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POLITY & CONSTITUTION

FEDERAL STRUCTURE DEVOLUTION OF POWER
ISSUES AND CHALLENGES PERTAINING TO THE FEDERAL STRUCTURE, DEVOLUTION OF POWERS AND FINANCES UP TO LOCAL LEVELS AND CHALLENGES THEREIN

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1. Concept of Federalism

Federalism is a system of polity in which power is divided between Union and its constituent units i.e. states. In this system, the Central Government usually oversees the issues that are of importance for the entire country, whereas the government at the lower level looks after issues of local concern. The purpose of this Division of Power between the two tiers of government is twofold: i) Preventing concentration of power in the hand of one tier of government ii) Generating strength of the nation through the Union.

So what exactly are the characteristics of federalism?

1. There should be two levels of governments, with each having its own independent sphere of administrative and legislative competence.
2. Each level of the government should have an independent tax base.
3. A Written Constitution from which respective governments derive power.
4. Existence of rigid constitution
5. An independent judiciary to adjudicate if conflict arises between the two tiers of government.

1.1. Federalism in India

While India is a federation, the nature of the India’s federalism is often discussed. Some have argued that it is a quasi-federal arrangement. Others consider it as having a unitary character, with many federal features.

Moreover, though India has a federal form of government, the world federalism/federation has not been used in the Indian Constitution (the Constitution does not expressly declare India as a federation). Article 1 of the Constitution says that India is a Union of States.

But explanation for the same can be found in Dr. Ambedkar’s speech to the Constituent Assembly: “The use of word ‘union’ is deliberate. I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation, and that the federation not being the result of an agreement, no state has the right to secede from it.”

India’s position, thus, is significantly different from that of USA, where states bargained and a federation was created. The overriding concern at the time of drafting the Constitution was the "unity and integrity of India". This led to a number of factors that gave the Indian Constitution a decidedly unitary tilt, with several provisions in favour of the Union. Some of them have been mentioned below:

Unitary Features:

- Residuary powers are with the Union Government
- States can be created or diminished without their consent
- Concept of single citizenship, unlike that of USA
- All India Services officers head important positions in States
- The role of Governor in States is very important and he is appointed by the Central Government
- The system of audit is headed by the CAG, who is appointed by the Central Government
- The judges of High Courts are appointed by the President.
- Emergency Provisions

The framers of the Indian Constitution went in for a mix of strong Central government, with substantial autonomy to the States. In spite of the centrist bias of the Constitution, largely instituted for preserving unity and integrity of the country, the Supreme Court had to concede
in S.R. Bommai vs. Union of India that federalism, like secularism, is a basic feature of the Constitution. With increasing emphasis on decentralization of powers to better address local needs and aspirations, the federal aspects are likely to be strengthened in future, greater nuances of which have been discussed in subsequent sections.

2. Federal Structure

Being federal in nature, our Constitution divides legislative, executive and financial powers between the Centre and States. But, judicial powers are exercised by an integrated judicial system, which enforces both the central and state laws, unlike other federations like USA, where judicial powers are also divided.

2.1. Union State Legislative Relations (Arts. 245 to 255)

As per the Indian Constitution, legislative or law making powers are not vested in a single tier of government, rather they have been distributed between the Centre and the States with respect to territory and subject matter.

(A) Territorial Jurisdiction

The Constitution defines the territorial limits of legislative powers. Parliament can make laws for whole or any part of the territory of India. It has extra territorial legislative powers as well, which means that laws of Parliament are also applicable to the Indian citizens and their property in any part of the world. Whereas a State can legislate only for their State and its laws are not applicable outside the State, except when there is a sufficient nexus between the State and the population or area (like some strong relation in past, which is still continued). However, there are certain limitations to territorial jurisdiction of Parliament in certain situations. For example - The Governor is empowered to direct that an act of Parliament does not apply to a Scheduled Area in the State or applies with specified modifications and exceptions.

(B) Subject Matter

As regards the subjects of legislation, the constitution adopts three list system from the Government of India Act, 1935. These three lists are the Union, State and Concurrent List as mentioned in the VIIth Schedule of the Constitution.

The Union List contains subjects of national relevance (mentioned in the table below) over which the Parliament has an exclusive authority to formulate laws. This list at present has 100 subjects (originally 97 subjects).

The State List includes subjects of importance to the States (mentioned in the table below), over which the State legislature has an exclusive authority to formulate laws. This list at present has 61 subjects (originally 66 subjects).

The Concurrent List containing subjects of mutual relevance over which both the Parliament and State Legislatures can legislate, but in case of conflict the Union law will prevail. This list at present has 52 subjects (originally 47 subjects).

<table>
<thead>
<tr>
<th>Level</th>
<th>Competences</th>
<th>Enabling Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Centre</td>
<td>Defence, Atomic Energy, Foreign Affairs, Citizenship, Transport, Infrastructure, Postal Service, Banking, Natural Resources</td>
<td>Article 246 + VIIth Schedule (List I)</td>
</tr>
<tr>
<td>State</td>
<td>Public Order/Police, Public Health, Agriculture, Water, Land, State Public Services</td>
<td>Article 246 + VIIth Schedule (List II)</td>
</tr>
<tr>
<td>Centre + States (Concurrently)</td>
<td>Criminal Law, Economic/Social/Family Planning, Marriage Law etc.</td>
<td>Article 246 + VIIth Schedule (List III)</td>
</tr>
</tbody>
</table>

Fig. Important Legislative Competence
The powers which are not "enumerated" in any of the lists in the 7th Schedule (Residuary Powers) are vested in the Centre (Article 248) like in Canada and unlike the USA, Australia and Switzerland.

The Constitution also provides that in case of overlapping, the Union List prevails over the other two and Concurrent List prevails over the State List.

Further, under special conditions, the Parliament can legislate on subjects included in the State List, under some specific circumstances, which are as follows:

(i) In the National Interest (Art.249) - If the Council of States (Rajya Sabha) declares that it is necessary for the Centre to legislate upon a subject in the State list, in national interest, and passes a resolution to this effect, with a majority of at least 2/3rd of members present and voting. This resolution remains in force for a year and can be renewed any number of times, but for not more than one year at a time. The laws so made do not have any effect six months after the resolution has ceased to be in force. At the same time, the State can also legislate upon the same subject, but in case of any inconsistency, laws of the Centre prevail. This particular feature makes the entire legislative process federal in nature.

(ii) By Agreement between States (Art. 252) - When two or more State Legislatures pass a resolution, requesting the Parliament to legislate upon a subject in the State List. The law passed by Union Parliament shall be applicable only to the States, which demanded such legislation. Any other State may later adopt it by passing a resolution to that effect. In this case, States cease to have power to legislate upon that subject and only the Parliament can amend or repeal such a law. In past, laws have been made using this provision, some of them are: Wildlife (Protection) Act 1972, Urban Land (Ceiling and Regulation) Act.

(iii) To Implement International Treaties and Agreements (Art. 253) - This provision enables the central government to fulfil its international obligations. The Lokpal and the Lokayuktas Bill, 2011 was introduced in the Parliament through the provisions of this particular article.

(iv) Under Proclamation of National Emergency (Article 352) - During national emergency, the Parliament can legislate upon any subject in the State List. Such a law becomes inoperative on expiration of six months after the emergency has ceased to operate. However, at the same time the State can also legislate upon the same subject, but in case of any inconsistency, laws of the Centre prevail.

(v) Under Proclamation of President's Rule (Art.356) - During President’s rule in a State, the Parliament can make laws with respect to any subject in the State list, in relation to that state. Such a law continues to be operative even after the President’s rule. But it can be repealed, altered or re-enacted later by the State Legislature.

Some other provisions provide for Centre’s control over State legislation:

(i) The Constitution empowers the Governor to reserve certain types of bills passed by the State Legislature for consideration of the President (Art. 200).

This provision has led to a considerable degree of resentment among the State governments, especially due to excessive delays in communicating the Centre’s decision to the State, on the bills so reserved.

(ii) Bills on certain matters in the State list can be introduced in the State legislature only with the prior approval of the President(Art. 304), i.e. bills imposing restriction on the freedom of trade and commerce.

(iii) The President can direct the States to reserve Money Bills as well as other financial bills passed by the State Legislature for his consideration, during a Financial Emergency (Art. 360).
Apart from this, Art. 169 empowers the Union Parliament to provide by law, for the abolition of the Legislative Council (Vidhan Parishad) of a State having such a Council.

The **Concurrent List** gives power to the two legislatures, Union as well as State, to legislate on the same subject. In case of conflict or inconsistency, the rule of **repugnancy**, as contained in Article 254 comes into play to uphold the principle of Union’s supremacy. Under this rule, if there is any discrepancy between the State and the Centre over a subject in the Concurrent List, the Union law takes precedence over the State’s law, and the State’s law to the extent of such repugnancy, be void.

But, as an exception, if the State law has been reserved for consideration of the President and has received his assent, then the State law prevails in that State. But, the Parliament remains competent to override such a law by subsequently making a law on the same matter.

