

Chapter 1

Legislative

A. Background

The Constitution in its very first article describes India as a Union of States. When the British power was established in India it was highly centralized and unitary. To hold India under its imperial authority, the British had to control it from the Centre and ensure that power remained centralized in their hands. A strong central authority was for the British both an imperial and an administrative necessity. The country continued to be ruled under the 1919 Act by a central authority until 1947. And, since under the 1919 Act, there was a central government, a central legislature, a system of central laws etc., the use of these terms continued under the colonial hangover.

In the Constituent Assembly, the Drafting Committee decided in favour of describing India as a Union, although its Constitution might be federal in structure. Moving the Draft Constitution for the consideration of the Constituent Assembly on 4 November 1948, Ambedkar explained the significance of the use of the expression "Union" instead of the expression "Federation". He said "...what is important is that the use of the word 'Union' is deliberate... Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source." Finally, when the Constitution was adopted on 26 November 1949, it provided for India being a Union of States and its States and territories being as specified in the First Schedule. The Schedule specified four types of units - Parts 'A', 'B' and 'C' States and Part 'D' territories.

During the last half-a-century, many structural changes have been made and the map of the Union of States reshaped. Categorisation of States has disappeared, names of several territorial units called States have vanished, many new States have been formed on linguistic and other criteria, boundaries, areas, names etc. of some States have been

altered and many relationships have been transformed. As at present, the Union consists of 28 States and seven Union Territories. Some unique solutions of regional councils, development boards, etc., have been attempted with varying degrees of success. The three newest States are Uttaranchal, Jharkhand and Chhatisgarh.

It is a tribute to the farsightedness of the makers of the Constitution that all these changes could be brought about largely peacefully and entirely within the four-walls of the Constitution. The predominant concern of the founding fathers as also of the various Commissions and Committees appointed since Independence to consider reorganization of States or Union-State Relations - the JVP Committee, the Dar Commission, the States Reorganization Commission (SRC), the Rajamannar Committee, the Sarkaria Commission, etc. - has been that of the unity and integrity of India. We are still engaged in the stupendous task of national integration which is also an admission of the hard reality of our nation and Union being still in the making. The SRC report concluded:

“It is the Union of India which is the basis of our nationality...States are but limbs of the Union, and while we recognize that the limbs must be healthy and strong...it is the strength and stability of the Union and its capacity to develop and evolve that should be governing consideration of all changes in the country.”

There is no dichotomy between a strong Union and strong States. Both are needed. The relationship between the Union and the States is a relationship between the whole body and its parts. For the body being healthy it is necessary that its parts are strong. It is felt that the real source of many of our problems is the tendency of centralization of powers and misuse of authority.

The Constitution divides the legislative, executive and financial powers between them, judicial powers have not been so divided as there is a common judiciary for the Union and the States. The States therefore, derive their powers from the Constitution and so does the Union. Thus the States are not exercising delegated powers from the Union, though there are agencies and devices for Union's control over the States in many matters. Legislative powers of the Union as well as States are of course subject to several limitations imposed by the

Constitution. Neither the Union Parliament nor the State Legislature is, therefore, sovereign in the legalistic sense. Besides the distribution of powers between the Union and the States the Constitution imposes many more limitations on them. For example, the exercise of legislative power (of Union as well as State Legislatures) is subject to the fundamental rights guaranteed by the Constitution. Similarly Article 276(2) limits the powers of State Legislature to impose a tax on professionals and Article 303 limits the powers of Parliament and State Legislature with regard to Legislation relating to Trade and Commerce.

B. General Scheme of Distribution

Distribution of functions between Union and the States proceeds on two lines:

- (i) The territory over which the Union and the States shall respectively, have their jurisdiction.
- (ii) The subjects to which their respective jurisdiction shall extend.

We would discuss here the legislative powers of the Union and the States under both these heads.

Territorial Jurisdiction

In this respect the State Legislature naturally suffers from a limitation to which parliament is not subject, namely, that the territory of the Union being divided among States, jurisdiction of each State must be confined to its own territory. The law enacted by a State Legislature should be read as referring to a person or object situated within the territory of the State concerned. A State legislature can make laws for the whole or any part of the State. It is not possible for a State Legislature to enhance its territorial jurisdiction under any circumstances except when the boundaries of the State itself are widened by Act of Parliament.

The Union Parliament has, on the other hand, the power to legislate for the whole or any part of the territory of India, which includes not only the States but also the Union Territories, or any other area for the time being included in the territory of India (Article 246 (4)). It also

possesses the power of extra-territorial legislation which no State Legislature Possesses. It means that the laws of Union Parliament can govern not only persons and property within the territory of India, but, also Indian subjects, resident any where in the world as well as their property. Such powers are not available to the States beyond their territory.

However, the territorial jurisdiction of the Parliament is also subject to some special provisions of the Constitution. These are:

- (i) For some of the Union Territories like Andaman and Lakshadweep group of Islands, regulations made by the President have the same force as an Act of Parliament. Such regulations may amend a law made by Parliament in relation to such territories – Article 240 (2).
- (ii) The application of any Act of Parliament to any Scheduled Area may be barred or modified by a modification by the Governor – Para 5 of the Fifth Schedule.
- (iii) The Governor of Assam may, by public notification direct that an Act of Parliament shall not apply to an autonomous district of an autonomous region in the State of Assam or shall apply to such district or region or part hereof subject to such exceptions or modifications as he may specify in the notification – Para 12 (B) Sixth Schedule.

Obviously, these provisions have been inserted in view of the backwardness of the specified areas to which indiscriminate application of general laws might cause hardship.

Distribution by Subjects

The Constitution has adopted the distribution of legislative subjects between the Union and the States from Government of India Act, 1935. This is at variance with provisions on the same subject in the Federations of United States and Australia where only the powers of the Federal Legislature have been listed, whereas Indian Constitution provides for a three-fold distribution. The Seventh Schedule to the Constitution contains three lists namely Union List, State List and Concurrent List. A Brief description of these lists is given below:

List-I or the Union List includes subjects over which the Union has exclusive power Legislation. It includes 97 items or subjects. Some of the major items in this list are Defence, Foreign Affairs, Banking, Currency and Coinage, Union Duties and Taxes etc.

List-II or the State List contains sixty two items or entries over which the State Legislature has exclusive power of legislation. Some of the important items in the State List are Public Order and Police, Local Government, Public Health and Sanitation, Agriculture, Animal Husbandry and Fisheries, State Taxes and Duties etc.

List-III or Concurrent List consists of fifty two items over which Union and the State Legislature have concurrent jurisdiction. Some of the important items in this List are Criminal Law and Procedure, Civil Procedure, Marriage, Contracts, Trustees, Welfare of Labour, Insurance, Economic and Social Planning.

While in the case of an item in the Concurrent List the Union as well as State Legislature have jurisdiction, in case of repugnancy between a Union Law and a State Law on the same subject, the former prevails. If, however, the State Law was reserved for the assent of the President and has received such an assent, the State Law may prevail in spite of such repugnancy. The Parliament can, however, over ride such State Law by a subsequent legislation – Article 254 (2).

Residuary Powers

In the Government of India Act 1935 the Residuary Powers were vested neither in the Federal nor in the State Legislature, but were placed in the hands of Governor-General. However, our constitution makes a different provision, Article 248 of the Constitution read with entry 97 of List-I vest the Residuary Powers in the Union Legislature. It means that in respect of any matter not enumerated in one of three lists, the Union Legislature shall have exclusive jurisdiction. It may, however, be noted that the enumeration of the Legislative subject in our Constitution appears quite comprehensive and does not leave much room for Residuary Powers. The Courts have also interpreted the entries rather widely. With the result, not many occasions have arisen where a Union Legislation has been attributed solely to the Residuary Power.

C. **Extraordinary Circumstances**

The distribution of Legislative powers between the Union and State Legislature has been described above. However, there are certain circumstances under which the above system of distribution is suspended and the powers of Legislation of the Union Parliament are extended over States subjects. These exceptional or extraordinary circumstances are:

(i) ***The National interests***

The Parliament can acquire the power to make laws with respect to any matter included in the State List, for a temporary period. If the Council of States (Rajya Sabha) declares by a resolution of two-thirds of the members present and voting, that is necessary in the national interest that the Parliament shall have power to legislate over such a matter. Each such resolution extends the law in question by one year (Article 249).

(ii) ***Under Proclamation of Emergency***

While a proclamation of emergency made by the president is operation, Parliament shall have powers to legislate on State subjects. A law made by the Parliament, which it could not have made except for the proclamation of emergency, ceases to have effect on the expiry of a period of six months after the proclamation has ceased to operate. Of course, things done or omitted to be done before the expiration of the said period shall remain valid (Article 250).

(iii) ***By Agreement between states***

If the Legislatures of two or more States resolve that it should be lawful for Parliament to make laws with respect to any matter included in the state List. Parliament shall have powers as regards the Legislation on these subjects in respect of consenting States (Article 252). The other States are free to adopt such Union Legislation by a resolution passed in that

behalf by their respective legislatures. This is nothing but an extension of the jurisdiction of the parliament by the consent of the State Legislatures.

Article 252 has been used by the States a few times. For example, in order to have a uniform law for the control and regulation of price competition, several States passed resolutions authorizing the Parliament to enact requisite Legislation the need for a central law was felt because these competitions were run by out-of-state journals which a State Law could not effectively control. Parliament then enacted the Price Competition Act 1955. The States of West Bengal and Bihar authorized the Parliament to legislate for the setting up of the Damodar Valley Corporation to control the Damodar River which caused floods in both the States. Similarly Parliament enacted the Urban Land (Ceiling and Regulation) Act 1976 after eleven Legislatures authorized it to do so under Article 252 (1) of the Constitution.

The American Constitution does not have such a provision. But such a provision does exist in the Australian Constitution. However, the interesting fact is that it has not been used in Australia even once. The Canadian Constitution does not have a corresponding provision.

(iv) ***To Implement Treaties***

Article 253 confers on the Parliament the capacity to legislate, irrespective of the scheme of distribution of powers to implement a treaty or a decision made at an international Conference. Under such circumstances the Parliament is empowered to make laws with respect to any matter in the State List. The provision has probably been made to ensure that there is no obstruction in meeting the international obligations of the country.

(v) ***Under Proclamation of Emergency in a State***

When the President makes a proclamation under Article 356 (b) that the administration of the State cannot be carried on

according to the provision of the Constitution, the powers of the Legislature of the State become exercisable by or under the authority of the Parliament. This gives the Parliament full powers to legislature on any matter included in any List with respect to the State, for which a proclamation has been made under Article 356 of the Constitution.

