences are circulated to the ministries or officers concerned for taking necessary action. Neither any specific ministry is made responsible for seeing that follow-up is done in all ministries, nor, in some ministries, is any officer or section made responsible for such co-ordination within the ministry.

19.14 The existing system thus has substantial defects. Another, and a major one at that, could be added to those discussed above and this is the absence of any forum whatever to discuss issues relating to fundamental institutions of public administration, national policies for which have been advocated in Chapter XII and in the succeeding chapters. It would appear that the arrangements for sounding and consulting the states need to be organised more systematically.

19.15 The need here is for a single, standing body to which all issues of national importance can be referred and which can advise on them authoritatively after taking all aspects of the problem into account. The advantage of a single body is that every problem can be viewed by it in the perspective of the whole. This integrated look, necessary in fashioning basic policies of national importance, is missing in the dispersed system operative at present. The body should be a standing one and should meet at regular intervals so that all participants, armed with foreknowledge of its meetings, can make effective use of the forum. Shortcomings in conferencing procedures could then be eradicated, because with a standing body meeting at prescribed intervals, adequate supporting machinery would have to be devised. The body must be so organised that both the centre and states find

it feasible to refer issues exercising them to it. Representation on it naturally has to be at the highest level for at that level alone can issues be pronounced upon after taking a comprehensive and unsegmented view.

19.16 It is hardly necessary to point out that the Rajya Sabha as it has been conceived by the Constitution cannot discharge the functions of such a body. The Rajya Sabha is meant primarily to be an Upper House and it represents the interest of the states only in a very limited way, its presentation of the views of the states being confined to matters embraced by Articles 249 and 312. In any case this House, although consisting of persons elected by the state legislatures, is not an appropriate forum for furnishing the point of view of the state governments and centre-state consultation really means consultation between the central and state governments. Besides it cannot be one of the functions of a legislative body to hammer out administrative policies lying within the domain of the executive.

NEED FOR AN INTER-STATE COUNCIL—ITS FUNCTIONS

19.17 We would, therefore, suggest in this context the establishment of an Inter-State Council under Article 263. Article 263 reads as follows:

Co-ordination between States

Provisions with respect to an inter-State Council

"263. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure."

All issues of national importance in which the states are interested can be placed before this forum as they will be covered by items (b) and (c) of this Article. This body should replace the National Development Council, the Chief Ministers' Conference, the Finance Ministers' Conference, the Food Ministers' Conference and the National Integration Council. Besides issues of importance normally taken up in these forums, any other issue of national importance that arises at any time may also be placed before this Council. The President has already established a Central Council of Health and a Central Council of Local Self Government under Article 263 for the purpose of co-ordinating the policy of the states relating to these matters. These councils however work within a narrow ambit of activity. The Council proposed by us will be wide-embracing and will provide a standing machinery for effecting consultations between the centre and the states.

Only issues of real and national importance need be taken up there. Others should be settled by conferences convened by the ministries concerned, at a lower, preferably official level.

19.18 We would however like to exclude two functions from the ambit of this Council. Article 263 considers the possibility of such a council advising on inter-state disputes. The question could, therefore, be asked whether this Council should not also have the charter of enquiring into and advising upon inter-state disputes particularly border disputes which tend to create considerable ill-feeling between contending states. An unnecessary onus is placed in such cases on the Central Government and any action, or inaction, on its part can be misunderstood by a contending party. Should not such disputes be automatically referred to such a Council for advice? To this, the answer is that if all disputes are referred to this body there will be a spate of disputes. An

arrangement that breeds such a tendency should be discouraged. A process of selection of disputes for reference to this body will be impracticable as it may become difficult to discriminate between disputes that should be referred to it and those that need not be so referred. Besides the composition of the Council proposed by us later would not be suitable for advising on such disputes. And, in any case, saddling the proposed Council with functions in the area of disputes would prevent it from giving full attention to the various problems of national concern which it ought primarily to consider.