**So what is the underlying need for the Concurrent List in the Constitution?**

There is no doubt that uniform laws are needed in national interest and therefore Parliament has been given legislative power over these subjects. But at the same time, issues/problems on ground can vary from state to state and this requires varied approach on a case-by-case basis. Given such a situation state laws are more relevant, even though the Central government can provide broad directions/guidelines. Thus, arises the need to have a Concurrent List in the Constitution to ensure good governance for the citizens. Recommendations of Sarkaria Commission have been discussed ahead with regards to the Concurrent List.

**2.2. Administrative Relations (Arts. 256 to 263)**

The executive power of the centre extends primarily to matters with respect to which Parliament has exclusive authority to make laws. Similarly the executive powers of the states extend to all those matters which are within their legislative domain. But with regard to the matters which are in the concurrent list there are three courses of action with the parliament in reference to the enforcement of legislation. It can leave it entirely to the states or may take over the task of ‘enforcing it or it may take upon the enforcement of a part of the law, leaving the rest of it to the states for enforcement.

The framers of Indian Constitution made detailed provisions in the Constitution in regard to administrative relations between the Centre and State to ensure minimization of conflict between the two. They have been elaborated below:

**a) Directives by the Union to the State governments:** Article 256 mentions that the executive power of every state shall be so exercised as to ensure compliance with laws made by Parliament and any existing laws, which apply in that state, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.

This power of the Union extends to the limit of directing a State in a manner it feels essential for the purpose. For instance, the Union can give directives to the State pertaining to:
- the construction and maintenance of means of communication declared to be of national or military importance;
- protection of railways within the State;
- the provisions of adequate facilities for instructions in mother tongue at the primary stage of education to children belonging to linguistic minority groups in the State;
- drawing up and execution of the specified schemes for the welfare of the Schedule Tribe in the State.

This is essential to ensure the implementation of Parliamentary laws throughout the
country. Non-compliance of the directives might lead to a situation mentioned under Art.365 and it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus, the Union can invoke Article 356, for imposition of President’s rule in the State and take over the administration of the State.

b) Delegation of Union functions to the States: Usually executive powers are divided on the basis of subjects in the lists, but under the constitutional provision of Article 258(1) the President may, with the consent of the State government, entrust (either conditionally or unconditionally) to that government any of the executive functions of the Centre. Under Art 258(2), the Parliament is also entitled to use the state machinery for enforcement of the Union laws, and confer powers and entrust duties to the State. Under Art 258A, the State can also, with the consent of the Union government, confer administrative functions to the Union. In respect of matters in the Concurrent list, executive powers rest with the State, except when a constitutional provision or a Parliamentary law specifically confers it to the Centre.

c) All India Services: Besides the Central and State services, the Constitution under Article 312 provides for the creation of an additional "All-India Services", common to both the Union and States. The State has the authority to suspend the officials of All India Services, but the power of appointment and taking disciplinary action against them vests only with the President of India. The idea of having an integrated well-knit All India Services to manage important and crucial sectors of administration in the country was incorporated in our Constitution. Their recruitment, training, promotion, disciplinary matters are determined by the Central government. A member of the Indian Administrative Service (IAS), on entry into the service is allotted a State, where he/she serves under a State government. Though, it can be argued that the All India Services violate the principle of federalism, but such an arrangement, wherein a person belonging to the All India Service being responsible for administration of affairs, both at the Centre and States, brings cooperation in administration and helps to ensure uniformity of the administrative system throughout the country. Currently, there are three All India Services, namely IAS, IPS and IFoS (the Indian Forest Service was created as the third All India Service in 1966 by Art.312).

d) Constitution of Joint Public Service Commission for two or more States: When two or more states, through a resolution to that effect, in their respective legislatures agree to have one such Commission, the Parliament may by law, provide for a Joint Commission. There is also a provision in the Constitution, wherein on request by two or more States, the UPSC can assist those states in framing and operating schemes of joint recruitment to any service for which candidates with special qualifications are required.

e) Inter-State Council: India is a Union of States, wherein the Centre plays a prominent role, but at the same time is dependent on the States for the execution of its policies. The Constitution has provided for devices to bring about inter-governmental cooperation, effective consultations between the Centre and States so that all important national policies are arrived at through dialogue, discussion and consensus. One such device is the setting up of the Inter-State Council. The President is given powers under Article 263 of the Constitution to define the nature of duties of the Council. The Council is to inquire into and advise upon disputes, which may have arisen between the States. In addition, it may investigate and discuss subjects of common interest between the Union and the States or between two or more States, in order to facilitate co-ordination of policy and action. The inter-state council was set up under Article 263 of the Constitution in 1990. The ISC has held 10 meetings so far and has taken several important decisions. Some of them are:
i. Time bound clearance of bills referred for the President’s consideration
ii. Approved the Alternative Scheme of Devolution of Share in Central Taxes to States
iii. Indiscrete use of Article 356 in the country
f) **Inter-State river water dispute:** Art.262 states that the Parliament may, by law, provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-state river or river valley and it may by law provide that neither the Supreme Court, nor any other court shall exercise jurisdiction in respect of any such dispute.

### Inter-State River Water Disputes (Amendment) Bill, 2019

**Brief background**

Under Article 262, two acts were enacted – (i) River Boards Act 1956 which states that centre should take control of regulation and development of Inter-state rivers and river valleys in public interest. However, not a single river board has been constituted so far. (ii) The Interstate River Water Disputes Act, 1956 (IRWD Act) which confers a power upon union government to constitute tribunals to resolve such disputes. It also excludes jurisdiction of Supreme Court over such disputes.

Under the Interstate River Water Disputes Act, a state government may request the central government to refer an inter-state river dispute to a Tribunal for adjudication. If the central government is of the opinion that the dispute cannot be settled through negotiations, it is required to set up a Water Disputes Tribunal for adjudication of the dispute, within a year of receiving such a complaint. Over the years, there have been many Water Dispute Tribunals hearing the cases between states on river water sharing. But they have not been able to effectively resolve the disputes.

There are various issues with the Act. A separate Tribunal has to be established for each Inter State River Water Dispute. There is inordinate delay in constituting the tribunal and also securing settlement of such disputes owing to no time limit for adjudication. Tribunals like Cauvery and Ravi Beas have been in existence for over 26 and 30 years respectively without any award. Further, there is no provision for an adequate machinery to enforce the award of the Tribunal. Also the losing Party is quick to seek redressal in the Supreme Court. Only three out of eight Tribunals have given awards accepted by the States.

**About the bill**

Recently, the Lok Sabha cleared the Inter-State River Water Disputes (Amendment) Bill, 2019, which seeks to amend the IRWD Act 1956. Some key provisions of the bill are:

- **Dispute Resolution Committee** needs to be established by the Central Government before referring dispute to the tribunal, to resolve the dispute amicably by negotiations within one year (extendable by six months), and submit its report to the central government.
- **Establishment of a Single Inter-State River Water Disputes Tribunal** by the Central Government, which can have multiple benches. It must give its decision on the dispute within two years, which may be extended by another year.
- **Composition of Tribunal** will include a Chairperson, Vice-Chairperson, three judicial members, and three expert members.
- The **decision of the Tribunal** shall be final and binding. The bill also removes the requirement of publication of decision in the official gazette in the original Act.
- It also makes mandatory for the Central Government to **make a scheme to give effect to the decision** of the Tribunal.
- **Data Collection and maintenance of a databank** at national level would be done for each river basin by an agency to be appointed and authorized by central government.

Apart from these, Art.355 imposes duties on the Centre to protect every State against external aggression and internal disturbances and to ensure that the Government of every State is carried on, in accordance with the provisions of the Constitution.

In case of National Emergency (Art. 352), the Centre becomes entitled to give executive directions to a State on any matter. Similarly, during President Rule (Art.356), the President can assume to himself the functions of State government and the power vested in Governor or any other executive authority in the State. During operation of Financial Emergency (Art.360), the Centre can direct the States over certain financial matters and the President can give other
necessary directions, including reduction in salary of persons serving in the State and the Judges of the High Court.

2.3. Financial Relations (Art.268 to Art.293)

The Indian Constitution has elaborate provisions regarding the distribution of revenues between the Union and the States. Article 268 to 293 in Part XII deal with the financial relations. The financial relations between the Union and the States can be studied under the following heads:

1. Taxes and duties levied by the Union, but collected and appropriated by the States: Stamp duties are levied by the Government of India, but collected and appropriated by the States, within which such duties are leviable, except in the Union Territories, where they are collected by the Union Government (Art.268). The proceeds of these duties levied within any State are assigned to that State only and do not form a part of Consolidated Fund of India.

2. Service tax levied by the Centre, but collected and appropriated by the Centre and the States (Article 268A): This has been omitted after adoption of GST through 101st constitutional amendment act.

3. Taxes levied and collected by the Union, but assigned to the States within which they are leviable (Art.269):
   a) Succession duty in respect of property, other than agricultural land.
   b) Estate duty in respect of property, other than agricultural land.
   c) Terminal taxes on goods or passengers carried by railways, sea or air.
   d) Taxes on railway fares and freights taxes on transactions in Stock Exchanges.