All the above mentioned provisions have been made in the Constitution to provide for the necessary flexibility to meet certain extraordinary situations rising in the governance of the Country. Usually, federalism is supposed to be a rigid form of Government where the distribution of legislative and other power is governed by a written Constitution. A change in the scheme of distribution of powers can be brought about only by an amendment to the Constitution which is normally a difficult and time consuming process. It requires the consent of the Federal as well as the State Governments., Our Constitution, however, has taken care of this problem by making the above mentioned provisions by virtue of which the Union Parliament can legislate on State subjects under extraordinary circumstances without taking recourse to the amendment of the Constitution. Moreover, the procedure of amending our Constitution has been kept rather simple in respect of most of the provisions of the Constitution.

Chapter – II

Administrative

The distribution of executive powers between the Union and the State Government is somewhat more complicated although it follows a similar pattern, similar to the distribution of legislative powers between the Union and the State Governments. We propose to study here the constitutional provisions regarding the distribution of executive powers and then have a look on the way this distribution has worked in actual practice.

A. **Scheme of Distribution**

In general, the distribution of executive powers follows the scheme of distribution of legislative powers. It means that the executive power of a State is, in the main, co-extensive with its legislative power. The executive power of the State thus extends only to its own territory and with respect to those subjects over which it has legislative competence (Article 162). Similarly, the Union has exclusive executive power over the following matters.

- (i) The matters with respect to which the Parliament has exclusive power to make laws (i.e. matters in List-1 of Schedule-VII).
- (ii) The exercise of its powers conferred by any treaty or agreement (Article 73).

Concurrent List

The above mentioned principle states that the Centre has executive jurisdiction over all matters included in List-1 of Schedule VII and a state has executive jurisdiction over all the matters included in the List-II. The position regarding the Concurrent List i.e. List-III is a little more complicated. The general principle is that regarding the matters included in the Concurrent legislative list (List-III) the executive functions shall ordinarily remain with the States, but subject to the provisions of the Constitution or of any law of the Parliament conferring such functions exclusively upon the Union. Under the Government of India Act 1935, the Centre had only the power to give

directions to provincial executive to execute a central law relating to a concurrent subject. But this power of giving direction proved ineffective. Therefore, the Constitution provides that the Union may, whenever it thinks fit, itself take up administration of the Union laws relating to any concurrent subject.

In the result, the executive power relating to concurrent subjects remains with the States, except in the following cases.

- (i) Where a law of Parliament relating to such subject vests some executive function superficially in the Union. The examples of this type are to be seen in the Land Acquisition Act, 1984 and the Industrial Dispute Act, 1947. So far as these functions, specified in such union law, are concerned, it is the Union and not the State which shall have the executive power while the rest of the executive powers relating to this subject shall remain with the States.
- (ii) Where the provisions of the Constitution itself vest some executive functions upon the Union e.g.

The executive power to implement any treaty or international agreement belongs exclusively to the Union, whether the subject belongs to the Union, State or Concurrent List (Article 73 (1) (b)).

- (iii) The Union has the power to give directions to the State Governments as regards the exercise of their executive power in certain matters provided for in Article 256, 257, 339, 344 (6), 347, 350(A), 353, 356 and 360 of the Constitution.

Emergencies

Besides the powers of the Union Government to give directions to the State Governments in normal circumstance, the Constitution also makes provisions for certain emergencies. Three kinds of situations have been envisaged which are mentioned below:

- (i) A State of national emergency can be proclaimed under Article 352 of the Constitution. When such a proclamation is made, the power of the Union Government to give directions to State

Governments extend to the giving of directions as to the manner in which the executive power of the State is to be exercised, relating to any matter (Article 353 (a)). This brings a State Government under the complete control of the Union without suspending it functioning.

- (ii) When the President on the report of the Governor or otherwise is satisfied that the Government of the State cannot be carried out in accordance with the provisions of the Constitution, he may make a proclamation to this effect. When such a proclamation of the failure of Constitutional machinery in a State has been made, the President can assume to himself all or any of the executive powers of the State (Article 356). It may be recalled that during such a proclamation, the legislative powers of the State Legislature are also reserved for the parliament. It means that the entire legislative and executive control of the State Government vests in the Union Government and the Parliament. This is in fact a complete assumption of the legislative and the executive functions of the State. Usually the Government of the State during such proclamation is carried out by the Governor acting on behalf of the President.
- (iii) When the State Government is found unable to manage the financial affairs prudently, the President may issue a proclamation of financial emergency in the State. On declaration of financial emergency, the President may issue the following directives to the State Government.
 - (a) To observe canons of financial propriety, as may be specified in the directions (Article 360 (3)).
 - (b) To reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the Union or the State, including the Judges of Supreme Court and High Courts (Article 360 (4)).
 - (c) To require that all money bills or other financial bills should be reserved for the consideration of the President after they are passed by the legislature of the State (Article 360 (4)).

B. Delegation by Consent

To mitigate the rigidity which might arise from the Centre-State division of administrative power, the Indian Constitution makes provision for inter-governmental delegation of administrative powers. This may happen either under an agreement between the Governments or by legislation. While the Centre can use both the methods to delegate administrative power to the State, the State can use only the first method to delegate administrative power to the Centre.

Delegation by the Centre with consent of the States

Article 258 (1) provides that the President may, with the consent of the State Government, entrust either conditionally or unconditionally, to the State or its officers, any functions in relation to a matter to which the Centre Executive Power extends. It is entirely for the Centre to determine whether the entrustment to be made to the State concerned should be conditional or unconditional, and if conditional, what conditions are to be imposed on the State concerned. So while making delegation under Article (258 (1), the Central Government reserves to itself power to issue directions to the State Governments for the exercise of delegated power. It also reserves to itself a concurrent power to continue to exercise along with the State Governments, the functions being delegated to them. Delegation may be specific or general to one State or many States, of any function whether within the Union list or the Concurrent List. The Constitutional provision can be used to delegate Central functions to a State Government, when a state makes no provision for the delegation of the powers of the Central Government to the States, but even when a statute contains a provision authorizing the Central Government for the purpose instead of the statutory provision. Some examples of such delegation are indicated below:

- (i) Functions of the Central Government under the Registration of Foreigners Rules 1959, the Foreigners Act, 1946 and Foreigners Order 1948 have been entrusted to the State Governments subject to two conditions:
 - (a) In exercising these functions, the State Governments are to comply with such general or special directions as the Centre may issue from time to time.

- (b) Notwithstanding the entrustment, the Central Government may itself exercise all these functions should it deem fit to do so from time to time.
- (ii) Under Section 7 of the Explosive Substances Act, 1948, no Court can try any person for any offence without the consent of the Central Government. The Central Government has ensured this function to State Governments.
- (iii) Similarly, the Central Government, with the consent of the State Governments have entrusted their functions under Clause 4 and 5 of Atomic Energy (Control of Production and Use) order 1953 subject to the usual conditions of State Government complying with the Central directives and the Centre itself being able to exercise its functions when it feels like doing so.

Delegation by the Central Government without Consent

According to Article 258 (2), a law made by the Parliament, even if it relates to a matter in the Union List may confer power and impose duties upon the State, its officers and authorities. For example, under Central Sales Tax Act enacted by the Parliament under Entry 9 (A) List-I, the task of assessment and collection of Sales Tax is with the State Government authorities. Under the Maintenance of Internal Security Act (MISA), the power of preventive detention had been conferred on all District Magistrates.

Whenever, the Central Government confers powers and imposes duties on the State Government, or its officers, the Centre has to recoup the States expenses in respect of any extra costs of administrative expenses incurred by the States in connection with those powers and duties. The Centre and the States may agree as to the sums payable in this connection, or in default of agreement, the amount may be determined by an arbitrator appointed by the Chief Justice of India. The payment to be made by the Centre to the States in this connection is entirely a matter between the two Governments and no third person can challenge the entrustment and the delegation of power and duties on the ground of absence of such payment.

Delegation by the States to the Centre

Under Articles 258(A), a State Government may, with the consent of the Government of India, entrust either conditionally or unconditionally to the Central Government or its officers, functions in relation to any matter to which the executive power of the State extends. The article was inserted in the Constitution in 1956 as the corresponding provision to Article 258 (1). The lack of the provision enabling the State to entrust its functions to Centre was found to be of practical consequences in connection with the execution of certain development works in the States. The High Court has ruled that the relationship arising by virtue of Article 258 (A) between the Centre and the State Governments is not that of the Principal and the agent.

C. **Power to carry on Trade**

Article 298 has a bearing on the inter-relation of the Centers' executive power with that of the "State and vice-versa" Under the provision, the executive power of the Union (or of the States) extends to the carrying by it of any commercial or industrial activity (whether or not it is related to a matter within its legislative competence) and also to hold, acquire or disperse of property and make contracts for any purpose. This extends the executive power of the Centre and also of the State. However, it is subject to one condition. If an activity falls outside the legislative domain of the Government which carries it, then it would be subject to the law made by the other government having the necessary legislative power. It is the only case of its kind where the Central executive power has been made subject to the State Legislative power. Article 298 enlarges the scope of the executive power of the Centre and the States by adding various matters in respect of which these Governments may exercise their executive power. The words, "for any purpose" indicate that the executive power of the Centre and the State to acquire, hold and dispose of property or make contracts is not limited by the division of the Centre-State legislative powers. In this way, the width and the amplitude of the executive power of the Centre and the State has been extended. It means that this executive power of the Centre (or the States) is apart from executive power granted under Article 73 (or Article 162). For example under this provision a State Government has power to reserve the mining area for exploitation in the Public Sector even when it cannot do so under Article 162, but this will be subject to the Central Legislation.

D. Center's Executive Control over States.

States not to impede the Centre

The constitution places certain restriction and obligation on the states in order to ensure that the centre can exercise its powers unimpeded by their actions. Article 256 imposes a general obligation on the state to exercise their executive power as to ensure compliance with the laws made by the parliament; and the executive power of the Centre extends to giving of such direction to the state as may appear to the Centre to be necessary for the purpose under Article 257 (1), the executive power of the state is to be exercised as not to impede or prejudice the Center's executive power and the latter can give such direction to the State as may appear to be necessary for that purpose.

Center's Powers to issue Directions

Apart from Article 256 and 257 (1), mentioned above, several other constitutional provisions authorize the Centre to issue directive to States in several matters falling under their purview. Thus, communication is a State subject but under Article 257 (2), the Centre may give directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance. This, however, does not restrict the power of the Parliament to declare highways or waterways to be national, or to construct and maintain the means of communication needed for naval, military and air force works. Article 257 (3) empowers the Centre to give directions to a State as to the measures to be taken for the protection of Railway within the State.

Similarly, the Central Government has powers to issue directives to the States in matters pertaining to minorities. Article 339 (2) entitles the Centre to give direction to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of Scheduled Tribes in the States. The President has also been empowered to give directions under Article 344 (6) in regard to the official language of the Union and under Article 347 in regard to the language spoken by a section of the population of a State. Under Article 350 (A), a State is obliged to provide facilities for institution

in the mother tongue at the primary stage of children belonging to a linguistic minority. The President has been empowered to issue such directions to the State as he considers necessary.

