



IAS 100

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ISSUES IN FEDERAL STRUCTURE



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The basic structure of government being federal in India, there are two sets of government viz. the Union and the State Governments which derive their powers directly from the Constitution. Both these governments enjoy coordinate powers and are not inferior to each other in a federal polity. Both of them enjoy independent authority derived from the Constitution which divides legislative, executive and financial powers between them. In a federation, usually the judicial powers are also divided on federal lines but this is not so in India which has a common judiciary for both the Union and the States. However, the division of powers between the two units of governments is not on the lines of watertight compartments. There are a number of areas where the two partners of federalism come together and cooperate with each other. This is known as Cooperative Federalism. In India such cooperation takes place between the Union and the States in constitutional bodies like Inter-State Council as well as extra constitutional bodies like National Development Council, Zonal Councils, etc. A notable feature of the distribution of powers under the Indian Constitution is the obvious dominance of the States in all the three spheres: legislative, executive and financial. The framers of the Constitution deliberately wanted to provide for a strong Centre in order to insure India's territorial integrity which explains the stronger position of the Central vis-à-vis the States.

LEGISLATIVE RELATIONS

Basic Postulates of Distribution of Legislative Powers

The legislative powers between the Union and the States in a federal constitution are divided on the following two lines:

- (a) The territory over which the Union and the states will exercise authority and
- (b) The subjects to which their authority will extend.

Art. 245 defines the territorial limits of the

legislative powers vested in the Union and the States. Article 246 defines the powers of the Parliament and the legislatures of states with regard to the subject matter or topics of legislation.

Under Art. 245, Parliament may make laws for the whole or any part of the Territory of India. The legislature of a state may enact laws for the whole or any part of the state. However, only Parliament has the power of making laws having extra territorial jurisdiction. The state legislatures do not have any such powers.

Distribution of Subjects: Article 245 distributes the legislative power between the Union and the States with reference to the territory. Article 246 divides the subject matter of legislation. It has enumerated three lists: (a) Union List (List I) (b) State List (List II) and (c) Concurrent List (List III). These three Lists cover the subjects on which the Union and State legislatures can make laws.

The Union List contains 100 entries. These entries include subjects of national importance e.g. Defence of India, Armed Forces of the Union, Foreign Affairs, War and peace, Railway, Airways, Post and Telegraphs, Telephones, Currency and coinage, Reserve Bank of India, etc.

The State List contains 61 entries. The list comprises of topics over which the state has exclusive power to legislate. These include Public Order, Police, Local Government, Agriculture, Prisons, etc.

The Concurrent List contains 52 entries. Both Union and the States are competent to make laws in relation to these entries. But the Union has the upper hand on this List also.

In exercise of this residuary power, the Parliament enacted the Gift-tax Act, The Wealth tax Act and some other Acts. Entry 97 of List I gives effect to Art. 248.

Doctrine of Pith and Substance: This doctrine was developed by the Privy Council to resolve a dispute relating to the subject matter of a law. According to this doctrine if a question arises

whether a particular law relates to a particular subject mentioned in one list or another the court looks to the substance of the matter. If the substance falls within the Union List, then the incidental encroachment by the law on the State List does not make it invalid.

Doctrine of Colourable Legislation: Colourable legislation is an attempt of a legislature to make a legislation appear to belong to its jurisdiction whereas, in reality, it belongs to another legislature. When a legislature directly legislates on a topic reserved for another legislature in a disguised manner it is called colourable legislation. Under this doctrine what cannot be done directly cannot be done indirectly either. Such a law will be declared invalid by the courts under this doctrine.

Doctrine of Severability: If a law is inconsistent with any fundamental rights or any other provision of the Constitution, it is declared void by the courts. But only those parts of the Act which are ultra vires or offend against the Constitution are declared invalid. The rest remains valid and operative. In other words, the entire law need not be declared anfractuous. Only the offending part is severed.