19.19 Another matter, for which the setting up of an advisory council has been urged by some, is that of the appointment of federal officers. These are constitutional appointments, made by the President, but in which the states are also interested and the distinguishing feature of which is that they are expected to function independently, not only of the state but also of the central executive. These appointments include, among others, the Governors, the Chief Justice of India, the Chief Election Commissioner, the Chairman of the Union Public Service Commission, and the Auditor General of India. We have given much thought to this matter. We realise the need to make good and impartial selections to these offices but feel that it would go against the spirit of our Constitution and the idea of cabinet responsibility if such appointments were to be entrusted to any such council. In Sir B. N. Rau's first draft of the Constitution, a council had been provided for with this, among other items, as a part of its proposed charter, but in that draft the President was not merely a constitutional head but had been given substantive powers in certain matters. The idea of substantive powers for the President was not approved by the Union Constitution Committee as that would have split the executive. It was accordingly decided that the President should be only a constitutional head and in that view of the matter Sir B. N. Rau himself abandoned the proposal for such a council in his revised draft. Later Dr. Ambedkar revived the idea in another form in the Constituent Assembly, where

again it was rejected for the same reason. We do not consider it appropriate to resuscitate the proposal in any form now, for it will have the effect of diluting cabinet responsibility and splitting the executive. We hope however that the Central Government will always exercise the greatest care in making selections to these offices so that their incumbents inspire confidence all round.

ORGANIZATION AND PROCEDURE

19.20 Article 263 leaves it to the President to define the organisation and procedure of such a council. On some aspects of its organisation and procedure we have a few suggestions to make.

Composition

19.21 The composition of the Council may be as follows:—

(1) Prime Minister

(2) Union Ministers for Finance, Home, Labour, Food and other subjects in the State and Concurrent Lists

(3) Chief Ministers or their nominees

(4) any others invited by the chairman or co-opted by the Council.

As a result of (4) it will be possible to invite other central ministers, members of the Planning Commission or other experts whenever their presence is required. A Chief Minister should be enabled to send his nominee (who could be the minister concerned) if the subject of discussion happens to be specialised and does not necessarily require the Chief Minister's personal presence. His nominee will then speak on behalf of his Chief Minister. The Council may meet under the chairmanship of the Prime Minister and in the absence of the Prime Minister the seniormost Union Minister present may preside.

Frequency

These meetings may be held at regular intervals, say, once in six months, and oftener, on *ad hoc* basis, if need arises

Permanent Secretariat

The Council should have an appropriate secretariat with the following functions:

(i) the preparation and co-ordination of agenda notes and the circulation of papers to members of the Council; and

(ii) taking follow-up action where necessary.

The Secretary of the Council should be an officer having the knowledge, experience and status that will enable him to work effectively.

Location

As the Inter-State Council will deal with a variety of matters its secretariat should be located in the Cabinet Secretariat which is essentially charged with the functions of securing co-ordination.

Status

The conclusions of the conference will be advisory in nature.

Finance

As the Council will be set up by the President, its cost should be borne by the Central Government.

19.22 Neither on the details of its composition, nor on those of its organisation and procedure should our views be taken as definitive. These are at best suggestive and these details can be settled by the Government. What we would like to emphasize is the need for such a council, suitably composed and having the function of advising the President on issues of national importance.

CHAPTER XX

IMPLEMENTING THE REPORT

EXPEDITIOUS AND INTEGRATED CONSIDERATION REQUIRED

20.1 Having completed our task we may perhaps offer some suggestions on the procedure to be followed in taking further action on the report of the Administrative Reforms Commission based on our present report. If the usual procedures of processing a report are followed, different portions of the report will be studied by the concerned departments of the central and state governments. In each department recommendations will be scrutinised by officers at successively higher levels, till, finally, decisions are taken either by the Minister or the Cabinet. This procedure is bound to be time-consuming, the time taken running perhaps into years, before decisions can be taken and it will be difficult for those examining individual recommendations to keep the overall perspective in view. As pointed out in the introductory chapter the proposals in the report have to be viewed as a whole. In considering the report in parts there is a distinct danger that the underlying strategy may be missed. We have, for instance, proposed a large measure of decentralisation in the sphere of planning and finance, but this has been balanced by proposals for greater central involvement in certain other fields of administration. Any modification of one set of proposals, without considering its repercussions on the rest, will be at the cost of the equilibrium that our report as a whole has sought to achieve.

20.2 That consideration should neither be fragmented nor long-drawn-out will be readily conceded. What is required therefore is a device that ensures an expeditious examination of the report in its entirety by the central and the state governments and the evolution of a co-ordinated programme of implementation. This can be made possible if, instead of following the usual method of processing reports, the report is considered as a whole in a series of high-level

meetings of representatives from the centre and the states who may take decisions in principle on the major recommendations, leaving the consequential details to be worked out by the individual departments.

ROLE OF THE INTER-STATE COUNCIL.

20.3 The Inter-State Council, the creation of which we have recommended in Chapter XIX, is an obvious choice as the most suitable forum for the inter-governmental meetings mentioned above. With the Prime Minister, Central Ministers and Chief Ministers as its members the Council will command the prestige and authority required for taking decisions on national policies and it will be morally incumbent on the governments to treat the Council's decisions as mandatory. We, therefore, suggest that the setting up of the Council should be the first step that the Central Government, on receiving the report of the Administrative Reforms Commission, should take. The report should, thereafter, be considered by the Council for taking decisions on the major recommendations. If it is decided not to establish such a Council, the forum of the Chief Ministers' Conference could be used.