Apart from the above constitutional provisions, several statutory provisions confer power on the Central Government to give directions to the States. For example, Section 23 of the Supply and Prices of Goods Act, 1950 empowers the Central Government to give directions to any State Government as to the execution of any of the provisions of the Act or of any order or direction made therein. Similarly, under the Plantation Labour Act, 1951, the executive power is left with the States but Central Government has power under Section 41 to give directions to a State Government to carry out the provisions of the Act. Many more such examples can be quoted. Usually, whenever, administrative power is delegated to a State under Central law, a reservation is made enabling the Centre to give directions to the States.

Consequences of Disobedience

These powers of the Central Government to issue directive to the State Governments are not mere hollow powers. The Central Government can take action in case the State Governments do not obey the directives. When a directive has been given under a statute delegating some functions of the Centre to a State, the Central Government can withdraw the delegation and resume the functions itself. In case of persistent disobedience of constitutional directives, the Central Government can hold under Article 365 that it is a case of failure of constitutional machinery of the States. This empowers the President to take over the functions of the State Government under Article 356 of the Constitution.

All India Services

Article 312 introduces an important feature into the constitution namely that besides separate services for the Union and the States, the Centre can create services common to both. If the Rajya Sabha declares by a resolution supported by not less than two-third of the members present and voting that it is necessary or expedient in the national interest to do so, the President may by law provide for the

creation of one or more All India Services and regulate recruitment and conditions of service for them. At present, three All India Services are in existence, namely, Indian Administrative Service, Indian Police Service, and Indian Forest Service.

These services give cohesion to the federal structure and help in achieving greater efficiency in the administration of the Union and the States. The members of these services get an opportunity of serving both at the Centre as well as in the States and are able to acquire national outlook as well as grass root knowledge.

E. Coordination Mechanisms

Though there is a division of functions between the Centre and the States in a federation, it would not be correct to assume that the various Governments act in water tight compartments. As many of the functions of the Central and the State Governments overlap and are of complementary nature, inevitably many instrumentalities to promote inter-governmental cooperation have come into existence. The framers of the Indian Constitution realized that the Governments in a federation have to be arranged not hierarchically or vertically, but horizontally. No line of command runs from Centre to the States. Common policies among the various Governments can, therefore, be promoted not by dictation but by a process of discussion, agreement and compromise. Accordingly, the framers of the Constitution incorporated in it, an infrastructure to promote cooperation and minimize tension among the various governments. Apart from the provisions in the Constitution, the Central and the State Governments have also devised a number of institutions to provide for smooth working relationship between the Governments.

Dispute Resolution mechanisms

The Constitution provides for a number of dispute resolution mechanisms to sort out differences that may arise among the States and between the States and the Union. Some prominent examples are as follows :-

- a. Article 131 confers exclusive jurisdiction on the Supreme Court to decide suits between the Union and the States and the States *inter-se*.

- b. Under article 262, Parliament may by law provide for 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. This empowers the Parliament to set up suitable machinery for adjudication of any dispute or complaint with respect to the use, distribution, or control of the waters of inter state rivers and river valleys.
- c. Article 280 provides for constitution of a Finance Commission for distribution between the Union and the States of the net proceeds of taxes.
- d. In the area of inter-state trade and commerce article 307 of the Constitution contemplates the appointment of an authority for carrying out the purposes of articles 301-304. These articles provide that there would be freedom of trade and commerce throughout the territory of India subject to restrictions stipulated in the Constitution and that the Parliament may by law impose as may be required in public interest.

Apart from potential disputes there is another feature of our political set up which warrants standing institutionalized consultation. Keeping this in view, the framers of our Constitution conceived Inter-State Council to be set up under article 263. Various subject-special consultative forums have also been established under article 263. Besides this, several inter-state consultative bodies have been set up under executive orders at different times since the commencement of the Republic. Five Zonal Councils were set up under the States Reorganization Act, 1956 to deliberate on contentious regional issues. A North East Council was set up in 1981, with a mandate, *inter-alia*, covering zonal issues of the North East.

The Administrative Reforms Commission, the Rajamannar Committee and the Sarkaria Commission all went into the working of the existing consultative mechanisms and assessed the requirements of the prevailing discords and strongly pleaded for setting up of an Inter-State Council with a comprehensive mandate. They have categorically observed that piece-meal departmental bodies have not served the purpose of a truly federating consultative body and that the remedy lies in nothing short of setting up of an Inter-State Council envisaged under article 263 of the Constitution.

Administrative Reforms Commission

The Administrative Reforms Commission in its report on Centre-State Relations submitted in 1969 recommended, *inter-alia* that an Inter-State Council should be constituted under article 263 of the Constitution and that it might consist of the Prime Minister as Chairman and the Union Home Minister, the Union Finance Minister, leader of the opposition in the Lok Sabha and five representatives, one each from the five Zonal Councils, as members. The Commission noted that the phrase 'common interest' occurring in article 263 was a comprehensive one which might be construed to cover problems relating to or arising out of the Constitution, legislative enactments, administration and finance.

Rajamannar Committee

A Centre-State Relations Inquiry Committee was set up by the then DMK Government of Tamil Nadu on 2nd September, 1969 under the Chairmanship of Dr.P.V.Rajamannar to consider the entire question regarding relationship that should subsist between the Centre and the States in a federal set up. The Committee in its report recommended that "the Inter-State Council should be constituted immediately" and that "no decision of national importance or which may affect one or more States should be taken by the Union Government except after consultation with the Inter-State Council". The Committee further recommended that "every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be referred to the Inter-State Council and its views thereon should be submitted to Parliament at the time of introduction of the Bill".

Sarkaria Commission

Sarkaria Commission went at considerable length into the justification for establishing a permanent Inter-State Council as an independent national forum for consultation with a mandate well defined in accordance with article 263. The Commission recommended that for coordination of policies and implementation in a dual polity specially in view of large areas of common interest and shared action requires a sustained process of contact, consultation and interaction, for which a proper forum is necessary. The Commission observed that executive powers of the Union and States overlap in many areas and as such division of matters in Union List and State List is not absolute. Several entries overlap. Then in implementation of its laws and policy Union is

largely dependent on State administrations. Union and States can entrust their executive functions to each other. States are dependent on Union for fiscal resources and in many administrative matters. Interdependence is indispensable in a diverse and developing society. Institutionalized and sustained consultation is indispensable in view of this interdependence. The Commission recommended setting up of a Council under article 263 of the Constitution for this purpose. (Also refer chapter 5 of this module)

Miscellaneous Inter-State Consultative Forums

With the growing complexity of problems on Centre-State relations, a few consultative bodies were set up to review the policy and other related matters and to arrive at a consensus on different contentious issues after adoption of the Constitution. While most of these bodies were set up under executive orders, some were constituted under article 263 of the Constitution.

The bodies which were set up under the executive orders are as under :-

- (i) National Development Council.
- (ii) National Water Resources Council.
- (iii) Indian Labour Conference.
- (iv) Advisory Council on Foodgrains Management & Public Distribution System.
- (v) Mineral Advisory Council.
- (vi) State Programming Board - Geological Survey of India.
- (vii) Drugs Consultative Committee.
- (viii) Central Advisory Board of Education.

In addition to above, the following bodies have been set up under article 263 of the Constitution;

- i. Central Council of Health.
- ii. Central Council of Local Self Government.

- iii. Council for Sales Tax and State Excise Duties - for each of Northern, Eastern, Western and Southern Zones.
- iv. Transport Development Council.
- v. Central Councils for Research in Ayurveda, Unani, Homeopathy, Yoga and Nature cure.
- vi. Central Family Welfare Councils.
- vii. Inter-State Council.

Inter-State-Council (ISC)

Article 263 provides that the President may by order appoint an Inter-State Council; if it appears to him that public interest would be served by its establishment. The President may define the organization, procedure, and duties of the council. Generally, it may be charged with the duties of:

- (a) Enquiring into and advising upon disputes which may have arisen between the 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 common interest.
- (c) Making recommendations upon any subject and in particular recommendations for better coordination of policy and action with respect to a binding decision.

It appears from this that the council is envisaged to be an advisory body having no authority to give a binding decision.

Not much use has been made of Article 263 so far and only a few bodies of minor importance have been created under it. The General Council of Health, created by a Presidential order under Article 263 consists of Central Health Minister as Chairman and State Health Ministers as Members. Similarly, a Central Council of local Self-Government has been created comprising the Union members. Both of these are advisory bodies. They advise on broad policy matters in which coordination between Centre and State Government is necessary. Similarly, Under Article 263, four more regional councils have been set up for making recommendations for better coordination of policy and action with respect to sales tax, a State subject.

Administrative Reforms Commission also suggested the establishment of an inter-state Council under Article 263 with a view to strengthen cooperation and coordination and evolution of common policies among the Centre and State Governments in many areas where the measures taken by these Governments from time to time are mutually interactive. The Commission did not work out the details of the type of duties which such a council can discharge. It only made a general statement that the establishment of an Inter-State Council would be conducive to a better understanding. Some State Chief Ministers have also demanded setting up of such a Council so that the federal problems may be discussed on a formal basis. The Central Government has, however, remained cool to the idea. Presumably it may have thought that the establishment of such a Council might blow up controversies on contentious issues rather than promote cooperation.

The Sarkaria Commission examined the question of setting up of the Inter-State Council at length. They felt that the Constitutional scheme for division of functions between the Union and the States is such that there are vast overlapping areas. Apart from the Concurrent List, several Union laws are administered by the executive machinery of the States. Even in regard to their separate functions, the Union and States need each other's cooperation. Gone are the days of federations with separate executive machineries of the Union and the States operating in water-tight compartments. After carefully examine all these aspects, the Commission came to the conclusion that an Inter-State Council should be set up charged with the duties in clause (b) and (c) of Article 263. To distinguish it from the sectoral bodies already set up under Article 263, this Council should be called Inter-Governmental Council. Agreeing with the Administrative Reforms Commission, the Sarkaria Commission also recommended that the Council should not concern itself with matters of socio-economic planning and development. The present N.D.C (National Development Council) should continue to look into these matters, but should be reconstituted under section 263 with a new name – National Economic and Development Council. The proposed Inter-Governmental Council should deal with all other matters covered by Clause (b) and (c). The Commission felt that the Council should be a recommendatory body. It should not in any way erode or encroach

upon the responsibilities and powers which, under the Constitution, are the exclusive concern of the Union and States respectively.

In June 1990 the President issued a notification under Article 263 of the Constitution setting up the inter-state council, as a first step in the implementation of the recommendations of the Sarkaria Commission. This was in fulfillment of the commitment made by the Janata Dal in its election manifesto.

The Council is headed by the Prime Minister. The Chief Ministers of all the States and Lt. Governors of the Union Territories are the Members, besides the six Union Cabinet Ministers nominated by the Prime Minister. The restricted representation to the Centre, which is a departure from the recommendations of the Sarkaria Commission, is to ensure compactness and to avoid giving unduly large representation to the Centre.