Power of Parliament to provide for establishment of additional courts (Art. 247): This Article empowers parliament to establish additional courts for the better administration of laws made by Parliament. By 42nd Amendment Act, 1976 entry 11A in the Concurrent List empowers Parliament to constitute courts with respect to administration of justice, constitution and organization of all courts except the Supreme Court and High Courts.

Residuary Powers of Legislation (Art. 248): There is no uniform pattern among federal constitutions as to residuary powers. Residuary Powers are those powers which are not covered in the Union, State and Concurrent Lists. In USA and Australia, the residuary powers are vested in the States but in Canada they belong to the Centre. In India also, the residuary powers are vested in the Centre. Gift Tax Act, 1958 was enacted under the residuary powers of Parliament.

Legislative powers of Parliament on the State List: There are certain provisions of the Constitution under which Parliament is competent to make laws on the State List in extra-ordinary situations. These provisions are given below:

(a) **By a Resolution of Rajya Sabha (Art. 249):** If Rajya Sabha passes a resolution by a 2/3rd majority then Parliament becomes competent

to make laws on the State List in the national interest. The resolution remains in force for such period not exceeding one year as may be specified. Such laws are valid for only 1 year at a time. However, Rajya Sabha may again pass the same resolution.

(b) **During Emergency (Art. 250):** If Emergency has been proclaimed under Art. 352, Parliament is competent to legislate on the State List. However, such laws will cease to operate beyond six months of termination of Emergency.

Thus, under Arts. 249 and 250, Parliament can invade the State List. It may be so that a law passed by Parliament on the State List under the authority of Arts. 249 to 250 comes into conflict with a law passed by state legislature. In case of such conflict the law passed by Parliament shall prevail (Art. 251).

(c) **By mutual consent between two or more States (Art. 252):** Under Art. 252 two or more states may pass resolutions requesting Parliament to make laws on the State List. Other states may also adopt this law by resolution.

To Implement International Treaties (Art. 253): Under Art. 253, Parliament has the power to make law for implementing any treaty, agreement or convention with any other country or any decision made at any international conference or body even if it encroaches on the State List. For example, legislation relating to TRIPS has been enacted by Parliament to give effect to India's treaty obligations with WTO.

Inconsistency between a Parliamentary Law and laws made by State Legislature (Art. 254): The Constitution authorizes both Parliament and the state legislatures to legislate on the subjects included in the Concurrent List. If there is a conflict between a Central and State law made on the Concurrent List, it is the Central law made by Parliament that will prevail.

Validity of Acts requiring previous sanction of the President or Governor (Art. 255): There are certain bills which require previous sanctions of the President or the Governor before they can be introduced in the Parliament or state legislature. For example, the Financial Bills under Art. 117 (Parliament) and Art. 207 (State Legislature) cannot be introduced without obtaining previous recommendation of the President and the Governor respectively. Similarly, a Bill relating to restrictions

on freedom of Trade and Commerce (Art. 304) cannot be introduced in the state legislature without the previous sanction of the President. But even if the assent by the President or the Governor as the case may be was given after the Act was passed, it will be valid under Art. 255.

ADMINISTRATIVE RELATIONS

Power of the Union to give directions to the States: The Union has the power to give directions to the states under Arts. 256 and 257. This is to ensure that a state government does not interfere with the legislative and administrative policies of the Union.

(a) Art. 256: This Article lays down that it shall be the duty of the State to exercise its executive power in such a manner as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(b) Art. 257: Under this Article, the Union can issue the following directions to the States:

- I. To issue directions to the states to exercise their powers in such a manner that they do not obstruct the exercise of the executive power of the Union (Art. 257, Cl. I)
- II. To ensure construction and maintenance of means of communications of national importance including national highways and waterways (Cl.II).
- III. To ensure protection of Railways (Cl. III).

Art. 257 (4) provides that if additional costs are incurred in following the directions given under Clauses 2 & 3 of Art. 257, the Union shall pay the incurred amount.