4. Article 269A states that Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. The amount apportioned to a State under this shall not form part of the Consolidated Fund of India.

5. Taxes levied and collected by the Union and distributed between the Union and the States (Art.270): Certain taxes are levied as well as collected by the Union, but their proceeds are divided between the Union and the States in a certain proportion in order to effect an equitable distribution of the financial resources. This category includes all the taxes and duties referred to in the Union List, except the three categories mentioned above (Article 268, 269, 269A), any surcharge and any cess levied for specific purposes. The manner of distribution of net proceeds of these taxes is prescribed by the President, on the recommendation of the Finance Commission.

6. Surcharge on certain taxes (Art.271): The Parliament is authorized to levy surcharge on the taxes mentioned in the above two categories (Art.269 and Art.270) and the proceeds of such surcharges go to the Centre exclusively and are not shareable.

7. Taxes levied and collected and retained by the states: These are the taxes enumerated in the State List and belong to the States exclusively. This is subject to Article 386 - No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or of services or both, where such supply takes place— (a) outside the State; or (b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.

8. Grants-in-Aid: The Parliament may make grants-in-aid from the Consolidated Fund of India to such States as are in need of assistance (Art.275), particularly for the promotion of welfare of tribal areas, including special grant to Assam. These are called statutory grants and made on recommendation of the Finance Commission. Apart from this, Art.282 provides for discretionary grants by the Centre and States both, for any public purposes.
9. **Loans:** The Union Government may provide loan to any State or give guarantees with respect to loans raised by any State.

10. **Previous sanction of the President (Art 274):** No Bill or amendment can be introduced or moved in either House of Parliament without the previous sanction of the President, if:
   a. It imposes or varies any tax in which the States are interested; or
   b. It varies the meaning of the expression “Agricultural Income” as defined in the Indian Income-Tax Act; or
   c. It affects the principles on which money are distributed to the States; or
   d. It imposes a surcharge on the State taxes for the purpose of the Union.

11. **Freedom of Inter-State Trade:** According to Article 301, Freedom of Trade, Commerce and Intercourse throughout the territory of India is guaranteed, but Parliament has the power to impose restrictions in public interest.

12. **Distribution of non tax-revenues:** Non tax revenues from post and telegraph, railways, banking, broadcasting, coinage and currency, central public sector enterprises and escheat (death of a person without heir) and lapse (termination of rights) go to the Centre, while State receives non-tax revenues from irrigation, forests, fisheries, state public sector enterprises and escheat and lapse (if property is situated in that state).

13. Provision has been made for the constitution of a Finance Commission to recommend to the President certain measures for the distribution of financial resources between the Union and the States (Art. 280).

Under the situation of emergencies, these financial relations also undergo changes according to the situation and the President can modify the constitutional distribution of revenues between the Centre and the States.

### 2.4. Trends in Centre-State relations

**Development of India's federalism since Independence**

The first phase of India's federalism extended from the **time of independence** to the Mid-1960. Prime Minister Jawahar Lal Nehru took great efforts to keep the Chief Ministers of all the states apprised of the activities at the Centre. He wrote to each of them to keep them informed of the state of nation and to build a consensus on national issues. This smooth phase of Indian federalism was helped by the reason that a single party ruled in almost all the states and at the Centre.

But after the **1967 election**, the Congress Party was defeated in nine states and its position at the Centre became weak. Thus, a new era in Centre-State relations started. The non-Congress governments in the States opposed the increasing centralization and intervention of the Central government. They raised the issue of State autonomy and demanded more powers and financial resources for the States. This caused tensions and conflicts in Centre-State relations over various issues e.g. mode of appointment and dismissal of Governor, discriminatory and partisan role of Governors, impositions of President’s rule for partisan interests, deployment of central forces in the States to maintain law and order, reservation of State bills for consideration of the President, sharing of finances (between Centre and States), encroachment by the Centre on the State list and so on.

With the prolonged period of coalition governments at the Centre, the third phase in federalization of Indian politics started in the **late 1980's**. Regional parties such as the DMK or the RJD have asserted their interests more openly over last one and a half decade of Indian polity. Such assertiveness has resulted in the national parties giving more importance to the role of regional parties in country’s functioning. Despite the increasing stature of regional parties there have been several issues and flashpoints between the Centre and the State. These issues have been under consideration and following developments can be seen in this direction:
2.4.1. Administrative Reform Commission (First)

The Central government appointed a six member Administrative Reforms Commission (ARC) in 1966 under the Chairmanship of Morarji Desai. Its terms of references included, among others, the examination of Centre-State relations. In 1969, ARC submitted 22 recommendations in its report on Centre-State relationship. The important recommendations are:

a) Establishment of Inter-State Council under Article 263 of the Constitution.

b) Appointment of people having long experience in public life and administration and non-partisan attitude as Governors.

c) Delegation of powers to the maximum extent to the States.

d) Transferring of more financial resources to the States to reduce their dependency upon the Centre.

e) Deployment of Central armed forces in States, either on their request or otherwise.

But, no action was taken by the Central Government on the recommendations of ARC.

Next, important development in this direction was appointment of Sarkaria Commission.

2.4.2. Sarkaria Commission

The Central government appointed a three-member Commission in 1983 on Centre-State relationship under the Chairmanship of R S Sarkaria, a retired Judge of the Supreme Court. The Commission submitted its report in October 1987 with 247 recommendations. It did not favour structural changes and regarded the existing constitutional arrangements and principles relating to the institutions basically sound. But, it emphasised need for the change in functional or operational aspect. It outrightly rejected the demand for curtailing the powers of centre and stated that a strong centre is essential to safeguard the national unity and integrity. However, it observed the over-centralisation as an avoidable phenomenon. Its important recommendations were:

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.

2. Article 356 (President’s rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.

3. The institution of All-India Services should be further strengthened and some more such services should be created.

4. The residuary power of taxation should continue to remain with the parliament, while the other residuary powers should be placed in the concurrent list.

5. When the President withholds his assent to the state bills, the reason should be communicated to state government.

6. The Zonal Councils should be constituted afresh and reactivated to promote the spirit of federalism.

7. The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.

8. The Centre should consult the states before making a law on a subject of the Concurrent List.

9. The procedure of consulting the Chief Minister in the appointment of State Governor should be prescribed in the Constitution itself.

10. The Governor’s term of five years in a state should not be disrupted except for extremely compelling reasons.

11. Steps should be taken to uniformly implement the three language formula in its true spirit.

12. No autonomy in for radio and television but decentralization in their operations.

13. The Commissioner for Linguistic Minorities should be activated.

Till December 2007, The Central Government has implemented 179 (out of 247) recommendations of the Sarkaria commission. The most Important is the establishment of Inter-State Council in 1990.
2.4.3. MM Punchhi Commission

In April 2007 a ‘Commission on Centre-State Relations’ was formed under the chairmanship of Madan Mohan Punchhi, former Chief justice of India. The Commission presented its seven volume report to the government on March 30, 2010. Volume II goes into the constitutional schemes of Centre-State relation and some of its recommendations are as follows:

(Being the latest committee on Centre-State relations, its recommendations are given in detail)

On Consultation with States while legislating on matters in Concurrent List

List III (concurrent list) includes subjects on which the Union and the States can both legislate. For cultivating better Centre-State relations and to facilitate effective implementation of the laws on List III subjects, it is necessary that some broad agreement is reached between the Union and States before introducing legislation in Parliament on matters in the Concurrent List. The existing arrangements in this regard require institutionalization through the Inter-State Council. The Council, if found necessary, may use an independent mechanism like a Committee of State Ministers to thrash out contentious issues in the Bill. It would help ensure a measure of support among the States for the administrative and fiscal arrangements the Bill ultimately proposes to Parliament. It is important that the records of proceedings in the Council/Committee including views of States are made available to Parliament while introducing the Bill on Concurrent List subjects.

On Transfer of Entries in the Lists, from List II to List III

Article 368(2) empowers Parliament to amend any provision of the Constitution in accordance with the procedure laid down therein. Should Parliament deplete or limit the legislative powers of the States through this process unilaterally or otherwise? Greater flexibility to States in relation to subjects in the State List and "transferred items" in the Concurrent List is the key for better Centre-State relations.

In this context, it is worthwhile to examine through a joint institutional mechanism whether the administration of the relevant subject under the Central law (on the transferred subject) has achieved the objects and whether it is desirable to continue the arrangement as an occupied field limiting thereby the exclusive jurisdiction of the States. If the findings are not positive it may be worthwhile to consider restoration of the item to its original position in State List in the interest of better Centre-State relations. Such a step hopefully will encourage the States to devolve the powers and functions on that subject to the Panchayats and Municipalities as stipulated in Parts IX and IX-A of the Constitution.

On Management of matters in concurrent jurisdiction

Given the joint responsibility of the Centre and the States it is imperative that legislation on matters of concurrent jurisdiction generally and transferred items from the State List in particular, should be managed through consultative processes on a continuing basis. The Commission recommended a continuing auditing role for the Inter-State Council in the management of matters in Concurrent or overlapping jurisdiction.