The ISC, since its inception, has held nine meetings, the first on October 10, 1990 and the ninth on June 28, 2005. The Council, which so far has primarily been considering the recommendations of the Sarkaria Commission on Centre-State relations, completed considerations of all of its 247 recommendations. Of these, 179 recommendations have been accepted and implemented, 64 recommendations have not been accepted either by the Inter-State Council or the Administrative Ministries concerned and 4 are under different stages of consideration in the concerned Ministries / Departments.

Zonal Councils

Five Zonal Councils have been set up under the States' Re-organisation Act, 1956. These are high level advisory bodies with the Union Home Minister as their Chairman and the Chief Ministers of the respective States as members. These Councils play a key role in resolving inter- State and Centre-State problems and fostering balanced socio-economic development in the respective zones. These councils are sub-federal links between the centre and the states, having the following main objectives:

- (i) to cooperate with each other in the successful and speedy execution of major development projects.
- (ii) To enable the centre and the states which are dealing increasingly with matters, economic and social, to cooperate and exchange ideas and experiences in order that uniform policies for the common good of the community are evolved.
- (iii) To secure some kind of political equilibrium between different regions of the country.
- (iv) To help in arresting the growth of acute state consciousness, regionalism and particular trends;
- (v) To solve problems concerning border disputes, linguistic minorities or inter-state transport.

The principal factors that have been taken into account in constitution of different zones are:

- (i) natural divisions of the country;
- (ii) requirements of economic development;
- (iii) cultural and linguistic affinity;
- (iv) river systems and means of communication;
- (v) requirement of security and law and order.

Control Boards

India has a number of interstate rivers and river valleys. The Constitution makers anticipated that with the execution of development of irrigation and power projects some interstate dispute would arise regarding sharing of river waters. Article 262 empowers Parliament to provide by law for adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of any interstate river or river valley. Accordingly, the Inter-State Dispute Act, 1956 provides for the establishment of the River Boards for the regulation and development of interstate rivers and river valleys. Water being a State subject, such Boards is appointed by the Central Government with the Consultation of the State Governments. The functions of the Boards are:

- (a) To advise the governments on any matter concerning the regulation or development of specified river or river valley.
- (b) To resolve their conflicts.

- (c) Prepare schemes for regulating and developing inter-state river or river valley.
- (d) Allocation among the Governments of the cost of executing such schemes.
- (e) To watch the progress of measures undertaken by the Government entrusted with the implementation.
- (f) Any other matters.

Often Control Boards are appointed on non-statutory basis by a resolution of the Centre or State Governments. These Bodies have helped the States in resolving many of their problems, although several disputes could still not be resolved and have to be referred for adjudication.

Other Statutory Bodies

Besides the coordination bodies mentioned above, there are several others like University Grants Commission, Damodar Valley Corporation, Durga Consultative Committee etc. The detailed enumeration of such bodies is not necessary here. Suffice it to say that our federal system has evolved several bodies to ensure coordination.

Commission on Centre-State relations

A commitment has been made in the National Common Minimum Programme (NCMP) to set up a new Commission to look into the issues of Centre-State relations keeping in view the sea changes that have taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago.

Accordingly, the Union Government has on September 30, 2005, notified setting up of the Commission on Centre-State Relations with its headquarters at New Delhi. Government has already appointed the Secretary to the Commission and some supporting staff.

The Commission is to complete its work and submit its report with recommendations within two years. Terms of Reference (TOR) of the Commission include:

1. To examine and review the working of the existing arrangements between the Union and the States as per the Constitution of India and various pronouncements of the courts in this regard;
2. To address the growing challenges of ensuring good governance for promoting welfare of the people, strengthening the unity and integrity of the country; and
3. To make particular recommendations, but not limit its mandate, on:
 - (a) the role, responsibility and jurisdiction of Centre vis-a-vis States during major and prolonged outbreaks of communal violence, caste violence or any other social conflict leading to prolonged and escalated violence;
 - (b) planning and implementation of mega projects; effective devolution of powers and autonomy to various local bodies;
 - (c) practice of independent planning and budgeting at District level;
 - (d) devolution of powers to Panchayati Raj Institutions and Local Bodies including the autonomous bodies;
 - (e) linking Central assistance with the performance of the States;
 - (f) positive discrimination in favour of backward States;
 - (g) fiscal relations between Centre and States;
 - (h) levying duties on goods and services in the emerging tax regime;
 - (i) freeing inter-State trade to establish a unified and integrated domestic market;
 - (j) setting up a Central Law Enforcement Agency;
 - (k) supporting legislation under Article 355; etc.

F. Consultation through Conferences

Apart from the statutory and non-statutory bodies mentioned above, a network of conferences and adhoc councils has been brought into existence by the Central Government to act as an institutionalized channel for consultation among the States on a wide variety of subjects. These conferences take place at the political, administrative and provisional levels. The National Development Council, the Chief Minister's Conference, and Conference of Ministers of different departments are examples of conference at the political level. They have been in existence for quite some time and At least two of them

namely, the Chief Ministers' Conference and Food Ministers Conference are of pre-independence origin.

The Conferences at the administrative level include the Chief Secretaries Conference and the Conferences of various functional secretaries. The Conference of Inspectors General of Police (Now Director General) has acquired special significance in view of the deteriorating law and order situation in the country. Similarly, the conference on irrigation and Power attended by State Government Engineers and Consultants of river valley projects, the Conference of Vice-Chancellors etc., are the professional level conferences.

Again, detailed enumeration of such conferences is not necessary here. It would be enough to state that they have gone a long way in sorting out various policy matters among the Central Governments at political as well as administrative levels.

Chapter – III

Planning

India is an economically developing country. A very large proportion of the people are living below the poverty line. The need for economic development was, therefore, keenly felt at the time of independence. The resources available in the country for the desired economic development are rather limited. It was, therefore, felt that these resources should be carefully harnessed to get maximum possible returns. This would not be possible in a *laissez faire* economy which usually give rise to concentration of economic power and monopolies. The State, therefore adopted the methods of economic planning to achieve maximum development form the available scarce resources. Of course, the system of planning adopted by us was different from the socialist countries where the concept originated. We adopted Democratic Planning in a mixed economy. In a federal democratic polity like ours, it is but natural that the planning effort, to be successful, should involve the Central Government, the State Governments and the people. While the concept of planning and its administration would be dealt with elsewhere, we are concerned here mainly with those aspects of planning which have a bearing on Centre-State relations. But before that, it would be necessary to describe in brief the planning process as it has developed over the decades.

A. **Planning set up**

Although Planning process was initiated in the county in 1983, with the appointment of Pt. Jawaharlal Nehru as Chairman of the National Planning Committee, it is surprising to note that the word planning does not find mention any where in the Constitution. Of course, the Indian Constitution tried to spell out the economic philosophy of the county in the “Directive Principles of State Policy” embodied in Part – IV of the Constitution. These directive principles point towards economic democracy and a Welfare State as the goals of the political process of the country. The concept of planning to bring about this kind of socio-economic transformation can therefore be inferred from the Constitution. As a concrete step towards planning, Government of India set up a Planning Commission in 1950 with the Prime Minster

as Chairman. It has a few Central Ministers and a number of official experts as members. There is no State representative as such on the Planning Commission which can thus be regarded as a purely Central organ. The role of the Planning Commission is only advisory. It takes stock of the resources available in the Country and formulates plans for national Government. Usually, a perspective plan of 15 years is prepared along with a 5 Year Plan. For concrete action annual plans are also prepared. During all this process the Central Ministers and the State Governments are consulted by the Planning Commission through a number of working groups, study groups, task forces etc. The plan initially formulated by the Planning Commission is in the nature of recommendations to the Central Government as well as to the State Government through National Development Council. The responsibility of taking final decisions rests with these bodies and the implementation of the plans rests with the Central and the State Governments. A close cooperation is established between the Planning Commission and the Central Government because of the fact that the Prime Minister heads both these organs. Other Central Ministers are also invited to the Commissions' meeting from time to time.

Planning is essentially a centralized process. The resources have to be assessed at the national level and the best possible avenues for investment have to be decided at the national level. Indian planning has been no exception. It is a unified and comprehensive planning; so far as it deals with both central and the State subjects. It is, therefore, necessary to ensure the participation of the States also in the planning process. For this purpose, the National development Council was established in 1952 under the Chairmanship of the Prime Minister. The other members included in the Council are State Chief Ministers, representatives of the Union Territories, members of the Planning Commission and the Cabinet Ministers of the Union Government. The functions of the Council are:

- (i) To strengthen and mobilize the efforts and resources of the nation in support of the plans.
- (ii) To promote common economic policies in viable spheres.
- (iii) To ensure planned and rapid development of all parts of the country.

The Council reviews the working of the plan from time to time, considers important questions of social and economic policy affecting national development and recommends measures for the achievement of aims and targets set out in the national plan. The Council is envisaged as the supreme body in regard to planning and development. It can play a major role in reconciling the views of the Central and State Governments and in securing full co-operation and coordination between them in planning matters and those ensuring development of a uniform approach and outlook towards working of national plans and programmes.

It is rather interesting to note that the two most important institutions in the planning process of the country namely the Planning Commission and the National Development Council are created not under any law, but by Cabinet resolution of the Central Government. The subject of “social and economic planning” is included in the Concurrent List. However, no legislation has so far been enacted under this entry to set up the planning machinery. The Planning Commission has not been given a statutory basis probably because of the fear that it would reduce the flexibility of the Commission and its close relationship with the Central Government.

In spite of the fact that planning is essentially a centralized process, in a vast country like India it is impossible to prepare realistic National Plan without incorporating within it the state plans. For this reason, attempts have been made to set up adequate planning machinery at the State level. A number of State Governments have set up State Planning Boards, although they are not yet very effective bodies. Planning at the district level is still in a rudimentary stage. Having described in brief the set up for planning in the country, we would proceed to have a look at the actual way in which planning process has operated.

B. Planning Process in Operation

During the last five decades of planning, the country has formulated and implemented nine Five Year Plans and the tenth one is in progress. We now have sufficient experience of the planning process to discern some of the important features which have a bearing on the Centre-State relations. We will discuss some of these features briefly.