20.4 It would be unrealistic to expect the Council to take up the report without the participants having had an opportunity of conducting a preliminary examination. The meeting of the Council to consider the report could be called within a reasonably short period, say three months of the submission of the report by the Commission. As soon as the Central Government receives the report it could send copies to all state governments asking them to keep in readiness for discussions. In the meantime, it could take a decision on the question of setting up an Inter-State Council. It would then be incumbent on all the governments concerned to complete their preliminary examination by then so that their representatives can discuss the report properly prepared.

20.5 The main object at this stage would be that the Council should arrive at broad conclusions on the major questions dealt with in the report. To assist the Council, it would be advisable for the Central Government to identify

and mention these to the state governments in advance. The different Cabinets will then form tentative views on these matters, but it is important that these views at this stage should only be tentative and that their representatives should come to the Council with minds open to conviction and prepared for give and take. Once the Council ratifies a particular approach the way will be paved for the speedy implementation of the report.

20.6 After taking decisions in principle the Council (or the Chief Ministers' Conference) should also be entrusted with the function of watching the progress made in the matter of implementing those decisions. Implementation should therefore be a standing item on the agenda of these meetings until it is completed.

CENTRAL AGENCY FOR CO-ORDINATING IMPLEMENTATION

20.7 It will also be necessary to provide for a central agency which will programme and co-ordinate the implementation of the Commission's report. The Study Team on the "Machinery of the Government" has recommended that the agency to work out details and to oversee implementation of reform measures recommended by the Administrative Reforms Commission should be the Department of Administrative Reforms. This recommendation admirably suits the task of implementing the report on centre-state relationships, for the Department of Administrative Reforms has been closely associated with this study and is therefore well-equipped to act as the co-ordinating agency. It will also be able to ensure that the ideas and principles underlying recommendations are not lost sight of. While the co-ordinating service for Government will be performed by the Department of Administrative Reforms, the Inter-State Council will be fed through its own secretariat, with which the Department of Administrative Reforms will establish close rapport.

20.8 The essence of the procedure recommended above will be applicable even if it is eventually decided not to have an Inter-State Council, for then, as mentioned earlier, the Chief Ministers' Conference can be used as a substitute.

20.9 To conclude:

(1) the report of the Commission should be sent to the states as soon as it is received by the Central Government so that they can be in readiness for discussions;

(paragraph 20.4)

(2) before taking up the report as a whole, government should take a decision on the recommendation contained in Chapter XIX regarding the establishment of an Inter-State Council;

(paragraph 20.3)

(3) the major policy questions raised in the report and affecting the centre and the states should be discussed at the meetings of the Inter-State Council (or at Chief Ministers' Conferences convened specially for the purpose if it is decided not to set up an Inter-State Council) and decisions in principle obtained. Meetings to discuss the report should be convened within a reasonable period, say three months of the submission of the report;

(paragraphs 20.3, 20.4)

(4) at this stage, the Council will arrive at broad conclusions on basic questions, which should be identified in advance;

(paragraph 20.5)

(5) to make the Council's deliberations businesslike and conclusive, it will be necessary for the governments to formulate their tentative views before the Council meets. The views should be tentative and representatives should go to the Council with open minds;

(paragraph 20.5)

(6) the Inter-State Council should watch the progress of implementation which should be a standing item on the agenda for its meetings;

(paragraph 20.6)

(7) the Department of Administrative Reforms should be the agency for co-ordinating and overseeing implementation.

(paragraph 20.7)

CHAPTER XXI

THE SCOPE AND METHOD OF WORK

CONSTITUTION OF STUDY TEAM

21.1 The Administrative Reforms Commission constituted the Study Team on "Centre-State Relationships" on May 17, 1966 consisting of the following:—

Chairman

1. Shri M. C. Setalvad, M.P.

Members

2. Shri M. Bhaktavatsalam, Chief Minister, Madras.
3. Shri Hitendra Desai, Chief Minister, Gujarat.
4. Smt. Tarakeshwari Sinha, M.P.
5. Dr. G. S. Sharma, Director, Indian Law Institute.
6. Shri P. C. Mathew, Secretary, Ministry of Labour, Employment and Rehabilitation, Department of Labour & Employment.
7. Shri R. Gupta, Adviser to the Chief Minister and ex-officio Additional Chief Secretary, West Bengal.