On Bills reserved for consideration of the President

Article 201 empowers the President to assent or withhold assent to a Bill reserved by a Governor for the President's consideration. If the President returns the Bill with any message, the State Legislature shall reconsider the Bill accordingly within a period of six months for presentation again to the President for his consideration.

States have expressed concern that Bills so submitted sometimes are indefinitely retained at the Central level even beyond the life of the State Legislature. Allowing the democratic will of the State Legislature to be restricted by centre is questionable in the context of 'basic features'
of the Constitution (federal character of the constitution). Therefore the President should decide consenting or withholding consent in reasonable time to be communicated to the State. A period of six months prescribed in Article 201 for State Legislature to act when the Bill is returned by the President can be made applicable for the President also to decide on assenting or withholding assent to a Bill reserved for consideration of the President.

**On Treaty making powers of the Union Executive and Centre-State Relations**

Entering into treaties and agreements with foreign countries and implementation of treaties, agreements and conventions with foreign countries are items left to the Union Government (Entry 14 of List I). Article 253 confers exclusive power on Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. In view of the vastness of the treaty making powers with the Union Government, the Commission recommends that Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers. Several states have expressed concern and wanted the Commission to recommend appropriate measures to protect States' interests in this regard. The Commission recommends that the following aspects may be incorporated in the Central law proposed on the subject of Entry 14 of List I:

a) In view of the fact that treaties, conventions or agreements may relate to all types of issues within or outside the States' concern, there cannot be a uniform procedure for exercise of the power. Furthermore, since treaty making involves complex, prolonged, multi-level negotiations wherein adjustments, compromises and give and take arrangements constitute the essence, it is not possible to bind down the negotiating team with all the details that should go into it. Nonetheless, the Constitutional mandates on federal governance cannot be ignored; nor the rights of persons living in different regions or involved in different occupations compromised. Therefore there is need for a legislation to regulate the treaty making powers of the Union Executive.

b) Agreements which largely relate to defense, foreign relations etc. which have no bearing on individual rights or rights of States can be put in a separate category on which the Union may act on its own volition independent of prior discussion in Parliament. However, it is prudent to refer such agreements to a Parliamentary Committee concerned with the particular Ministry of the Union Government before it is ratified.

c) Other treaties which affect the rights and obligations of citizens as well as those which directly impinge on subjects in State List should be negotiated with greater involvement of States and representatives in Parliament. For this purpose a note on the subject of the proposed treaty and the national interests involved may be prepared by the concerned Union Ministry and circulated to States for their views and suggestions to brief the negotiating team.

d) There may be treaties or agreements which, when implemented, put obligations on particular States affecting its financial and administrative capacities. In such situations, in principle, the Centre should underwrite the additional liability of concerned States according to an agreed formula between the Centre and States.

e) Financial obligations and its implications on State finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time. The Commission may be asked to recommend compensatory formulae to neutralize the additional financial burden that might arise on States while implementing the treaty/agreement.
On Appointment and Removal of Governors

Given the status and importance conferred by the Constitution on the office of the Governor and taking into account his key role in maintaining Constitutional governance in the State, it is important that the Constitution lays down explicitly the qualifications or eligibility for being considered for appointment. Presently Article 157 only says that the person should be a citizen of India and has completed 35 years of age. The Sarkaria Commission approvingly quoted the eligibility criteria that Jawaharlal Nehru advocated and recommended its adoption in selecting Governors.

These criteria are:

a. He should be eminent in some walk of life.
b. He should be a person from outside the State.
c. He should be a detached figure and not too intimately connected with the local politics of the States; and
d. He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

The words and phrases like "eminent", "detached figure", "not taken active part in politics" are susceptible to varying interpretations and parties in power at the Centre seem to have given scant attention to such criteria. The result has been politicization of Governorship and sometimes people unworthy of holding such high Constitutional positions getting appointed. This has led to some parties demanding the abolition of the office itself and public demonstration against some Governors in some States. This trend not only undermines Constitutional governance but also leads to unhealthy developments in Centre-State relations.

The Central Government should adopt strict guidelines as recommended in the Sarkaria report and follow its mandate in letter and spirit lest appointments to the high Constitutional office would become a constant irritant in Centre-State relations and sometimes embarrassment to the Government itself.

Governors should be given a fixed tenure of five years and their removal should not be at the will of the Government at the Centre. The phrase "during the pleasure of the President" in Article 156(i) should be substituted by an appropriate procedure under which a Governor who is to be reprimanded or removed for whatever reasons, is given an opportunity to defend his position and the decision is taken in a fair and dignified manner befitting a Constitutional office.

It is necessary to provide for impeachment of the Governor on the same lines as provided for impeachment of the President in Article 61 of the Constitution. The dignity and independence of the office warrants such a procedure. The "pleasure doctrine" coupled with the lack of an appropriate procedure for the removal of Governors is inimical to the idea of Constitutionalism and fairness. Given the politics of the day, the situation can lead to unpleasant situations and arbitrariness in the exercise of power. Of course, such impeachment can only be in relation to the discharge of functions of the office of a Governor or violations of Constitutional values and principles.

On Governors' discretionary powers

Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations where the Constitution has expressly provided for it. Such an impression needs to be dispelled. The scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.
In respect of Bills passed by the Legislative Assembly of a State, the Governor is expected to declare that he assents to the Bill or that he withholds assent there from or that he reserves the Bill for the consideration of the President. He has the discretion also to return the Bill (except Money Bill) for re-consideration of the House together with the message he might convey for the purpose. If on such reconsideration the Bill is passed again, with or without amendments, the Governor is obliged to give his assent. Furthermore, it is necessary to prescribe a time limit within which the Governor should take the decision whether to grant assent or to reserve it for consideration of the President. The time limit of six months prescribed for the State Legislature to act on the President's message on a reserved Bill should be the time limit for the President also to decide on assenting or withholding of assent. The Governor accordingly should make his decision on the Bill within a maximum period of six months after submission to him.

On the question of Governor’s role in appointment of Chief Minister in the case of a hung assembly there have been judicial opinions and recommendations of expert commissions in the past. Considering all those views in mind it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions in this regard. These guidelines may be as follows:

1) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.

2) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.

3) In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated below:
   (a) the group of parties which had pre-poll alliance commanding the largest number.
   (b) the largest single party staking a claim to form the government with the support of others.
   (c) a post-electoral coalition with all partners joining the government
   (d) a post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside.

On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit.

**On Obligation of the Union to protect States from external aggression and internal disturbance**

Concern for the unity and integrity of India is the rationale for the obligation put on the Union to protect States even against internal disturbances, which ordinarily is a matter for the states to handle. This obligation is coupled with the power to enforce that duty, if necessary without any request coming from the State. This is consistent with the federal scheme of the Constitution. A whole range of action on the part of the Union is possible under this power depending on the circumstances of the case as well as the nature, timing and the gravity of the internal disturbance. The Union can advise the State on the most appropriate deployment of its resources to contain the problem. In more serious situations, augmentation of the States’ own efforts by rendering Union assistance in men, material and finance may become necessary. If it is a violent or prolonged upheaval (not amounting to a grave emergency under Art. 352), deployment of the Union forces in aid of the police and magistracy of the State may be adopted to deal with the problem. Action to be taken may include measures to prevent recurring crisis.

When a situation of public disorder aggravate into an internal disturbance as envisaged in Art. 355, justifying Union intervention is a matter that has been left by the Constitution to the judgement and good sense of the Union Government. Though this is the legal position, in practice, it is advisable for the Union Government to sound the State Government and seek its co-operation before deploying its Forces in a State.
When an external aggression or internal disturbance paralyses the State administration creating a situation of a potential break down of the Constitutional machinery of the State, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise of the power under Art. 356 should be limited strictly to rectifying a “failure of the Constitutional machinery in the State”.

On the question of invoking Article 356 in case of failure of Constitutional machinery in States, suitable amendments to incorporate the guidelines should be set forth as per the landmark judgement of the Supreme Court in S.R. Bommai V. Union of India (1994). This would remove possible misgivings in this regard on the part of States and help in smoothening the Centre-State relations. Of course, the proper use of Article 356 can ultimately be governed by the inherent decency and honesty of the political process.

On "Local emergency" under Article 355 and 356

Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356 to be used only as a measure of "last resort", and the duty of the Union to protect States under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for "localized emergency" would ensure that the State Government can continue to function and the Assembly would not have to be dissolved while providing a mechanism to let the Central Government respond to the issue specifically and locally. The imposition of local emergency is fully justified under the mandate of Article 355 read with Entry 2A of List I that is deployment of any armed forces of the union in any state in aid of the civil power and Entry 1 of List II that is public order of the Seventh Schedule. It is submitted that Art. 355 not only imposes a duty on the Union but also grants it, by necessary implication, the power of doing all such acts and employing such means as are reasonably necessary for the effective performance of that duty.