Predominant Position of the Planning Commission

As already mentioned, Planning Commission was meant to be only an advisory body. The Plans formulated by the Commission have to be formally approved by the Central Government and the National Development Council. However, over a period of time the Planning Commission has emerged as a very powerful body. Its recommendations have almost the force of directives. Mr. A. K. Chandra observed that the Planning Commission has become the “Super Economic Cabinet of the Country”. There are several reasons for the emergence of Planning Commission as such a powerful body. Some of the important reasons are:

- (i) The Prime Minister and a few important Cabinet Ministers are the members of the Planning Commission along with the experts. The association of such high level functionaries of the government of India and specially that of the Prime Minister lends a great deal of prestige to the Planning Commission. When a recommendation has been made by a body presided over by the Prime Minister, it becomes difficult for any one to over rule or modify it. Naturally, such a recommendation acquires the force of a directive.
- (ii) It is a permanent body with a permanent secretariat. Naturally, over a period of time, it tends to acquire a body of knowledge which nobody else can. This gives the Commission an edge over other institutions. For example. The Finance Commission meets once in 5 years. Its recommendations therefore, do not have a stamp of continuity. Consideration of economic problems starts with the setting up of a new commission.
- (iii) The Planning Commission is a body of experts. It consists of noted personalities in economic, scientific, agricultural and planning fields. They are able to give a perspective to national thinking on economic matters which is very difficult for any other body to acquire. Naturally, their recommendations command a high respect which no one can easily ignore.
- (iv) The most important reason for the influence of Planning Commission with the Ministries and the States is the approval of their plans and programmes by the Planning Commission. In respect of the State Governments, even the Central grants are

released by the Central Government to the States on the recommendations of the Planning Commission. These are discretionary grants given under Article 282 of the Constitution. Similarly, the loans to the State Governments are also released on the recommendation of the Planning Commission. Although this procedure is nowhere prescribed in the Constitution or any law, it has now the force of a long and continued tradition. As we shall presently see, this gives rise to good deal of stresses and strains in the Centre –State relations.

- (v) In the initial stages, the hold of the Planning Commission over State Governments was also facilitated by the rule of the Congress Party at the Centre as well as in the States. Even when a Chief Minister would not find himself in agreement with the recommendations of the Planning Commission, he could be silenced by the discipline of the party. The Prime Minister being naturally senior to him in the party hierarchy would command his obedience. With the opposition parties forming Government in different States, this mode of achieving coordination between the Centre and the State Governments as well as between the Planning Commission and the State Governments is undergoing a change. The opposition State Governments now openly voice their disagreement in the meetings of the National Development Council as well as in other fora.

Role of the National Development Council

The National Development Council is supposed to be the supreme body in planning matters. However, it has not been able to pull much weight and has invariably followed the lead given by the Central Government and the Planning Commission. The most important reason for this weak position of the National Development Council is that it is an adhoc body meeting at irregular intervals. Usually, it meets to approve the Five Year Plan and the Annual Plans. Unlike the Planning Commission, it does not have any expert body to continuously advise it on matters relating to Planning at the National level. Whatever advice is available to the Chief Minister comes from his Planning and Finance Ministers who again do not have much of planning machinery in the State to advise them. Moreover, the State Governments have to depend to a great extent on the discretionary grants given by the Central Government on the recommendations of

the Planning Commission. Therefore, in regard to even the State subjects, the Planning Commission and the Central Government have acquired a great say much against the division of legislative and administrative powers as envisaged in the Constitution.

Having had a look at the institutional aspects of the Planning process, we may now study some of the areas of stress and strain in its working.

Discretionary Grants

The State Governments desire that they should get adequate resources to implement their development plans. They want a big size supported by the Central Government. At the same time, they do not want centrally sponsored programmes. The Central Government on the other hand wishes to continue some of the programmes which are of vital importance to the nation. For example, the Government of India attaches a great deal of importance to family planning and would like to run a number of centrally sponsored programmes in this field. There is a general apprehension that the State Governments may not give such programmes the priority they deserve. The Central Government, therefore, wishes to push some programmes by giving the State Governments some financial assistance. This financial assistance is given in the nature of specific purpose grants under Article 282 of the Constitution. These grants are different from the Statutory grants given to the states on the recommendations of the Finance Commission Under Article 275. The crux of the matter is that the Constitution had envisaged the Finance Commission to be the statutory body for recommending the manner of sharing the resources between the Central and the State Governments. However, in the course of time, the discretionary grants given under Article 282 on the basis of the recommendations of Planning Commission, which is a non-statutory body, now exceed the grants given under Article 282 on the recommendations of the statutory Finance Commission. The State Planning Sector consists of centrally aided schemes and non-centrally aided schemes. The central sector comprises central schemes and the central sector sponsored schemes which fall for administration within the State sphere. They are counted not in the State but in the Central Sector and for their administration, the Centre gives aid to the States. Therefore, the State Sector consists of not only the State sector

as such, but also the Central sponsored schemes. For such schemes, the grants are given to the States under Article 282 of the Constitution on matching basis. It seems that the States themselves have to find a part of the money to earn the central aid for particular scheme. The matching contribution may vary from scheme to scheme and from State to State. A uniform matching basis may be inequitable as it may favour rich state against the poorer because the former are in better position than the latter to find the matching funds. On the whole the State Governments do not like the system of conditional grants for following reasons:

- (i) Being tied to specific purpose, the States are not free to use the money for any other purpose. They may have a different system of priorities than the Central Government. In fact it is precisely for this reason that the central Government wants to give specific purpose grants.
- (ii) The State Governments are required to find matching contribution to avail of the central grants. Most of the Government are perpetually short of resources and find it impossible to provide the matching contribution. At times, it results in non-utilization of the grant provided by the Central Government. On several occasions the State Governments resort to the device of using the grant for some purpose and showing it for another. At times they resort to various gimmicks to book the expenditure incurred by them for other purposes as their matching contribution.
- (iii) The system of matching grants may be prejudicial to the poorer states who may not be able to provide their contribution. To a certain extent this problem is sought to be solved by keeping their matching contribution small but that does not appear to be enough to take care of the development needs of the backward States.

The Central Government on the other hand justifies the specific purpose grants on the following grounds.

- i) As already mentioned the Central Government wants to enforce the priorities of certain plans and programmes through the system of specific purpose grants.

- ii) The Central Government feels that it is primarily the State activity which they are financing, and it is not unfair to expect the State Government to contribute a part of the expenditure.
- iii) If the Central Government provides the entire expenditure of the plan programme, the State Government tends to neglect it because it has no financial stake in it. It is therefore, better for the implementation of the project if the State Government also contribute a part of the cost.
- iv) The necessity of providing matching grants to avail of Central assistance may spur the State Government to put in more efforts for resource mobilization.
- v) The State Government being autonomous in their functioning, the only way to induce them to take certain programmes is through providing them some financial assistance. It is a better method of ensuring the State Government's acceptance than any coercive process even if the Central Government has the power to do so.

State Autonomy

While the arguments for and against the system of discretionary grant may go on and on, the most important implication of these grants is an attack on the States' autonomy. The problem has become more acute with the opposition governments coming to power in different states. Their main contention is that the autonomy of the state Governments is sought to be undermined by keeping their share in the resources small and then forcing them to adopt the Central programmes by the device of discretionary grants. They argue that the State Governments should be given, as a matter of right, necessary resources to discharge their functions effectively. They should not be required to depend upon the Central Government for carrying out their development programmes. They feel that resource transfer from the Centre to the States should be large and should be on the basis of statutory grants. This will enhance their resources as well as give them freedom to implement the programmes that they consider most suitable for their states. In other word, the argument is to enhance the function of the Finance Commission in respect of the devolution of resources. Planning Commission may be reduced to its proper status of giving advice to the Central and the State Governments.

C. Coordination between Finance and Planning Commissions

The above mentioned discussion makes it clear that the Planning Commission and the Finance Commission exercise overlapping functions in the area of Centre-State fiscal relations. It therefore, appears necessary to find some mechanism for coordinating their functions. The present position is that the Finance Commission does not take into account the Centre-State fiscal relationship under the plan. After the Finance Commission has made its recommendations regarding tax sharing and grants, the Planning Commission takes over, assesses the needs and resources of the States and the Centre and their plan programmes and then decides how much money should be given to each State by way of loan and grant under Article 282 and 293 of the Constitution. Now, as already mentioned, the funds flowing through the Planning Commission are more massive than those passing through the Finance Commission. This development has given a new orientation to the Constitutional provisions. Whereas the Constitution envisages the Finance Commission as the balance wheel of the Indian fiscal federalism, the emergence of the Planning Commission has reduced the importance of that body.

Several suggestions have been made from time to time to coordinate the activities of the two bodies. It does not appear possible to enlarge the function of Finance Commission so as to bring within it the plan grants as well. It will have serious repercussions on the planning processes, such as:

- (i) Allocation of plan assistance is intimately connected with the formulation of the plan and the Planning Commission must take an active part in this process.
- (ii) The Plan grants made to the states are assessed annually while the Finance Commission sits once in 5 years. If the plan progress is assessed once in 5 years, the whole planning process will become ineffective.

It also does not appear possible to entrust the functions of the Finance Commission to the Planning Commission for the following reasons:

- (i) Planning Commission has no statutory or Constitutional basis and the Government does not want to formulize this body because it will lose its flexibility in the process.
- (ii) Its composition has a political element whereas the Finance Commission is supposed to be a non-political body. The State will not like Finance Commission to be a political body closely associated with the Central Government. The Third alternative of entrusting to the Finance Commission only tax sharing and giving the task of fixing the share of grants (both under the fiscal need and under Article 282) to the planning Commission also does not appear to be feasible. It is not possible to consider tax sharing in isolation from fiscal need grants and vice-versa. The common purpose of both is to close the revenue gap of the State. Their separation would make the coordination between the two very difficult.

The Finance Commission as well as the Planning Commission have, therefore, come to stay. Some coordination between the two commissions has also been achieved. The 5 year period for which the Finance Commission makes its recommendations now coincides with the period of the 5 Year Plan and so it is easy for the Planning Commission to make necessary adjustments in the plan grants in the light of the recommendations of the Finance Commission. Also a member of the Planning Commission is now nominated to the Finance Commission. The Sarkaria Commission has further suggested that the member in-charge of Plan Resources in the Planning Commission should be nominated to the Finance Commission. The Sarkaria Commission also suggested that during the interim period between two Finance Commissions, the Finance Commission Division should function under the Resources Member of the Planning Commission and not under the Finance Ministry. This will ensure perfect coordination between the Finance Commission and the Planning Commission.

Chapter -IV

Financial

In the federal polity, two sets of Governments operate simultaneously and directly on the same people and have to perform their distinct functions in relation to them. It is, therefore, desirable that the Centre and each of the State Governments have their independent source of finance and full control over such sources. However, the problem of balancing the resources between the Centre and the States is a very difficult one. Even in the older federations, like United States, Canada, and Australia, the problem still defies a satisfactory solution. In all these federations, there was a trend towards the centralization of revenue with the federal Government. No wonder, a similar trend can be seen in India also. In any case, our Constitution has much more of a central bias than other federations of the world. This central bias is also reflected in the allocation of financial resources between the central government and the State Governments. Several reasons have been cited to explain this tendency of centralization.

Firstly, some of the ever growing and realistic sources of revenue like customs and excise duties have been allocated by the Central Government and the States have been left with comparatively inelastic sources of revenue like taxes on agricultural income, land and buildings etc.