Flexibility in Executive Relations: Under the Art. 258, the Union may with the consent of the state entrust function to the state in regard to any matter to which the power of the Union extends. Similarly the state may with the consent of the Union entrust function to the Union (Art. 258A). This may be with or without conditions.

Jurisdiction of the Union over territories outside India (Art. 260): This Article enables the Union to assume jurisdiction over territories acquired by the Government of India by treaty or agreement.

Public Acts, Records and Judicial Proceedings (Art. 261): This Article is also known as the Article of full faith and credit. Under it, full faith and credit shall be given throughout India to public Acts and judicial proceedings of the Union and of every state. The final judgement or orders delivered or passed by civil courts in any part of the country can be executed anywhere in the country.

Adjudication of Water Disputes relating to inter-state rivers (Art. 262): This Article empowers the Parliament to enact laws in order to provide for the adjudication of disputes relating to water of inter-state rivers or river valleys. Accordingly, the Parliament has enacted the Water Disputes Act, 1956 which empowers the Central Government to set up a tribunal to resolve water disputes. The decision of the tribunal shall be binding on the parties. The Act excludes the jurisdiction of Supreme Court and other courts in respect of any water disputes which has been referred to such a tribunal. Recently the Cauvery River Tribunal has given its final judgement on sharing of waters of the river Cauvery.

FINANCIAL RELATIONS

Distribution of financial resources between the Union and the States is a prime feature of a federal constitution. Without financial independence, the various constituents of a federation cannot enjoy the autonomy and cannot fulfil their obligations under the Constitution. The Constitution itself for the purpose of clarity has divided the financial resources between the Centre and the State which includes distribution of the taxes and non tax revenues, the power of borrowing and grants-in-aid.

The financial distribution of powers between the Union and the States has the following features:

- (a) Both the Union and the States have been given exclusive powers of taxation.
- (b) Some taxes are levied by the Union but collected and appropriated by the States.
- (c) Some taxes are levied and collected by the Union but the proceeds are distributed to the States.
- (d) Some taxes are central taxes but are shared between the Union and the States.
- (e) The Union can make grants-in-aid to assist the States.

(f) Both the Union and the States have the power of borrowing.

(A) Taxes belonging to the Union exclusively:

(1) Customs, (2) Corporation tax, (3) Taxes on capital value of assets of Individual and Companies, (4) Surcharge on income tax, etc. (5) Fees in respect of matters in the Unions List (List I)

(B) Taxes belonging to the State exclusively:

(1) Land Revenue, (2) Stamp duty except in document included in the Union List, (3) Succession duty, Estate duty and income tax on agricultural land (4) Taxes on passengers and goods carried on inland waterways, (5) Taxes on lands and buildings, mineral rights, (6) Taxes on animals and boats, on road vehicles, on advertisements, on consumption of electricity, on luxuries and amusements, etc. (7) Taxes on entry of goods into local areas, (8) Sales Taxes on Professions, trades, etc., not exceeding Rs. 2,500 per annum (List II).

(C) Duties Levied by the Union but Collected and Appropriated by the States:

Stamp duties on bill of Exchange, alcohol, though they are included in the Union List and levied by the Union, shall be collected by the State insofar as leviable within their respective territories and shall form part on the States by whom they are collected (Art. 268).

(D) Taxes Levied as well as Collected by the Union but assigned to the States within which they are leviable:

(a) Duties on succession to property other than agricultural land. (b) Estate duty in respect of property other than agricultural land, (c) Terminal taxes on goods or passengers carried by railway, air or sea, (d) Taxes on railway fares and freights (e) Taxes on stock exchange other than stamp duties (f) Taxes on sales and advertisements in newspapers (g) Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase take place in the course of inter-State trade or commerce (h) Taxes on inter State consignment of goods (Art. 269).