It is however necessary that a legal framework for exercising the power of "localized emergency" is provided by an independent Statute borrowing the model of the Disaster Management Act, 2005 and the Prevention of Communal Violence and Rehabilitation Bill, 2006. Only exceptional situations which fall within the scope of "external aggression" or "internal disturbance" should be considered for the purposes of separate legislation under the mandate of Article 355. Such situations include (a) separatist and such other violence which threatens the sovereignty and integrity of India, (b) communal or sectarian violence of a nature which threatens the secular fabric of the country, and (c) natural or man-made disasters of such dimensions which are beyond the capacity of the State to cope with. With regard to item (c) a Statute is already in place (Disaster Management Act, 2005) and in respect of situations contemplated in item (b), it is learnt that a revised Bill is being proposed. What is therefore required is a legislation to provide for Centre’s role in case of separatist and related violence in a State which is in the nature of "external aggression" or "internal disturbance" contemplated in Article 355. It is important that the legislation provides for appropriate administrative co-ordination between the Union and the State concerned. It may also need consequent amendments to certain sections of the Criminal Procedure Code as well.

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- The verdict concluded that the power of the President to dismiss a State government is not absolute. The President should exercise the power only after his proclamation (imposing his/her rule) is approved by both Houses of Parliament. Till then, the Court said, the President can only suspend (not dissolve) the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly.
- It also categorically ruled that the floor of the Assembly is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor.
On Power of Union to give directions to State

Though States have raised objections to the power exercisable by the Union under Articles 256 and 257 on the ground that they are destructive of not only the autonomy of States but also inimical to the very foundation of a federal arrangement but this is no case for amendment of these provisions. It must, however, be clarified that favouring the retention of these provisions is entirely different from advocating easy or quick resort to them. Articles 256 and 257 may be viewed as a safety valve, one which may never come into play but which is nevertheless required to be retained.

The above view is substantiated by recent experiences where the Centre had to give directions on containing communal violence or insurgency in certain areas. The question that remains is about the consequence of non-compliance by a State of the Centres' directions in this regard. Though the Constitution has not provided any explicit course of action to such an eventuality, the obvious answer appears to be recourse available under Article 356 which indeed is an extreme step. In the existing scheme of things such a development is unlikely to happen which may explain why the Constitution makers avoided making remedial provision. Healthy conventions respecting the autonomy of states and restrained use of the power on behalf of the Union can go a long way to address the concern expressed by States in this regard. Another related issue is about the term “existing laws” used in Article 256 which are in addition to laws made by Parliament to which the executive power of State shall ensure compliance. These relate to other laws including Presidential Ordinances and international treaties and customary international law applicable to the State concerned. Rule of Law demands executive compliance of all laws.

A question is raised whether the scope of Article 257 Clause (3) should be widened besides railways to include other vital installations like major dams, space stations, nuclear installations, communication centres etc. The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of Union property declared by the Union Government to be of national importance thus clause (3) of Art.257 should accordingly be amended to incorporate them.

On Co-ordination between States, Centre-State Relations and Inter-State Council

Federalism is a living faith to manage diversities and it needs to be supported by institutional mechanisms to facilitate co-operation and co-ordination among the Units and between the Units and the Union. Co-operative federalism is easily endorsed but difficult to practice without adequate means of consultation at all levels of government.

The Constitution has provided only limited institutional arrangements for the purpose and regrettably they are not adequately utilized. In this context, the Commission strongly recommends the following for strengthening and mainstreaming of the Inter-State Council to make it a vibrant forum for all the tasks contemplated in Clauses (a) to (c) of Article 263:

### Inter State Council

- **Article 263** states that it shall be lawful for the President to establish an ISC for inquiring, discussing and advising upon:
  - disputes which may have arisen between States
  - subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
  - such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

- The council **consists of** the PM as the Chairman, CMs of all states and UTs, Administrators of UTs not having Legislative Assemblies and six union cabinet minister including Home Minister nominated by PM.

- It is **not a permanent constitutional body** but it can be established ‘at any time’ if it appears to the President that the public interests would be served by the establishment of such a council.
• The Inter-State Council must meet at least thrice in a year on an agenda evolved after proper consultation with States.
• The Council should have experts in its organizational set up drawn from the disciplines of Law, Management and Political Science besides the All India Services.
• The Council should have functional independence with a professional Secretariat constituted with experts on relevant fields of knowledge supported by Central and State officials on deputation for limited periods.
• After ISC is made a vibrant, negotiating forum for policy development and conflict resolution, the Government may consider the functions for the National Development Council also being transferred to the ISC.
• It should have sufficient resources and authority to carry out its functions effectively and to engage civil society besides governments and other public bodies.
• It must be empowered to follow up the implementation of its decisions for which appropriate statutory provisions should be made.

Towards this end, the Commission would recommend suitable amendments to Article 263 with a view to make the Inter-State Council a credible, powerful and fair mechanism for management of inter-state and Centre-State differences.

On Zonal Councils and Empowered Committees of Ministers
The need for more consensus building bodies involving the Centre and the States has been canvassed before the Commission because of a widespread perception that governance is getting over-centralised and states are losing their autonomy in their assigned areas. While legislative powers are clearly demarcated and the fiscal relations are subject to periodic review by the Finance Commission, the fear on the part of States is more on administrative relations and it is here the need for more forums for co-ordination is felt.

Under the States Re-organization Act, 1956 five Zonal Councils were created ostensibly for curbing the rising regional and sectarian feelings and to promote co-operation in resolving regional disputes. Later the North Eastern Council was created under the North Eastern Council Act, 1971. In each of these Zonal Councils, Union Home Minister is the Chairman and the Chief Ministers of the States in the Zones concerned are members. The Zonal Councils should meet at least twice a year with an agenda proposed by States concerned to maximize coordination and promote harmonization of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.

The Empowered Committee of Finance Ministers of States proved to be a successful experiment in inter-state co-ordination on fiscal matters. There is need to institutionalize similar models in other sectors as well. A Forum of Chief Ministers, Chaired by one of the Chief Minister by rotation can be similarly thought about particularly to coordinate policies of sectors like energy, food, education, environment and health where there are common interests to advance and differentiated responsibilities to undertake. Implementation of Directive principles can be a standing agenda for the Forum of Chief Ministers. It is pertinent to note that other federations like USA, Australia and Canada do have similar forums to facilitate public policy development and good governance. This Forum of Chief Ministers can also be serviced by the Inter-State Council.

On Adjudication of disputes relating to waters of inter-State rivers
The present state of affairs in adjudication of inter-state water disputes is obviously unsatisfactory as it is dilatory, time consuming and seldom gets settled. Therefore change in the law and procedure is warranted.

On All India Services and Centre-State Co-operation for better Administration
All India Services are unique feature of the Indian Constitution. The broad objectives in setting up All India Services relate to
• facilitating liaison between the Union and States;
• promoting uniform standards of administration;
• enabling the administrative officers of the Union to be in touch with field realities;
• helping the State administrative machinery to obtain the best available talent with wider outlook and broader perspectives;
• reducing political influence in recruitment and promote discipline and control in administration.

Considering the importance of these objectives, the Commission strongly recommends the constitution of few other All India Services in sectors like Health, Education, Engineering and Judiciary. They existed prior to Independence which contributed significantly to the quality of administration.

There are many issues relating to the administration of All India Services which are appropriately discussed in the report of the Administrative Reforms Commission and are of great relevance. However, the Commission would recommend proper integration of All India Services in the context of the introduction of the third tier of governance. The local bodies are in dire need of building capacities and strengthening the planning process for which the officers of All India Services can play a lead role.

Equally important is the system of encadrement of officers of state Governments and local bodies into the All India Services. Structural integration at all three levels requires clear demarcation of criteria for encadrement of posts, objective performance appraisal system, systematic career development and professionalization plans and a rational system of postings and transfers. There should be constitution of an Advisory Council under the Chairmanship of the Cabinet Secretary with the Secretary Personnel and the concerned Chief Secretaries of States.

On Rajya Sabha to be a Chamber to protect States’ rights

The essence of federalism lies in maintaining a proper balance of power in governance and in this respect the Council of States (Rajya Sabha) occupies a significant role. There is no doubt that Rajya Sabha is representative of States of the Union and is supposed to protect States' rights in Central policy making. The Commission is of the considered view that factors inhibiting the composition and functioning of the Second Chamber as a representative forum of States should be removed or modified even if it requires amendment of the Constitutional provisions. This is felt more important now when centralization tendencies are getting stronger and fragmentation of the polity is becoming intense.

Whenever Central policies are formulated in relation to one or more States, it is only proper that Committees of Rajya Sabha involving representatives of concerned States are allowed to discuss and come up with alternate courses of action acceptable to the States and the Union. For example, compensating the mineral rich States or the Hill States can well be negotiated in the Rajya Sabha Committee. Similarly, States adversely affected by the Centre entering into treaties or agreements with other countries can get appropriate remedies if the forum of the Rajya Sabha is utilized for the purpose. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the frictional points which emerge between Centre and States in fiscal, legislative and administrative relations.