Secondly, effective exploitation of financial resources granted to the Central Government has also resulted in augmenting their financial position.

Thirdly, politico-economic trends of the 20th century have also helped in the centralization process.

All this has made the States financially dependent on the Centre. The whole situation has necessitated the Centre to play an effective coordinating role in the fiscal affairs of the nation. This is as true of India as it is about the United States, Canada and Australia.

The emergence of a financially strong Centre has made it necessary that a part of revenue receipts of the Centre should be transferred to the States. There are several principles which govern this transfer of finance from the

Centre to the States. These are the principles of compensation, derivation, need and national welfare.

Compensation means financial adjustment for the liabilities incurred by a unit upon joining the federation and as a result of the financial impact of Central policy.

Derivation requires distribution of transfers from the Centre to the States in proportion to States' contribution to the Central Taxes.

Need, as a principle of distribution, involves allocation according to the budgetary needs or population of the States.

National Welfare requires consideration of economically efficient allocation of resources and maintenance of uniform national minimum standards for services.

The principle of derivation does not apply in Indian conditions as the formation of Indian federation is not a result of the joining of independent sovereign States. As is well known, our federation has been created out of a unitary Government. The other three principles have been applied for the transfer of resources from the Centre to the States by different Finance Commissions. But before we come to these principles of transfer of resources, it would be worthwhile to have a look at the provisions of the constitution relating to the sharing of the revenue resources.

A. Distribution of taxation powers

Our Constitution provides for a very clear demarcation of powers of taxation between the Union and the State Governments. Legislative Lists-I and II of the Seventh Schedule to the Constitution contain, among other things, the entries regarding the taxation powers of the Union and State Governments respectively. There is no entry regarding taxation in List-III i.e. the Concurrent List. It means that there are no concurrent powers of taxation between the Union and the States. The residual powers of taxation in respect of matters not appearing in any list vest in the Union by virtue of entry 97 of List-I. There are thirteen taxation heads on the List-I. The major heads of taxation in the Union List are:

- (i) Taxation of income other than agricultural income.
- (ii) Duties of Customs including export duties.
- (iii) Corporation tax.
- (iv) Excise duties on tobacco and other goods produced and manufactured in India except on alcoholic liquors for human consumption and narcotics, but including, medicinal and toilet preparations.
- (v) Taxes on Sale or purchase of goods where such sale or purchase takes place in course of inter-state trade.
- (vi) Taxes on vehicles.

The allocation of items of taxation between the Union and the States is based on the general principle that the taxes which are location-specific and relate to subjects of local importance have been assigned to States, while the taxes of inter-state significance have been assigned to the Union. The entries in the legislative list are so framed as to make a clear-cut demarcation of taxation powers between the Union and the States. Such a clear cut division is essential to avoid conflicts and litigation between the two tiers of the polity. Older federations like USA and Australia do not have such clear-cut demarcation. There are overlapping powers of taxation leading to a lot of complications which require a great deal of time and effort to be resolved. Our Constitution avoids these pitfalls. There are many grievances of the States, which will be dealt later in the chapter, but there is no confusion about the distribution of taxation powers.

B. Distribution of the Tax Proceeds

Even though a legislature may have been given the power to levy a tax, the yield of different taxes coming within the competence of State legislature may not be large enough to serve the purpose of a State. To meet this situation, the Constitution makes several special provisions:

- (i) Some duties are leviable by the Union but these are to be collected and entirely appropriated by the States after collection.
- (ii) Some taxes which are levied and collected by the Union, but the proceeds are then assigned by the Union to those States within which they have been levied.

- (iii) Again there are taxes which are levied and collected by the Union but the proceeds are distributed between the Union and the States.

Based on the Principles mentioned above, the scheme of distribution of tax proceeds is described below:

Taxes belonging to Union exclusively

There are several items in the list on which taxes are levied, collected as well as appropriated by the Central Government. Some of these important items are:

- (i) Customs.
- (ii) Corporation tax.
- (iii) Taxes on capital value of assets of individuals and companies.
- (iv) Surcharge on income tax etc.
- (v) Fees in respect of matters in the Union List.

Taxes belonging to States exclusively

In respect of certain items, the taxes are levied, collected and appropriated by the State Governments, some of these items are mentioned below:

- (i) Land revenue.
- (ii) Stamp duty except in respect of documents included in the Union List
- (iii) Taxes on animals and birds, on road vehicles, etc.
- (iv) Taxes on consumption of electricity.
- (v) Taxes on entry of goods in a local area.
- (vi) Sales tax
- (vii) Toll etc.
- (viii) Fees in respect of matters under State List.

Taxes levied by the Union but collected and appropriated by States

The items in this category include stamp duties on bills of exchange etc., excise duty on medicines and toilet preparations containing

alcohol. They are included in the Union List. These taxes are levied by the Union, but collected by the States and appropriated by them (Article 268).

Taxes levied as well as collected by the Union, but assigned to States within which they are leviable (Article 269)

Such items include:

- (i) Duties on succession to property other than agricultural land;
- (ii) Estate duty in respect of property other than agricultural land.
- (iii) Terminal taxes on goods or passengers carried by Railways, air or by sea.
- (iv) Taxes on sales of and advertisements in newspapers.
- (v) Taxes on railway fares and freight.
- (vi) Taxes on sale or purchase of goods other than newspapers where such a sale or purchase takes place in the course of inter-state trade and commerce.

Taxes levied and collected by the Union and distributed between the Union and States

Certain taxes are levied and collected by the Union, but their proceeds are distributed between the Union and the States in certain proportion, in order to effect an equitable division of financial resources. These are:

- (i) Tax on income other than agricultural income.
- (ii) Duties of excise are also included in the Union List excluding medical and toilet preparation (Article 272).

C. Non-tax Revenue

Apart from the revenue received by the Union and the State Governments from the levy of taxes as mentioned above, they have some sources of non-tax revenue also. Such sources of revenue are:

- (i) The Union Government may earn non-tax revenue from the following sources:

- (a) Commercial operation of Railways.
 - (b) Posts and Telegraphs.
 - (c) Television and Radio Broadcasting
 - (d) Currency and Mint.
 - (e) Income from the industrial, commercial undertakings of the Central Government such as:
 - Industrial Finance Corporation.
 - Indian Airlines.
 - Air India
 - Several Fertilizer Corporations
 - Hindustan Shipyard
 - India Telephone Industries, etc.
- (ii) Similarly, the State Governments derive their non-tax revenue from the following sources:
- (a) Forests
 - (b) Irrigation
 - (c) Commercial enterprises (Electricity Boards, Transport Undertakings etc.)

D. Grant-in-aid

Even after the transfer of tax revenues from the Central Government to the State Governments, the needs of the latter are not fully met. Therefore, with a view to augment State resources, in addition to what they would get through their taxes, provisions have been made in the Constitution for Central grant to the States. The Constitution divided such grants into two categories:

- (i) Statutory grants under Article 275 of the Constitution.
- (ii) Discretionary grants under Article 202.

The Constitutional scheme for grants-in-aid is one of the techniques for making inter-governmental adjustments and minimizing the disparities in social services among the different states. The correction of disparity in services to the people of different states through grant-in-aid is essential for smooth functioning of the federal system.

Statutory Grants

The Statutory grants are given to the State Governments on the recommendations of the Finance Commission. Article 275 gives the impression that the grant-in-aid depends on the discretion of the Parliament. However, Article 280 (3) makes it clear that the grant is to be given on the recommendation of the Finance Commission. By now it is clear that devolution of grants-in-aid under article 275 is governed not so much by the Parliamentary discretion as by the recommendation of the Finance Commission.

Discretionary Grants and Loans

Even after the sharing of tax revenues and devolution of statutory grants, the financial needs of the State may not be fully met. Article 282 and 293 of the Constitution are other channels through which resources are transferred from the Centre to States., Article 282 provides that the Union or the State may make any grants for public purposes notwithstanding that the purpose is not one with respect to which Parliament or the legislature of the State, as the case may be, may make laws. Article 293 (2) provides that the Government of India may subject to such conditions as may be laid down by or under any law made by the Parliament make loans to any State or, so long as any limits fixed under Article 292 are not exceeded, give guarantees in respect of loans raised by any State.

Article 282 provides for non-statutory or discretionary grants. Grants under this Article are conditional as these are meant for specific purposes. In making these grants, Union Government has to rely on the recommendations of the Planning Commission, an extra-constitutional and non-statutory body. Now the grants made under this article have outstripped statutory grants made under Article 275.

As stated earlier, under Article 293(2), the Union Government can grant loans to the States. In this provision, the Government of India has provided short term loans in the form of ways and means, advances, and medium and long-term loans to the States. Such loans are provided from the Consolidated Fund of India or from the special development fund built from the funds received in the form of foreign aid.

E. **Finance Commission**

Since the State Governments have also to be provided sufficient resources to perform their functions under the Constitution, provisions have been made in the Constitution for transfer of resources from the Union to the States by way of sharing of tax revenues and through grants-in-aid and specific purpose grants. It is a difficult task which may cause friction between the Union and the States. Article 280 (i) of the Constitution therefore provides for setting up of a Finance Commission by the President within two years of the commencement of the Constitution and thereafter at the expiration of every fifth year or before if it is considered necessary.

Article 280(ii) empowers the Parliament to determine by law the requisite qualifications of the members and the manner of their selection. The Parliament has enacted Finance Commission (Misc. Provision) Act 1951 to provide for the matters mentioned above. According to the Act, the Finance Commission has five members including the Chairman. The Chairman must be a person having wide experience in public affairs. The other four members must be:

- (i) A High Court judge or one qualified to be appointed as such;
- (ii) A person having special knowledge of the Finance and Accounts of the Government;
- (iii) A person having wide experience in financial matters and financial administration;
- (iv) A person having special knowledge of economics.

Functions

Article 280 (3) of the Constitution lays down the functions of the Finance Commission as follows:

- (a) The distribution between the Union and the States of the net proceeds of taxes which are to be or may be, divided between them under this chapter and allocation between the States of the respective shares of such proceeds.
- (b) The principles which should govern the grants-in-aid of the revenues of the States out of the consolidated fund of India.

- (c) Any other matter referred to the Commission by the President in the interest of sound finance.

Technically the role assigned to the Commission is advisory and its recommendations are not binding on the Government. But the recommendations of the Commission have to be treated with respect and are by and large recognized almost as award. To ensure that the Government takes proper action on the recommendations of the Commission, the Constitution provides that every recommendation of the Commission along with an explanatory memorandum on the action taken thereon has to be placed before the Parliament. This ensures that Government does not treat the recommendations lightly and the action taken can be examined and questioned by the Parliament.

F. Financial Federation at work

Transfer of net proceeds of taxation

It has already been stated that under Article 268,269, the net proceeds of certain taxes are to be wholly assigned to the States. Taxes under Article 268 are only levied by Union while taxes under Article 269 are both levied and collected by the Union. The reason behind inclusion of these taxes in the Union List is the maintenance of uniformity. In the case of items under Article 269 the additional purpose is to avoid the difficulties of administration.