(E) Taxes Levied and Collected by the Union and Distributed between Union and the State:

Certain taxes shall be levied as well as collected by the Union but their proceeds shall be divided between the Union and the States in a certain proportion, in order to effect an equitable division of the resources. These are:-

- (a) Taxes on income other than on agricultural income.
- (b) Duties of Excise as are included in the Union List, excepting medicinal and toilet preparations (Art. 272).

Power to Levy Tax: Art. 265 declares that no tax shall be imposed except by authority of law. The executive has no authority to impose a tax. It can be levied only by an Act of appropriate legislature.

Tax and Fee: A tax is a compulsory exaction for the general benefit. It is levied as a part of common burden. Its purpose is to collect revenue. Fee is also a compulsory exaction but it has some relation to a special benefit or privileges accruing to the individual who pays it.

Changes in sharing of revenues between the Union and the States: The Constitution (80th Amendment) Act, 2000 which has come into effect retrospectively from 1.4. 1996 has drastically changed the distribution of revenue between the Union and the States. Prior to this amendment, taxes on income (other than agricultural income) and duties of Excise were levied and collected by the Union but were shared by the Union and the States. The actual percentage of sharing was determined by a Presidential order made after considering the recommendation of the Finance Commission. After the 80th Amendment all taxes and duties referred in to the Union List excepting surcharges on taxes and duties and cess levied for special purposes are divisible between the Union and the States. The duties of customs and corporation tax, etc. which earlier belonged exclusively to the Union have become divisible on the recommendation of 10th Finance Commission.

Service Tax: A new tax called service tax has been started by the 88th Amendment Act, 2003. The Government of India can levy taxes on services. Service tax shall be collected by the Government of India and the States. The proceeds of services tax shall be divisible between the Union and the States.

Surcharge for the Union: Article 271 provides

for levy of surcharges on duties and taxes. The proceeds of such surcharges go to the Union exclusively. From time to time the government imposes surcharge on income tax, corporate tax, etc. It has also levied surcharge and additional surcharge for purposes of the Union on Customs and Excise duties. The States have no share in the surcharges.

Grants-in-Aid: The Constitution provides for the following types of grants-in-aid:

(a) Article 275 provides for grants-in-aid to the States. Parliament can make grants to the needy States depending on the assessment of their need. Special grants may be given for promoting the welfare of the scheduled tribes or for raising the level of administration of the scheduled areas.

(b) Article 282 empowers the Union and the States to make grant for any public purpose. It may even give grant for a purpose for which it may not have power to make laws.

Modification in centre-state financial relations during emergency:

(1) While a proclamation of Emergency declared under Art. 352 is in operation, the President may direct that all or any of the provisions of Art. 268 to 279 (in regard to division of taxes and grant in aid) shall remain suspended or may be modified.

(2) While a proclamation of financial emergency declared under Art. 360 is in operation, the Union may give following direction to any State:

- a. To observe such canons of financial propriety and other directions as may be specified.
- b. To reduce the salaries and allowances of all persons serving under the State (including High Court Judges).
- c. To reserve all Money Bills and Financial Bills for the consideration of the President.

COOPERATIVE FEDERALISM

The essence of federalism is distribution of legislative, executive and financial powers between the constituent of federalism which has been constitutionally distributed between the Union and the States. However, the trend world-over is towards what is called "cooperative federalism" under which both the Union and the States come and join together in cooperative-collaborative

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manner. In India also this trend has been conceptualized and given concrete expression both within the Constitution as well as outside it. While Inter-State Council is a constitutional device of cooperative federalism, Zonal Councils, National Development Council (NDC), National Integration Council (NIC), etc. are extra constitutional mechanisms to further the cause of cooperative federalism.

INTER-STATE COUNCIL

Establishment of Inter-State Council (Art. 263):

To bring about meaningful cooperation among the States Art. 263 contemplates establishment of an Inter-State Council. It consists of the Prime Minister, the Chief Ministers of all States and Union Territories and six Union Ministers of cabinet rank. The Prime Minister is the Chairman of the Council.