On Equal representation of States in Rajya Sabha

The principle of equality and equal representation in institutions of governance is as much relevant to States as to individuals in a multi-party diverse polity. Equally applicable is the idea of preferential discrimination in favour of backward States in the matter of fiscal devolution from Union to States. There are other federations (like USA) which give equal number of seats to the federating units in the Council of States irrespective of the size of their territory and population. The number of seats in the House of People (Lok Sabha) anyway is directly linked to...
the population and there is no need to duplicate the principle. A balance of power between States inter se is desirable and this is possible by equality of representation in the Rajya Sabha. If the Council of States has failed to function as representative of States as originally envisaged, it is because of the asymmetry of coalition politics and the way the party system developed. The functioning of Rajya Sabha can be reformed to achieve the original purpose of federal equilibrium. There should be amendment of the relevant provisions to give equality of seats to States in the Rajya Sabha, irrespective of their population size.

The reasoning of the Supreme Court in Kuldip Nayar vs. Union of India, (2006) rejecting the status of Rajya Sabha as a Chamber representing the States in the federal Union is faulty and deserves review. Meanwhile, Parliament should act restoring section 3 of the Representation of People Act as it originally stood to redeem the federal balance in shared governance. The territorial link with that state from which a person is contesting for Rajya Sabha membership, which was prescribed by the Representation of People Act (until it was dispensed in 2003) is necessary and desirable to let the States realize that they are equal partners in national policy making and governance.

On Governments’ obligation to support court expenditure when laws are made

The Financial Memorandum attached to Bills usually do not provide for adjudication costs involved in enforcement of the new law. This puts the Subordinate Courts with little or no resources to cope up with additional workloads directly resulting from new legislations put on the Statute Book. An expert Committee has recommended to the Government that judicial impact assessment should be made whenever legislations are proposed and the Financial Memorandum should reflect judicial costs as well. This Commission endorses the proposal. In view of Article 247(power of parliament to provide for the establishment of certain additional courts) read with Entry 11A of the Concurrent List (Administration of justice; constitution an organisation of all courts, except the supreme court and high courts), Government of India is constitutionally obliged to make financial provision for implementation of Central laws through State Courts in respect of subjects in Lists I and III of the Seventh Schedule.

On Judicial Councils to advise Centre-State share in judicial budgets

Enabling the justice system to discharge its functions efficiently is the joint responsibility of Central and State Governments. While the administrative expenses of the Supreme Court and High Courts are charged upon the Consolidated Funds of the Centre and States respectively, there is no such financial arrangement guaranteed by the Constitution for subordinate judiciary. Judicial planning and budget making ought to be undertaken jointly by the judiciary and the executive for which some joint forum needs to be established. An expert committee set up by the Union Law Ministry recommended the setting up of "Judicial Councils" at the State and Central levels for the purpose which the Commission endorses. These Councils should not only prepare the judicial budget for approval by the Legislature but also decide on the proportion of sharing the budget expenditure between Centre and States on the basis of the data on the workload of courts under Lists I, II and III.

The idea is not to make the States bear the entire expenditure on Subordinate Courts which devote substantial time and resources to enforce the laws made by Parliament under List I and List III.

Finally, the Commission is of the view that Central Government must make an assessment of the number of courts needed for efficient adjudication of disputes arising out of Central laws and establish the required number of Additional Courts as stipulated under Article 247 of the Constitution.

On Need for continuing emphasis on federal balance of power

On the question whether a fresh balance of power is needed to take governance forward on the
path set by the Constitution, the framers of the Constitution, taking note of the pluralistic identities of the people and the diverse historical traditions of the polity, have correctly come to the conclusion that a federal system alone can take the country forward as a united, democratic republic. The Commission, however, is convinced that the tilt in favour of the Union has increasingly accentuated over the years even outside the security needs of the country. This has led to avoidable over-centralisation even in developmental matters. These emerging contradictions in federal constitutional practice have to be addressed early in the interest of not only better Centre-State relations but also to sustain the very unity and integrity for which the tilt in favour of the Centre was originally conceived.

This balancing of powers and functions which assumed added significance after the introduction of the 73rd and 74th Constitutional Amendments can largely be accomplished through administrative arrangements supported by adequate devolution of finances for which the Finance Commission is a key institution. While security concerns might warrant greater powers to the Union, on the development front (education, health etc.) the Centre should respect the autonomy of the other two levels of government and consciously avoid the tendency to centralize powers and functions. Its role should be limited in laying down policies, devolving funds and facilitating co-ordination leaving implementation entirely to States and Local Bodies.

**On Streamlining Administrative Relations**

On the more problematic issue of the nature and scope of Centre's directions to the States in matters which are in the domain of States' executive power, the Commission, after having examined the views expressed by the States, has come to the conclusion that the powers under Articles 256 and 257 are necessary to remain with the Centre in order to ensure that the Centre's legislative and executive powers are duly honoured by the States. What directions are to be given by the Centre to the States and when, is for the Central Government to decide, keeping in view the exigencies of the circumstances and administrative necessities.

**On Fiscal Relations to be largely decided by the Finance Commission**

There is a need to strengthen the Constitutional scheme of fiscal transfers through Finance Commissions and reduce the scope of other forms of devolution which leads to complaints from States.

There is a case to make the Finance Commission to be a permanent body with membership changing every five years and with a regular Secretariat. The Centre should find a methodology to allow State participation in its Constitution and in formulation of terms of reference so that it may not appear to be a creation entirely of the Centre which is an interested party in the division of the kitty (revenue received).

**2.5. Miscellaneous Issues**

**2.5.1. Special Category Status to States**

Various Chief Ministers across the nation have been demanding special status for their respective states since last few years. Recently, Andhra Pradesh MPs have been protesting for special category status for the state which centre has refused. The demand is claimed on the basis of Andhra Pradesh Reorganisation Act which provides that “the Central Government may make appropriate grants and also ensure that adequate benefits and incentives in the form of special development package are given to the backward areas of that State”.

The whole idea of a special category state was introduced in 1969 by the Fifth Finance Commission, which as per the Gadgil formula gave special status to the states of Nagaland, Assam and Jammu and Kashmir. Today eleven states in the country enjoy this status including seven north-eastern states, Sikkim, Jammu Kashmir, Uttrakhand and Himachal Pradesh.
As per the Gadgil formula “special status” is to be given to certain states because of certain intrinsic factors which have contributed to their backwardness historically. Some of these factors include:

(i) Hilly and difficult terrain;
(ii) Low population density or sizable share of tribal population;
(iii) Strategic location along borders with neighbouring countries;
(iv) Economic and infrastructural backwardness; and
(v) Non-viable nature of state finances

In India, resources used to be transferred from the centre to states in many ways (see figure below).

However, after the 14th Finance Commission, centre claims that there is no need of Special Category Status to States owing to the increased tax devolution to states from 32% to 42% of divisible pool of central taxes.

Moreover, it seems that since Planning Commission ended, there has been a drastic cut in the allocation to SCS and the difference between funds allotted to SCS and other States have been sizeably reduced and the status has remained more of symbol of Political mileage. Further, the situation of the states having SCS does not show any perceptible improvements in terms of industrialization, aiming which they received tax incentives such as capital investment subsidy, excise duty and income tax exemptions, and transportation cost subsidies.

Further, granting status to more states would lead to intensification of similar demands from states such as Odisha, Bihar, Chhattisgarh and Rajasthan.

One way of moving forward may be abolition of "SCS" and introduction of the "least developed states' category as recommended by Raghuram Rajan committee (2013). It should be based on the 10 equally weighted indicators for monthly per capita consumption expenditure, education,
health, household amenities, poverty rate, female literacy, percentage of the Scheduled Caste/Scheduled Tribe population, urbanisation rate, financial inclusion and physical connectivity. It would help in better understanding the development needs of individual states.

2.5.2. Centrally Sponsored Schemes (CSS)

In the areas requiring national effort, it is imperative for the Centre to make interventions. Government of India tries to do this through various programmes and polices including the CSS. Central Government has introduced several schemes in areas that are national priority like health, education, agriculture, skill development, employment, urban development, rural infrastructure etc. Several of these sectors fall in the sphere of activity of States.

In fact, CSS is the biggest component of Central Assistance to state plans (CA), where states don’t have much flexibility. In the initial years of planning in India, the number of CSS was very large (190 at the end of Fifth Plan which increased to 360 at the end of Ninth Plan). Thus, the CSS have remained a major bone of contention between the Union and State Governments owing to following reasons:

- **Inability to provide matching funds:** To access the funds from center under some CSS, there has to be a definite percentage contribution from the States. The pattern of assistance to States varies. Generally it is Central Government’s contribution of 90% for North-East States and 75%–100% in different schemes for other States. The number of States, particularly the North-East States, Bihar and Jharkhand have often represented that they have limitation of resources and are not able to provide State’s share to enable them to access the required funds under CSS.

- **Lack of flexibility:** An important area impacting on efficient implementation of CSS has been the need for flexibility in many of the schemes. India with its different geographical regions, varied requirements of States, different levels of infrastructure development, demographics and economic growth, requires flexibility for States to plan their development. It is necessary that CSS take into account the ongoing schemes in the States so as to ensure convergence with the existing schemes. For example, if money is provided under Indira Awaas Yojana for construction of houses and the State Government is also putting its own resources, it may be possible to construct a house with a cement roof, along with a toilet and rooms which have better interior. Another argument to support this is that the cost of project is different in different areas and this needs to be fully taken care of. For example, the cost of buildings in the North-East and in the far-east corners of North-East has great variations.