Sharing Union Tax Revenues

Article 280 (3) of the Constitution requires the Finance Commission to make recommendations as to the distribution of the net proceeds of shareable taxes between Union and the States, and the allocation between the States of their shares in such proceeds. Formulation of principles that should guide the assignment of share to the States and the determination of individual share of each State constitutes a central task of the Commission.

The Constitution (Eightieth Amendment) Act, 2000 has altered the pattern of sharing of Central taxes between the Centre and the States in a fundamental way. Prior to this amendment, Taxes on Income

other than agriculture income and Union duties of excise were shared with States under articles 270 and 272 respectively. The Eightieth Amendment Act has substituted a new article for article 270 and omitted the old article 272. The new article 270 provides as under:

- (1) “270(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268 and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).
- (2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).
- (3) In this article, “prescribed” means, -
 - (i) until a Finance Commission has been constituted, prescribed by the President by order, and
 - (ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission”.

The Finance Commission is now required to recommend such percentage of taxes or duties referred to in the new article 270 that may be assigned to the States and also recommend the manner in which these may be distributed among the States.

This Amendment Act is based on a recommendation of the Tenth Finance Commission (TFC) which had recommended an Alternative Scheme of Devolution (ASD) in its report submitted in November 1994. Under this scheme, proceeds of all Central taxes, except surcharges, would constitute a common shareable pool from which a share was to be devolved to the States. The TFC recommended 29 per

cent of the proceeds to be devolved to the States under this Scheme. This percentage share included devolution on account of additional excise duties levied in lieu of sales tax as well as the grant-in-lieu of the tax on railway passenger fares.

In December 1996, the Government of India had brought out a Discussion Paper on the Alternative Scheme of Devolution spelling out the pros and cons of the proposed scheme. On the basis of a consensus reached in the Third Meeting of the Inter-State Council held on 17th July, 1997, the Government of India accepted the scheme with some modifications. A Constitution (Eighty-Fifth Amendment) Bill, 1998 was introduced in the 12th Lok Sabha. The Bill was referred to the Standing Committee of Parliament on Finance. The Standing Committee gave its report to the Parliament in the last week of February 1999. However, the Bill lapsed with the dissolution of the Lok Sabha. A modified version of the Bill was introduced in the Lok Sabha as 'The Constitution (Eighty-Ninth Amendment) Bill, 2000' on March 9, 2000. The Bill was passed by Parliament and received the assent of the President of India on June 9, 2000, as 'Constitution (Eightieth Amendment) Act, 2000.'

The main changes brought about by this amendment are as follows:

- (a) All Central taxes and duties, except those referred in articles 268 and 269 respectively and surcharges and cesses, are to be shared between the Centre and the States.
- (b) Only States in which these taxes and duties are 'leviable in that year' are entitled to get a share in these taxes and duties.
- (c) A percentage of "net proceeds" of these taxes and duties as may be prescribed by the President by order after considering the recommendations of the Finance Commission is to be shared by States.
- (d) The percentage of "net proceeds" of these taxes and duties which is assigned to the States in any financial year shall not form part of the Consolidated Fund of India.
- (e) The article 270(2) which referred to taxes on income prior to the amendment contained the following provision:

"Such percentage as may be prescribed, of the net proceeds in any financial year of any such tax, **except in so far as those**

proceeds represent proceeds attributable to Union Territories or to taxes payable in respect of Union emoluments, shall not form part of the Consolidated Fund of India.” In the new article 270 which refers to all taxes the words “net proceeds” attributable to Union Territories or to “taxes payable in respect of Union emoluments” have been omitted.

- (f) The recommendation of the Tenth Finance Commission regarding sharing of “gross proceeds” was also not accepted in the new Amendment Act and the words “the share of net proceeds” was prescribed in order to maintain consistency between articles 270, 279 and 280.

Article 269 has been recast by the Amendment Act. The new article includes only taxes on sale and purchase of goods and taxes on the consignment of goods. All other taxes that were listed under article 269 prior to the amendment have been deleted from this article.

In view of the changes brought out by the Constitution (80th Amendment) Act, 2000 the terms of reference were modified by the Presidential Order dated 19th June, 2000 and para 7 of the original terms of reference was deleted. This para required the Commission to suggest changes in the principles governing the distribution of additional excise duties in lieu of sales tax on sugar, textiles and tobacco, and the grant in lieu of the tax under the repealed Railway Passenger Fares Tax Act, 1957.

The Eleventh Finance Commission recommendations

Determining Inter se Shares of States

The inter se shares of the States in tax devolution was determined by the following criteria and relative weights as per the recommendation of the eleventh Finance Commission:.

Criteria and Relative Weights for Determining *Inter se* Shares of States

	Criterion	Relative Weight [per cent]
1.	Population	10.0
2.	Income (Distance Method)	62.5
3.	Area	7.5
4.	Index of infrastructure	7.5
5.	Tax effort	5.0
6.	Fiscal Discipline	7.5

It will be thus noted that there are three main considerations in the selection of criteria namely: (i) resource deficiency; (ii) higher cost of providing services; and (iii) fiscal discipline.

Twelfth Finance Commission (2005-2010)

The Twelfth Finance Commission (TFC) was appointed on November 1, 2002 to make recommendations regarding the distribution between the Union and the States of net proceeds of shareable taxes, the principles which should govern the grants-in-aid of the revenues of States from the Consolidated Fund of India and the measures needed to augment the Consolidated Fund of a State to supplement the resources of local bodies in the State on the basis of the recommendations made by the Finance Commission of the State. The terms of reference mandated the Commission to review the state of the finances of the Union and the States and suggest a Plan by which the Governments, collectively and severally, restore budgetary balance, achieve macroeconomic stability and debt reduction along with equitable growth. Furthermore, the Commission was also asked to suggest corrective measures for debt sustainability and to review the Fiscal Reform Facility introduced by the Central Government.

The Commission submitted its report on November 30, 2004 covering the period 2005-10. The recommendations of the Commission include a plan for restructuring of public finances of the Centre and the States through improvement in revenue mobilization and bringing down debt levels, and through enactment of fiscal responsibility legislation by States. The Commission recommended debt relief to States linked to fiscal reforms, doing away with the present system of Central assistance to State plans in the form of grants and loans and transfer of external assistance to States on the same terms and conditions as attached to such assistance by external funding agencies. The TFC raised the share of States in shareable Central taxes from 29.5 per cent to 30.5 per cent. Total transfers to States recommended by the TFC amount to Rs.7,55,752 crore over the five year period 2005-10. Of this, transfers by way of share in Central taxes and grants-in-aid amount to Rs.6,13,112 crore and Rs.1,42,640 crore, respectively. The total transfers recommended by the TFC are higher by 73.8 per cent over those recommended by the Eleventh Finance Commission (EFC). Within the total transfers, while the share in Central taxes is higher by 62.9 per cent, grants-in-aid recommended by the TFC are higher by 143.5 per cent over those recommended by the EFC.

Economic Survey 2004-2005

Recommendations of the Twelfth Finance Commission Restructuring public finances

- Centre and States to improve the combined tax-GDP ratio to 17.6 per cent by 2009-10.
- Combined debt-GDP ratio, with external debt measured at historical exchange rates, to be brought down to 75 per cent by 2009-10.
- Fiscal deficit to GDP targets for the Centre and States to be fixed at 3 per cent.
- Revenue deficit of the Centre and States to be brought down to zero by 2008-09.
- Interest payments relative to revenue receipts to be brought down to 28 per cent and 15 per cent in the case of the Centre and States, respectively.

- States to follow a recruitment policy in a manner so that the total salary bill, relative to revenue expenditure, net of interest payments, does not exceed 35 per cent.
- Each State to enact a fiscal responsibility legislation providing for elimination of revenue deficit by 2008-09 and reducing fiscal deficit to 3 per cent of State Domestic Product.
- The system of on-lending to be brought to an end over time. The long term goal should be to bring down debt-GDP ratio to 28 per cent each for the Centre and the States.

Sharing of Union tax revenues

- The share of States in the net proceeds of shareable Central taxes fixed at 30.5 per cent, treating additional excise duties in lieu of sales tax as part of the general pool of Central taxes. Share of States to come down to 29.5 per cent, when States are allowed to levy sales tax on sugar, textiles and tobacco.
- In case of any legislation enacted in respect of service tax, after the notification of the eighty eighth amendment to the Constitution, revenue accruing to a State should not be less than the share that would accrue to it, had the entire service tax proceeds been part of the shareable pool.
- The indicative amount of overall transfers to States to be fixed at 38 per cent of the Centre's gross revenue receipts.

Local Bodies

- A grant of Rs.20,000 crore for the Panchayati Raj institutions and Rs.5,000 crore for urban local bodies to be given to States for the period 2005-10.
- Priority to be given to expenditure on operation and maintenance (O&M) costs of water supply and sanitation, while utilizing the grants for the Panchayats. At least 50 per cent of the grants recommended for urban local bodies to be earmarked for the scheme of solid waste management through public-private partnership.

Calamity Relief

- The scheme of Calamity Relief Fund (CRF) to continue in its present form with contributions from the Centre and States in the ratio of 75:25. The size of the Fund worked out at Rs.21,333 crore for the period 2005-10.
- The outgo from the Fund to be replenished by way of collection of National Calamity Contingent Duty and levy of special
- The definition of natural calamity to include landslides, avalanches, cloud burst and pest attacks.
- Provision for disaster preparedness and mitigation to be part of State Plans and not calamity relief.

Grants-in-aid to States

- The present system of Central assistance for State Plans, comprising grant and loan components, to be done away with, and the Centre should confine itself to extending plan grants and leaving it to States to decide their borrowings.
- Non-plan revenue deficit grant of Rs.56,856 crore recommended to 15 States for the period 2005-10. Grants amounting to Rs.10,172 crore recommended for the education sector to eight States. Grants amounting to Rs.5,887 crore recommended for the health sector for seven States. Grants to education and health sectors are additionalities over and above the normal expenditure to be incurred by States.
- A grant of Rs.15,000 crore recommended for roads and bridges, which is in addition to the normal expenditure of
- Grants recommended for maintenance of public buildings, forests, heritage conservation and specific needs of States are Rs. 500 crore, Rs.1,000 crore, Rs.625 crore, and Rs.7,100 crore, respectively.

Fiscal reform facility

- With the recommended scheme of debt relief in place, fiscal reform facility not to continue over the period 2005-10.