The duties of the Council are:

- (a) Inquiring into and advising upon disputes which may have arisen between the States.
- (b) Investigating and discussing such subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.
- (c) To make recommendations upon such a subject and for better co-ordination of policy and action in respect to that subject.

The main objective behind this provision is to establish regular recognized machinery for inter-Governmental consultation and Inter-State relations. Such a body will give an opportunity to the States to express their views freely on common matter and would enable the Union to understand the feeling of the States and Inter-Government cooperation will ensure smooth carrying on of developmental plans.

For the first time an Inter-State Council was constituted on May 28, 1990 consisting of the following members:

- (a) Prime Minister (ex-officio Chairman)
- (b) Chief Ministers of all States; and of those Union Territories which have a legislative Assembly.
- (c) Administrators of Union Territories not having a Legislative Assembly.
- (d) Six Union Ministers of Cabinet rank.

The Inter-State Council has met for only ten times. The meetings of the Council are held in camera and therefore the details of the agenda items and

the proceedings of the meetings cannot be shared in the public domain.

The Ninth Meeting of the Inter-State Council held on 28.6.2005 discussed the following agenda items:

1. Blue Print of Action Plan on Good Governance
2. Disaster Management - Preparedness of States to Cope With Disaster
3. Implementation Report on the decisions taken by Inter-State Council on the recommendations of Sarkaria Commission.

The Tenth Meeting of the Inter-State Council held on 9.12.2006 discussed the following agenda items:

1. Atrocities on Scheduled Castes and Scheduled Tribes and status of implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The Council-Secretariat closely monitors the implementation of the recommendations of the Council with the concerned. In the ten meetings of the Inter-State Council held so far, the Council has taken final view on all the 247 recommendations made by Sarkaria Commission on Centre-State relations. Out of these 247 recommendations, 65 recommendations have not been accepted by the Council, 179 recommendations have been implemented and 3 recommendations are at various stages of implementation.

NATIONAL DEVELOPMENT COUNCIL (NDC)

The first Five Year Plan had recommended the constitution of a National Development Council to review the working of the Plan and of its various aspects. It was constituted in August, 1952 by a Cabinet resolution of the Union Government. Thus, it is an extra constitutional body not envisaged by the Constitution. The NDC is composed of the Prime Minister, the Chief Ministers of all the States, representatives of the Union Territories and the members of the Planning Commission.

The function of the NDC are:

- (i) To review the working of the National Plan from time to time;
- (ii) To consider important questions of social and economic policy affecting national development;
- (iii) To recommend measures for the achievement of the aims and target set out in the nation plan,

including measures to secure the active participation and cooperation of the people, improve the efficiency of the administrative service, ensure the fullest development of the less advanced regions and sections of the community and, through sacrifice borne equally by all citizens, build up resources for national development.

- (iv) The Council makes its recommendations to both the Central and State Governments. The Secretary of the Planning Commission acts as the Secretary to the Council and the Planning Commission furnishes administrative and assistance for the work of the Council.

ZONAL COUNCILS

The State Reorganisation Act, 1956 has set up five Zonal Councils, namely, the Northern Zonal Council, the Council of the Central Zone, the Eastern Zonal Council, the Western Zonal Council and the Council of the Southern Zone. A sixth council named as the North Eastern Council was set up under the north Eastern Council Act, 1971. Each of these Councils consists of the Home Minister of the Government of India, Chief Ministers of the member States and two other ministers nominated by the governor of the State concerned. The Union Home Minister is the ex-officio chairman of each of these Councils. In each Council advisers from the Planning Commission and the Chief Secretaries of the State Governments concerned are included. It has a separate staff and a secretariat. Such Councils have been established for the promotion of collective approach and effort to solve common problem of the member States. They are intended to foster inter-State concord and thereby to strengthen the Centre and the State. They would work to promote co-operation; successful implementation and execution of developmental projects and would also act as advisory bodies in matters of common interest, particularly in respect of economic and social planning. They would also provide a forum for settling border disputes and other problems relating to linguistic minorities or inter-State transport, etc. By and large these Councils have been non functional, inter-alia for lack of initiative, absence of proper secretariat, shyness to discuss controversial and sensitive issues, and one party rule at the Centre and most of the State. The Commission on Centre State Relations has recommended revamping of these Councils by removing their weaknesses and to make them functions.