- **Different accounting procedures:** Accounting process is different in different States for the same CSS scheme. It is, therefore, not possible to have an effective Central monitoring and accounting system.

Various committees have looked into this matter and given recommendations on the same. The government accepted the recommendations of the Sub-Group of Chief Ministers and took various steps towards rationalization of CSS:

- The direct transfers to State implementing agencies have been done away with, and all transfers to States for Centrally sponsored schemes are now being routed through the Consolidated Fund of the State.
- The number of CSS has been from 66 to 28 and they were divided into three categories (see figure below).
- Increased choice has been given to states to select optional schemes they want to implement. Also, while designing the CSS, the Central Ministries shall permit flexibility in the choice of components to the States as available under the Rashtriya Krishi Vikas Yojana (RKVY).
- The flexi-funds available in each CSS has been raised from 10% to 25% for the States and 30% for the UTs of the overall annual allocation under each Scheme.
Approval of the schemes is being made co-terminus with the Finance Commission cycle. NITI Aayog is in process of evaluation of all the CSS.

Current Structure of Centrally Sponsored Schemes

<table>
<thead>
<tr>
<th>Type of CSS</th>
<th>Criteria</th>
<th>Funding Pattern (Centre: States)</th>
<th>Schemes</th>
</tr>
</thead>
</table>
| Core of the Core (6) | Have compulsory participation of states | • General Category states: Existing pattern  
• Special Category states: Existing pattern | • MGNREGA  
• National Social Assistance Program (For Senior citizens, widows etc.)  
• Umbrella Scheme for SC (All schemes for SC in one)  
• Umbrella Scheme for ST (All schemes for ST in one)  
• Umbrella Scheme for OBC (All schemes for OBC in one)  
• Umbrella Scheme for Minorities (All schemes for Minorities in one) |
| Core (20) | Have compulsory participation of states | • General Category states: 60: 40  
• Special Category states: 90: 10 | • Rashtriya Krishi Vikas Yojana, Rashtriya Pashudhan Vikas Yojana, Pradhan Mantri Gram Sadak Yojana, National Rural Drinking Water Mission, National Health Mission, Swachh Bharat Abhiyan, Integrated Child Development Scheme, National Education Mission, Forestry and Wild Life, Pradhan Mantri Awas Yojana etc. |
| Optional (3) | States could choose some or all of them | • General Category states: 50: 50  
• Special Category states: 80: 20 | • Border Area Development Program  
• National River Conservation Plan |

2.5.3. NITI AAYOG

NITI Aayog (National Institution for Transforming India – Aayog) has been constituted to actualize the important goal of cooperative federalism and to enable good governance in India to build a strong nation state. It is envisaged as a platform to inspire cooperative federalism, stressing on the need for effective center-state cooperation to advance development outcomes and achieve double-digit and inclusive growth for India. NITI Aayog is visualised as a think tank through which new and innovative ideas come from all possible sources — industry, academia, civil society or foreign specialists — and flow into the government system for implementation.

It replaces the erstwhile Planning Commission which was facing certain criticisms:

- It seemed that it was not able to capture the new realities of macroeconomic management at the national level.
- It had not been conducive to sound fiscal relations between the Union and the States since it followed “top-down” approach where states participated just as spectators in annual plan meetings.
- The funds it allocated to states were tied to projects it approved and they were imposed on states rather than being consultative.

In this context Niti Ayog seems to have more relevance:

- Due to its composition, NITI Aayog gives better representation of states which facilitates direct interactions with the ministries & helps to address issues in a relatively shorter time. Thus, furthering the idea of cooperative federalism.
- It is also taking steps towards Competitive Federalism. Various reports of NITI Aayog like Healthy states Progressive India etc. which give performance-based rankings of States across various verticals to foster a spirit of competitive federalism.
  - It helps to identify the best practices in different States in various sectors and then try to replicate them in other States.
  - Moreover, being a common point for similar issues faced by different sectors, states etc., it acts as a convergence point and platform to discuss these issues.
- NITI Aayog has also established a Development Monitoring and Evaluation Office which collects data on the performance of various Ministries on a real-time basis. The data is
then used at the highest policymaking levels to establish accountability and improve performance. Earlier, India had 12 Five-Year Plans, but they were mostly evaluated long after the plan period had ended. Hence, there was no real accountability.

However, there are certain concerns as well with NITI Aayog:

- While generating new ideas, NITI Aayog needs to maintain a respectable intellectual distance from the government of the day rather than resorting to uncritical praise of government’s projects.
- It has no powers in granting discretionary funds to states, which renders it toothless to undertake a “transformational” intervention.
- Further, it acts as advisory body only which advises the government on various issues without ensuring enforceability of its ideas.

The body has also missed some opportunities to make qualitative difference. For instance, CSS had to be reformed in the light of the recommendations of the 14th Finance Commission. Instead of reforms in design and implementation of the Schemes that was promised when the Planning Commission was wound up, changes were made only to shift greater responsibility onto States in terms of financing. A second opportunity arose when the distinction between Plan and non-Plan was removed. At that point, the organization had an opportunity to insist on taking a sector-wise comprehensive view of capital and revenue expenditures. However, that has not been done.

In this context, steps need to be taken to either convert the Finance Commission into a permanent body that can oversee fiscal transfer mechanisms rather than just give a tax sharing formula every five years or give a funding role to the NITI aayog. Towards the task of cooperative federalism, NITI Aayog should receive significant resources (say 1% to 2% of the GDP) to promote accelerated growth in States that are lagging, and overcome their historically conditioned infrastructure deficit, thus reducing the developmental imbalance. Here it should be noted that it should have the powers for allocating development or transformational capital or revenue grants to the states, but not the power to approve the annual expenditure programmes of individual states, unlike the Planning Commission.

2.5.4. NCTC

Background of NCTC

NCTC or National Counter Terrorism Centre is India’s federal anti-terror organization, which gained importance after the 26/11 attacks, as it was felt that India did not have a central agency with real time intelligence input with regards to terrorism. Most of the blame of 26/11 attacks was put on the inability of the States to co-ordinate among themselves and the Centre to share intelligence inputs. The NCTC would focus on drawing up plans and co-ordinating all actions and integrating all intelligence related to counter-terrorism. The agency has been made under the provisions of UAPA, 1967 (Unlawful Activities Prevention Act). It has been given the power to search, seizure and arrests throughout India to prevent terror activities.

Objections raised by States

- **Public Order is a State subject:** States object that policing/public order is a State subject and this is an encroachment over their rights and thus an attack on the federal structure.
- **Control of Intelligence Bureau:** States also object that NCTC is a part of Intelligence Bureau, which is controlled by the Home Ministry. As wide powers are given to the NCTC, the agency could be directed solely at the behest of Home Ministry without taking the consent of the State concerned. So, there will be political mileage to be generated in respect of searches and arrests against opponents.
- **Wide Powers:** States also object to the wide powers given to NCTC and therefore demand trimming down of powers to search, seizure and arrest.
Way Ahead

Keen to push the National Counter Terrorism Centre in the aftermath of the serial blasts in Hyderabad, the home ministry tweaked the proposal in 2013 saying NCTC will inform the chief of state police before conducting any operation in state’s jurisdiction. Besides this introduction of safeguards is necessary so that the NCTC does not get unbridled powers.

The country has to function as one, irrespective of which party is in power. India follows a federal system and this mandates that both the Union and state governments work in tandem. In no way can the Union government impose its will without consulting with the state governments.

For a federal system to succeed there is an urgent need to reach a consensus on matters such as terrorism, which is a national concern.

2.5.5. Issues around GST

The GST or the Goods and Services Tax aims to create a common market throughout India without any taxes on inter-state movement of goods. The 101st Amendment in the constitution and the introduction of GST in the Indian Economy has significantly changed the landscape of financial relations between the centre and states. It is a step towards one nation, one indirect tax regime.

GST is Single tax on supply of goods and services, right from the manufacturer to the consumer. It is a destination based tax unlike the present taxation scheme which is origin based. It would prevent cascading of taxes as final consumer will bear only the GST charged by the last dealer in the supply chain. Both centre and state has relinquished certain taxation powers towards rolling out of GST. For example – Service Tax of the centre and Sale Tax of State is subsumed under GST.

In this existing structure, there are two components of GST – Central GST and State GST. Both CGST and SGST will be simultaneously levied across the value chain, both on goods and services. Some goods are exempted from GST such as real estate, alcohol, electricity, petroleum and its products. Further, IGST comes into picture when there is an inter-state transfer of goods and services.