Debt relief and corrective measures

- Central loans to States contracted till March,2004 and outstanding on March 31, 2005 amounting to Rs.1,28,795 crore to be consolidated and rescheduled for a fresh term of 20 years, and an interest rate of 7.5 per cent to be charged on them. This is subject to enactment of fiscal responsibility legislation by a State.
- A debt write-off scheme linked to reduction of revenue deficit of States to be introduced. Under this scheme, repayments due from 2005-06 to 2009-10 on Central loans contracted up to March 31,2004 will be eligible for write-off.
- Central Government not to act as an intermediary for future lending to States, except in the case of weak States, which are unable to raise funds from the market.
- External assistance to be transferred to States on the same terms and conditions as attached to such assistance by external funding agencies.
- All the States to set up sinking funds for amortization of all loans.
- States to set up guarantee redemption funds through earmarked guarantee fees.

Others

- The Centre should share ‘profit petroleum’ from New Exploration and Licensing Policy (NELP) areas in the ratio of 50:50 with States where mineral oil and natural gas are produced. No sharing of profits in respect of nomination fields and non-NELP blocks.
- Every State to set up a high level committee to monitor the utilization of grants recommended by the TFC.
- Centre to gradually move towards accrual basis of accounting.

Chapter V

Report of Sarkaria Commission on Centre–State Relations

It has already been mentioned that the central Government had set up the Sarkaria Commission in 1983 to conduct a comprehensive inquiry into the Central-State relations and to suggest measures for proper and smooth functioning of the federal system of the country. The commission submitted its report in January 1988 giving a comprehensive review of the centre-state relations.

In the light of the past 37 year's experience, several suggestions were given by the Sarkaria commission for the improvement of the center-state relations. The general conclusion of the commission is that under the Indian conditions a strong center is necessary not only to protect and preserve the independence, integrity and unity of the country but also to ensure a uniform integrated policy of basic issues of national concern. The commission felt that the considerations which weighted with the constitution makers is given a principally mentioned rule to the center are still relevant today. According to the commission the distribution of powers between the center and the state made by the constitution is by and large a proper reconciliation of the imperative need for a strong center with need for State autonomy. The commission, therefore, felt that the basic scheme and provisions of the constitution are sound and no structural changes in the functional and operational aspects of center-state relationship. With this introduction we may now study the major recommendation of the Sarkaria commission.

Recommendations regarding legislative relations

The Commission felt that the supremacy of Parliament as envisaged in Articles 246 and 254 regarding the matters in concurrent list is basically correct. The Commission did not agree with the suggestion of some State Governments for making any significant changes in the legislative list. According to the Commission any such change would weaken the Centre and would hinder the development of welfare policies in matters of national concern.

However, the Commission made the following suggestions for minor changes in the legislative relations:

- (i) The Constitution should be amended to enable the States to amend parliamentary laws on State List with the assent of the President. It has also suggested that the ceiling of three years should be prescribed for such parliamentary laws.
- (ii) The Commission has recommended a change in regard to entry 97 of the Union List. The suggestion is that the residual matters, other than taxation powers should be in the concurrent list.
- (iii) The Commission noted that many State Governments do not hold elections of the local bodies for long periods. It therefore, recommended that the Parliament should be enabled to enact laws to ensure regular and proper working of local bodies. For this purpose entry 5 of the State List has to be amended. The Commission did not find it necessary to make it obligatory on the part of the Centre to consult the State Government before enacting law on current subjects. The Commission preferred this to be achieved through conventions.

Recommendations regarding administrative relations

- (i) The Commission was of the general view that the principle of Union supremacy in the executive field as envisaged in Article 265 and 257 should remain intact. It has, therefore, recommended measures for smooth administrative relations between the Centre and the States. More extensive use should be made of Article 258 which permits entrustment of central functions of the State.
- (ii) One of the major recommendations of the Commission regarding administrative relations is that the requirement of consultations with the Chief Ministers on the appointment of any person as Governor of the State should be prescribed in the Constitution itself. It has been suggested that on demitting office, the Governor should not be eligible for any other appointment or office of profit except the office of Governor or Vice President. He should also not be allowed to enter politics.
- (iii) The Commission has tried to set out certain guidelines to be adopted in appointing Chief Ministers and for the dismissal of Ministry. The general principle is that majority of the Chief Ministers should be tested on the floor of the House. However, the Commission found that

it is neither feasible nor desirable to provide for a guideline for the exercise of the Governors' discretion.

- (iv) Regarding the Governor's powers to refer State Bills to Centre for assent, the Commission has suggested that Centre should observe a proper time frame for dealing with such bills. If the assent is withheld, the reasons should be communicated to the State Government. It has also been suggested that the assent should not be withheld merely on policy differences on matters relating to States List and matters relating to concurrent list on the ground that the Union is contemplating comprehensive law. Regarding the emergency provisions (Article 353, 355, and 356), the Commission felt that these provisions are meant to ensure integrity of the National and not to establish supremacy of the Union.

The Commission was of the view that Article 356 regarding the imposition of President's Rule should continue to exist. However, this power should be used sparingly and with extreme caution. The report of the Governor should contain a clear statement of material facts and should be given wide publicity.

- (v) The Article 356 should be amended to provide that the material facts and grounds justify President's Rule, should form part of the proclamation.
- (vi) Regarding the use of Armed Forces the Commission was of the view that it is entirely for the Union Government to decide, *suo moto*, where the situation demanded use of such Armed Forces. However, it is desirable to consult the State Government, whenever possible, before deploying its Armed Forces otherwise than at the request of the State Government.
- (vii) The Commission found that All India Services are as necessary today as when the Constitution was framed. It has recommended further strengthening of the service and regular consultation on their management between the Centre and the State. For this purpose it has suggested constitution of Advisory Council under the Cabinet Secretary. It has also been suggested that in agreement with the States, more All India Services should be created.

Financial Relations

The Commission has made following recommendations regarding the financial relations between the Centre and the State:

- (i) It has accepted the major role of the Finance Commission. However, suggestion has been made that the terms of reference of the Finance Commission should be drawn up after informal consultations with the States.
- (ii) The Commission has recommended that the Constitution should be amended to enable the Parliament to provide for the sharing of the corporate tax. It has also suggested amendment of the constitution to enable levying taxes on advertisement in broadcast to be distributed to State under Article 269 of the Constitution.
- (iii) The Commission has made some suggestions about the sharing of Income Tax and Excise duty. It has been also suggested that surcharge on income should be levied for specific purposes and for limited periods. Similar suggestions have also been made about the special cess. The Commission has suggested that grant should be given to the States in lieu of railway passenger fare tax as recommended by the Finance Commission.
- (iv) The Commission has suggested review of royalty rate of minerals etc., once every two years as against the practice of reviewing it every four years.
- (v) In regard to the assistance for natural calamities, it has suggested that State should be given discretion to make some suggestions for the use of relief fund. Strict penalties should be imposed for diversion and misappropriation of funds. The centre should give its consent to the State for borrowing from Banks etc. for a period of less than one year.
- (vi) The system of Municipal Bonds should be introduced to enable local bodies to raise resources.
- (vii) The Commission also suggested setting up an Expert Body to recommended taxation and resources mobilization of Union and States. It has also suggested preparation of comprehensive and proper plans on the special Government subsidy and the setting up of an official body to evolve steps for coordination of economic policies and to ensure a consensus on financial matters.

Planning Commission

The Commission has made the following recommendations should the working of the Planning Commission and National Development Council:

- (i) It has been suggested that Planning Commission should hold effective consultations with the State at all stages and should evolve healthy conventions to give weightage to the opinion and suggestions of the state.
- (ii) National Development Council should be renamed as National Economic and Development Council. It emerged as the highest political level inter-Governmental body and gave thrust to planned development. The Commission has suggested that instead of its present informal status, the National Development Council should be given constitutional status under Article 263. This body should be involved in the formulation of plans from the beginning and should provide a forum for arriving at a consensus on the mobilization and use of resources. The loan grant pattern of central assistance and the system of earmarking of outlays should be reviewed. On the subject of centrally sponsored schemes, the Commission observed such schemes may be kept to the minimum. The States should be fully involved in determining the coverage of such schemes.

Inter-State Trade and Industry

On the subject the Commission made the following recommendations:

- (i) The Commission favoured Parliament's control over Inter-State Trade and Commerce as provided for in the Constitution. However, it recommended that an Advisory Authority should be constituted under Article 306 to oversee the subject of free trade.
- (ii) In the field of Industrial Licensing the Commission did not recommend delegation of blanket power to the States. It has, however, suggested that Union Government should exercise greater restraint in occupying the industrial field.
- (iii) It has also been recommended that the Union Government's control over any industry should be reviewed on mandatory basis every three years.
- (iv) The Union Government's control should be restricted to specific aspects of an industry rather than the whole industry.

Inter-State Council

The Commission has recommended establishment of an Inter-State Council under Article 263 as a permanent body. The Council would deal with socio-economic, planning and development. It should evolve guidelines for identifying issues to be brought before it. The Council should include Prime Minister, Union Cabinet Minister and all Chief Ministers.

Other suggestions

Besides the suggestions mentioned above, the Commission has also made several other suggestions. Some of the important ones are given below:

- (i) The Commission has suggested amendment to the Constitution to enable a time schedule to be prescribed by Law within which the functionaries having consultative roles in the procedure for appointing High Court Judges should complete their part of the process.
- (ii) On the subject of broadcasting, the Commission has suggested that there should be reasonable decentralization of power and harmonious adjustment between the emergence of national interest and varied needs and aspirations of the State and the people. However, the Commission did not agree with the suggestion to transfer broadcasting to Concurrent List or State List.
- (iii) The Commission observed that the question of language should not be politicized. It has also suggested that the three Language formulae should be implemented in its letter and spirit uniformly by all States.
- (iv) The States should have a greater role in the control of essential commodities.

General reactions

The general reaction of the State Government ruled by opposition parties towards the report of the Sarkaria Commission has not been very enthusiastic. Most of them have viewed the recommendations of the Commission as totally inadequate. They probably desired a thorough reform of the provisions concerning Centre-State relations. Their main contentions are:

- (i) Power of the Central Government to impose President's rule should be severely curtailed. State Government should be free to operate within their areas of legal and territorial jurisdiction. These state governments desire that the Union List should be severely curtailed and should include only defence, foreign relations, general communications, currency etc., and all other powers should be vested in the States. The Commission has, however, rejected this demand on the ground that this would weaken the Centre to the extent of threatening the integrity of the country.
- (ii) The State Government desired that they should have greater share in the Revenues out of taxation. They feel that at present they are too much dependent on the Centre for running and carrying out even limited functions assigned to them in the Constitution. The state also desired that the discretionary grants of the Centre should be totally abolished. They should get their share of resources as a matter of right and this should be enshrined in the Constitution itself.
- (iii) Some of the States have gone to the extent of suggesting that the institution of Governor should be abolished. According to them the Governor have been used as agents of the Centre to create trouble for the opposition ruled states. On this point the Commission has argued that most of the problems can be got over if good persons are appointed as Governors in consultation with the Chief Ministers of the concerned States. The Commission has suggested development of healthy conventions to guide the actions of the Governors.