NATIONAL INTEGRATION COUNCIL

The National Integration Council (NIC) was constituted by Jawaharlal Nehru in 1961 to review all matters pertaining to national integration and to make recommendations thereon to find ways and means to combat the evils of communalism, casteism, regionalism, linguism and narrow-mindedness. Its main function is to discuss issues relating to National Integration and Communal Harmony and advise how to achieve these national goals. It has held 16 meetings since it was constituted, the last one in 2013.

It was reconstituted in February, 2005. The Prime Minister is the Chairman of the Council. The Union Ministers, Chief Ministers and political leaders are its members. The NIC has representation from various categories such as national commissions, media persons, business, eminent public figures and women. The total strength of the reconstituted NIC is 103.

FINANCE COMMISSION

Article 280 provides for the constitution of a Finance Commission. The Commission is constituted every five years by the President. The Commission consists of a chairman and four other members to be appointed by the President. The Chairman shall be a person who has experience in public affairs. The other four members shall be selected from persons who (1) are qualified to be a High Court Judge or (2) have special knowledge of the finance and account of the Government or (3) have wide experience in financial matters and in administration or (4) have special knowledge of economics.

The members continue to hold office for the period specified in the Presidential order. The Commission is vested with the powers of a civil Court in respect of summoning and enforcing the attendance of witness, production of documents, etc.

Functions of the Finance Commission:-

- (a) The distribution of taxes between the Union and the States and allocation of shares of such proceeds between the States.
- (b) The principles which should govern the grants-in-aid to be given to the States by the Union.
- (c) Measures to increase the Consolidated Fund of the State so that the funds of the panchayats

and municipalities in the State may be supplemented.

- (d) Any other matter that may be referred to it by the President in the interest of sound finance.

PLANNING COMMISSION

The Planning Commission was constituted in 1950 by a Cabinet resolution to prepare the Five Year Plans. The Prime Minister is its Chairman. It has a Deputy Chairman who is always a noted economist. Besides, it has five full time members. The Deputy Chairman enjoys the status of a Cabinet Minister while the other members have the status of a Minister of State. Though, primarily it was set up to formulate Five Year Plans for economic and social development of the country, over the years its activities have been extended over the entire sphere of administration excluding defence and foreign affairs. Although it is a wing of the Union Executive, it has encroached upon the autonomy of the States under the federal system. Secondly, it has overshadowed the Finance Commission which is a constitutional body. Of the total devolution of resources from the Union to the States, 68% is devolved through Planning Commission under Plan expenditure while only 32% is devolved by Finance Commission under non - Plan expenditure.

MAJOR ISSUES BETWEEN CENTRE STATE RELATIONS

● *Misuse of Articles 356 and 355*

The repeated misuse by the Centre of the provisions of Article 356 of the Constitution to dismiss State Governments and dissolve State Assemblies has been subverting the federal principle and the rights of the States. The demand to restrict the use of Article 356 only to cases where there is a serious threat to national unity or the secular fabric of the country has been raised from various quarters in successive meetings of the Inter-State Council. In view of the Supreme Court judgement on the S. R. Bommai case, there is an urgent need to build in strong safeguards in Articles 356 and 365 through appropriate amendments of the Constitution. However, no decision has been taken by the Union Government in this regard. There is also a new and alarming proposal for Central deployment of paramilitary forces in the States unilaterally in a situation which the Centre would

consider as an 'internal disturbance'. The provenance of Article 355 needs to be clarified. As has been repeatedly stressed by several constituents of the Inter-State Council, the term 'internal disturbance' in Article 355 is related to 'public order', which is the first entry in the State List. The proposal for Central deployment of paramilitary forces in a State in a situation which the Centre would consider as "internal disturbance" without the State's concurrence is unacceptable. Article 355 should be amended on the lines suggested above for Article 356. Apart from external aggression, only a serious threat to national unity or an assault on the secular principle can be taken cognizance of.