Member and Director of Studies

8. Shri N. K. Mukarji, Joint Secretary, Department of Administrative Reforms.

Later, Shri Hitendra Desai resigned his membership as his other commitments prevented him from giving the attention he would have liked to give to the work of this Team. His valuable contribution in the earlier stages helped us considerably in arriving at many of our basic conclusions.

TERMS OF REFERENCE

21.2 The Team was asked to examine centre-state relationships in

(i) the realm of planning and development, with particular reference to the growth of central agencies handling Concurrent and State List subjects;

(ii) other spheres, with particular reference to the needs of national integration and of maintaining efficient standard of administration throughout the country.

In addition, as explained in the Introduction, the Team undertook to examine financial relationships as without a study of these no meaningful examination could be conducted of the total subject of centre-state relationships, and particularly of that aspect that dealt with the realm of planning and development.

SCOPE OF WORK

21.3 The ambit of the study was decided in the first meeting of the Team which was guided by the Chairman of the Commission, Shri Morarji Desai. The scope of the Team's work and the broad approach to be adopted were discussed and it was decided that the relationships between the centre and the states in general administration, financial administration and plan administration would require examination by this Team while legislative relationships need not be looked into. It was clarified in this meeting that reforms should be suggested without disturbing the basic constitutional fabric, although marginal constitutional changes could be recommended where considered administratively necessary. The decisions taken at this meeting provided the foundation for the subsequent work of the Team.

COLLECTION OF DATA

21.4 The first task was obviously to arrive at an understanding of the existing relationship in each of the three significant fields mentioned above. To arrive at this understanding a study of the present constitutional, organisational and procedural arrangements governing each of these aspects as well as of the historical background leading to the present situation was essential. This task of gathering facts and analysing them fell on the research staff of the Department of Administrative Reforms, who prepared a series of detailed papers bringing out and analysing the factual situation and making tentative recommendations. Factual information, where required, was collected from the ministries, in the main

informally although in many instances formal authenttication, to the extent possible, was had later. The data contaiined in the report were collected during the course of the stiudy lasting about a year and, represent, especially in the maitter of statistics, the facts at the time of collection and not neecessarily at the time of the submission of the report. The broad aspects of the situation remaining the same, no review of our conclusions before submission was called for.

21.5 A considerable amount of data was collected and analysed before final conclusions were drawn. In a task that is spread over such a broad field data-collection has to be selective, and yet sufficient to enable the formation of valid conclusions. The Team has tried to avoid the twin dangers of too much involvement with detail and dependence on too thin a spread of material and has attempted consistently to strike a balance between depth and breadth. Generally the approach has been to obtain all the essential data and as much of the rest as was relevant and could be collected in the time available. Not all the details considered could be packed into the report although in the appendices we have given as much as we thought was necessary to support our conclusions. More detail for reference would be available in the papers prepared in the Department of Administrative Reforms.

CONSULTATIONS

21.6 To enable the Team to get the benefit of the advice of persons who had had actual experience of the different aspects of centre-state relationships, the papers prepared by the secretariat were placed before selected groups of officers drawn both from the centre and the states for informal discussion. The Team was thus able to tap a cross-section of administrative opinion.

21.7 In addition to consulting administrators in different fields the Study Team had discussions with eminent and knowledgeable persons to assess their views on certain aspects of centre-state relations. The names of the persons with whom the Team, or any members on behalf of it, discussed these subjects are in Appendix 41.

21.8 The field of study was such that it overlapped with that of some other study teams appointed by the Administra--

OVERLAP WITH OTHER TEAMS

tive Reforms Commission. For instance, centre-state relationships in financial administration and in the sphere of planning and development fell also within the respective jurisdictions of the Study Teams on "Financial Administration" and "The Machinery of Planning". The first step in co-ordinating the activities of different study teams having overlapping areas of study was obviously to keep one another informed about the work done and the line of thinking evolved by each team. For this purpose copies of all the working papers prepared on centre-state relationships and the minutes of all meetings which considered these working papers were sent to the sister study teams interested in the subject. This measure was adopted to take account of divergent views before they were finally developed. Some of the meetings of the Study Team and of the selected groups were also attended by some members and officers of the other study teams concerned.

21.9 In all the Study Team had 8 meetings spread over 13 days while 18 meetings spread over 22 days took place with selected groups.

NEW DELHI.

Dated the 28th of September, 1967.

M. C. SETALVAD
Chairman

M. BHAKTAVATSALAM
Member

P. C. MATHEW
Member

TARAKESHWARI SINHA
Member

G. S. SHARMA
Member

N. K. MUKARJI
Member
&
Director of Studies

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