● *Appointment and Role of Governors*

The provision for Centrally appointed Governors for the States has remained as an anachronism, which is not in keeping with a federal democratic polity. If the post of Governor has to be retained, then the Governor should be appointed by the President from a list of three eminent persons suggested by the Chief Minister, satisfying the criteria mentioned by the Sarkaria Commission. This has also been repeatedly discussed in the Inter-State Council. None of the major countries of the world with a federal constitution have any provision for a post of the Governor in a State to be appointed by the Centre. There should also be a time limit with regard to Governor's assent to Bills passed by the State Assemblies. Moreover, the requirement of an explicit norm debarring Governors from publicly expressing disagreements or differences with the State Government, also need to be debated. There is also a need to review whether Governors should continue to be ex-officio Chancellors of State Universities.

● *Central Intrusion into the State List*

Not only have the earlier transfer of State subjects, such as education, to the Concurrent List been left unreversed, but further intrusions have also been made into the State List in terms of proliferation of the so-called Centrally Sponsored Schemes. These Central schemes on the State subjects, which contain rigid guidelines imposed by the Centre, besides having implications in the financial sphere, also impair the autonomy of the States and affect their development priorities. There is an urgent need to review the impact of the transfer of legislative items from the State to Union/Concurrent List. The Union

Government has so far ignored the demand of the States to place at least the residuary powers of legislation in the State List. The residuary power of taxation in the sphere of services is being preemptorily used by the Union Government to the total exclusion of the States. Despite discussions in the Inter-State Council, the proposal for a Constitutional amendment to set definite time-limits for receiving the assent of Governors or the President in the case of bills passed by the State Assemblies has so far been ignored. Moreover, there is no formal institutional structure that requires mandatory consultation between the Centre and the States in areas of legislation under the Concurrent List.

● *Treaty-making Powers*

The present Constitutional scheme with regard to treaty making power being exclusively in the domain of the Union Executive needs to be urgently reviewed. The Constitution should be amended to make legislative sanction mandatory for any international treaty. Besides, several international treaties like the WTO agreement have serious implications for the States, especially with respect to State subjects like agriculture. In all such cases, consultation with the States and concurrence of the Inter-State Council must also be made mandatory.

Issues Related to Present Institutional Arrangements

● *Inter-State Council*

The functioning of the Inter-State Council, which had gathered some momentum in the earlier years, has once again lost steam. Despite the Council arriving at several decisions regarding implementation of the Sarkaria Commission's recommendations, they have not been implemented by the Union Government. The decisions of the Inter-State Council therefore have to be made binding on the Union Government, through appropriate Constitutional amendment.

All major issues involving Centre-State relations, including legislations under the Concurrent List, have to be discussed and decided by the Inter-State Council. The schedule of meetings of the Council as well as the Standing Committee of the Council has to be made mandatory. The Inter-State Council should mandatorily meet twice a year. The Secretariat of the Inter-State Council should have better representation from the States.

● *NDC and Planning Commission*

The National Development Council has to be developed as an effective instrument for Centre-State co-ordination and should be given, through an appropriate amendment, a Constitutional status as was suggested in the Srinagar Conclave. The meetings of the NDC should be more frequent (at least once in every quarter), and its functioning should not be one of hastily imposing a pre-conceived view of the Centre as a consensus on the States, as is now often practised. Instead, each issue should be discussed seriously with written notes from the Centre and the States, and decisions should be taken democratically and implemented expeditiously. The Planning Commission should act as an executive wing of the NDC. Unlike the present composition of the Planning Board where members and experts are all nominated by the Centre, there should be adequate representation of the States - both for members as well as experts - with at least one from each region with periodic rotation among the States in a region. The restructured Planning Commission must not act primarily as a representative of the Centre as it is now, but should also represent fairly the interests of the States.

● *Finance Commission*

A basic problem with the Finance Commission is that the views expressed by the States are never taken into account seriously, while determining the terms of reference of the Commission. All the members of the Finance Commission are nominated by the Centre and representatives of the States are never included. These practices need to be changed. In determining the terms of reference, the views of the States should be taken into account seriously, and if there is any difference of views on the terms of reference, the same should be settled in the Inter-State Council. In the choice of members of the Commission, unlike the present practice, there should be adequate representation of the State Governments.

BARRIERS TO INTER-STATE TRADE AND COMMERCE

Free flow of trade without geographical barriers is sine-qua-non for economic prosperity nationally as well as internationally. Therefore, progressive removal of such barriers has been a

general phenomenon in social evolution in the modern world. Today we are vigorously pursuing the goal of free flow of trade among the nations of the world under the banner of globalisation through, for example, the WTO among the nations of the world. Regionally, member states of the European Community, for example, have already achieved that goal almost fully.

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

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

Need for Trade and Commerce Commission

In order that the country's competitiveness in trade, commerce and industry is enabled to respond to the increasing pressures of globalisation, it is necessary that barriers to inter-state trade and commerce, particularly, the free movement of goods on the inter-state routes should be progressively reduced with a view to their final elimination. A statutory authority contemplated under Article 307 of the Constitution requires being set-up. As the effects of such an authority could as well go beyond the purposes of Article-307, the legislation could be comprehensive drawing on Entry 42 of List -I and, if necessary, Entry 97 of List-I of the Seventh

Schedule. The composition of the authority may provide for representation of the FICCI, CII, Railway Board, FSIME (Federation of Small Industries and Micro Enterprises), Indian Society of Automobile Manufacturers, National Highway Authority of India, NCAER, National Institute of Public Finance and Policy, Inter-State Council, School of International Studies (Jawaharlal Nehru University), Planning Commission and Ministry of Surface Transport.

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

INTER-STATE DISPUTES

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

Article 131 relates to the original jurisdiction of the Supreme Court and provides the judicial mechanism for dealing with inter-Governmental disputes involving any questions of law or fact on which existence or extent of a legal right depends between the Government of India and one or more States or between the Government of India and any State or States on the one side and one or more other States on the other or between two or more States. However, a few matters are excluded either by express provisions or by necessary implication.

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

Inter-State Water Disputes

Water is a prime resource for sustaining life on earth. The domestic, agricultural and industrial uses of water are multiplying day by day and this phenomenal increase in demand for water in diverse fields has resulted in its scarcity. Moreover, availability of water is highly uneven in both space and time as it is dependent upon varying seasons of rainfall and capacity of storage. India is served by two great river systems, i.e. the Great Himalayan Drainage system and the peninsular river network. It has 14 major rivers that are inter-State rivers and 44 medium rivers of which 9 are inter-State rivers. Eighty five per cent of the Indian landmass lies within its major and medium inter-State rivers.

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

The expression "regulation and development of inter-State rivers and river valleys" in Entry 56 of the Union List in the Seventh Schedule of the Constitution would include the use, distribution and allocation of the waters of the inter-State rivers and river valleys between different riparian States. Otherwise the provision for the Union to take over the regulation and development under its control makes no sense and serves no purpose. The River Boards Act, 1956 which is admittedly enacted under Entry 56 of the Union List for the regulation and development of inter-State rivers and river valleys does cover the field of the use, distribution and allocation of the waters of the inter-State rivers and river valleys. The very basis of a federal Constitution like ours mandates such interpretation and would not bear an interpretation to the contrary which will destroy the constitutional scheme. Although, therefore, it is possible technically to separate the "regulation and development" of the inter-State rivers and river valleys from the "use, distribution and allocation" of water, yet it is neither warranted nor necessary to do so.