GST entailed a surrender of significant amount of fiscal autonomy by the Centre and, especially the states, as rates are decided by the GST council rather than individual state or central governments. Further, there were certain concerns raised by the states in terms of loss of revenue by manufacturing states and capacity of states to tax services is not known. But some of the concerns were addressed by various measures:

- GST council which has the final say on decisions regarding GST, has 2/3rd members from the states, thereby showing a accommodative stance with respects to states demands.
- Although it may appear that the goods and services tax (GST) hasn’t given a big boost to states governments’ tax revenue so far, but there’s little reason for them to complain. The constitutionally guaranteed compensation mechanism under GST ensures, in effect, a 14% annual growth in the states’ revenue. A cursory look at their past performance will reveal that most states had previously registered growth rates much lower than 14% from the taxes that later collapsed into GST.
- Further, this compensations will be given for five years.

2.5.6. Federalism and Foreign Policy

Even though foreign policy is the prerogative of the Central government and the Constitution does not allow the states to take initiatives in these matters, the West Bengal Government challenged the Central Foreign policy on sharing the waters of river Teesta by stalling the bilateral treaty with Bangladesh. Some of the states have been arguing in favour of a role for the states in the foreign policy of the country, particularly, states with an international border are vocal on issues, which directly or indirectly impact them. Similarly, when the issue of border
trade with China came up for discussion, Sikkim’s views were sought. Tamil Nadu has demanded the intervention on the issue of Tamil killings in Sri Lanka every now and then. The north-eastern States of the country have borders with various countries like Myanmar, Bangladesh, China, Bhutan and Nepal and their proximity of countries east of India demands that their economies should benefit more from the Look East Policy. North Eastern State leaders have been asserting that their views should be sought while conducting negotiations with neighbouring countries on economic and political issues.

There is a case for institutionalising the process of consultation and involvement of States, which are affected by a particular foreign or security policy measure. Barring Haryana, Madhya Pradesh, Jharkhand and Chhattisgarh, all Indian States share borders with other countries, or with the international waters of the sea. In that sense, they have interests or issues that may intersect with the foreign and security policies of the country.

Among the various governmental systems, the U.S. is one in which the interests of its federal constituents are taken into account in the formulation and exercise of foreign and security policies. This was part of the large and small States compromise that resulted in its constitution. This enables its Upper Chamber, the Senate, to be the lead house on foreign policy issues — ratifying international agreements, approving appointments of envoys and so on. The Senate, as is well known, has a membership which is not based on population — each State, large and small, populous or otherwise, has the same number of Senators.

It would be difficult to graft something like the U.S. system on to the Indian system. Yet, clearly the time has come when Mizoram and Nagaland also have a say in India’s Myanmar policy, instead of merely having to bear its consequences.

2.5.7. Deployment of central para-military forces in states

The Constitution of India mandates that maintenance of law and order is a state subject which they perform with the help of Police Act of 1861. The Union list of VII Schedule of the constitution of India however, indicates several spheres of police works in which the Centre plays a vital role. Thus, Central Police Organisations (CPO) derive their constitutional validity from these provisions.

The term “aid to civil authorities” (ACA) is a British imperial usage referring to the process by which local authorities can request the Central Government to lend assistance in times of emergency. This is where the role of force like CRPF comes into play to tackle problems beyond the capacity of the state police force.

However, there are certain issues with such deployments:

- Deployment of central forces directly by Centre can occur only in emergency after informing the State concerned or when there is a constitutionally declared emergency. However, centre does not follow such norms.
- In many instances, centre takes the unilateral decision to deploy them even when there has been no such request from the states.
- Although the subject list specifies such deployments can be in the aid of civil authorities, it is seen that they are deployed for mundane tasks as well. For example – protecting CBI officials in Kolkata.

2.5.8. Article 370

The Centre decided to end the special status given to Jammu and Kashmir (J&K) under Article 370. President of India in “concurrence” with the “Jammu and Kashmir government” promulgated Constitution (Application to Jammu and Kashmir) Order, 2019 which states that provisions of the Indian Constitution are applicable in the State. This effectively means that all the provisions that formed the basis of a separate Constitution for Jammu and Kashmir stand abrogated. With this, Article 35A is scrapped automatically.
• Along with this, a statutory resolution was approved by the Parliament which – invoking the authority that flows from the effects of Presidential Order – recommended that the President abrogate (much of) Article 370.

• Also, Jammu and Kashmir Reorganization Act, 2019 was passed by the Parliament. Jammu & Kashmir (J&K) was re-organised into two Union Territories - J&K division with a legislative assembly and the UT of Ladakh without having an assembly.

The peculiar position of Jammu and Kashmir was due to the circumstances in which the State acceded to India. The Government of India had declared that it was the people of the state of J&K, acting through their constituent assembly, who were to finally determine the constitution of the state and the jurisdiction of government of India. The applicability of the provisions of the Constitution regarding this State were accordingly, to be in nature of an interim arrangement. This was the substance of the provision embodied in Art. 370 of the Constitution of India.

• Art. 370 had “temporary provisions with respect to the State of Jammu and Kashmir” which gave special powers to the state allowing it to have its own Constitution.

• According to article 370, except for defence, foreign affairs, finance and communications, Parliament needs the state government’s concurrence for applying all other laws.

• Article 35A of the Indian Constitution, which stemmed out of Article 370, gave powers to the Jammu and Kashmir Assembly to define permanent residents of the state, their special rights and privileges.

**How the Scrapping of Article 370 and 35A became possible?**

• President issued a presidential order under Article 370 (1) of the Constitution. This clause enables the President to specify the matters which are applicable to Jammu and Kashmir in concurrence with the Jammu and Kashmir government.

• The order amended Article 367. Article 367 contains guidance on how to read or interpret some provisions. The amended Article declares that “the expression ‘Constituent Assembly of the State...’ in Article 370 (3) shall be read to mean ‘Legislative Assembly of the State’.

• Article 370(3) provided that the Article 370 was to be amended by the concurrence of the Constituent Assembly. However, because of the amendment, it can now be done away by a recommendation of the state legislature.

• In other words, the government used the power under 370(1) to amend a provision of the Constitution (Article 367) which, then, amends Article 370(3). And this, in turn, becomes the trigger for the statutory resolution - Resolution for Repeal of Article 370 of the Constitution of India. As Jammu and Kashmir is under the president rule, concurrence of governor is considered as “Jammu and Kashmir government”.

**Scraping Article 370: Constitutional and legal challenges**

Petitions have been filed in the Supreme Court challenging the recent action of the Union Government on Jammu and Kashmir, the following legal issues may receive attention in the course of judicial deliberations.

• Legality of the Presidential order: Article 370 itself cannot be amended by a Presidential Order. Even though the Order amends Article 367, the content of those amendments, however, do amend Article 370. And as the Supreme Court has held on multiple occasions, you cannot do indirectly what you cannot do directly. Therefore, legality of the order – insofar as it amends Article 370 – is questionable.

• Misusing the President Rule and Making Governor as a substitute for the elected assembly: The governor is the representative of the Union Government in the State. In effect, the Union Government has consulted itself. Also, President’s Rule is temporary and is meant to be a stand-in until the elected government is restored. Consequently, decisions of a permanent character – such as changing the entire status of a state- taken without the elected legislative assembly, but by the Governor, are inherently problematic.
• Equating state assembly with constituent assembly: The difference is that the one has to exercise its powers as per the constitution, while the other develops the constitution. This distinction that is at the heart of India's basic structure doctrine that prevents certain constitutional amendments on the ground that Parliament, which exercises representative authority, is limited and cannot create a new constitution and thereby exercise sovereign authority.

• Going against the Jammu and Kashmir's Constitutional position: Presidential order has assumed that legislative assembly has power to scrap Article 370. But Article 147 of the Jammu and Kashmir Constitution prohibits such a move. The Article makes it clear that any changes to the Jammu and Kashmir Constitution needs the approval of two-thirds of the members of the legislative assembly.

3. **UPSC Prelims Questions**

1. Which one of the following is not a feature to Indian federalism?
   (a) There is an independent judiciary in India.
   (b) Powers have been clearly divided between the Centre and the States.
   (c) The federating units have been given unequal representation in the Rajya Sabha.
   (d) It is the result of an agreement among the federating units.

2. Which Article of the Constitution provides that it shall be the endeavour of every state to provide adequate facility for instruction in the mother tongue at the primary state of education?
   (a) Article 349
   (b) Article 350
   (c) Article 350 A
   (d) Article 351

3. With reference to the Constitution of India, which one of the following pairs is not correctly matched?
   (a) Forests : Concurrent List
   (b) Stock Exchanges : Concurrent List
   (c) Post Office Savings Bank : Union List
   (d) Public Health : State List

4. Which one of the following Articles of the Constitution of India says that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union?
   (a) Article 257
   (b) Article 258
   (c) Article 355
   (d) Article 356

4. **UPSC GS Mains Questions**

**Federalism/Union State Relations**

1. Analyse the causes of controversy in India, in recent years, in regard to Union-State relations. What are the specific areas of discord? Consider the main issues and offer your comments and suggestions. (About 400 words) (81/II/1a/50)

2. India is not a federation; but it has definite federal features. Elucidate. Planning and federalism make uneasy partners; the planning operations in India have led to erosion of federalism. Discuss. (About 250 words) (82/II/1b/45)
3. What were the objectives in having three separate legislatives lists in the Constitution of India? Can the Parliament make laws in regard to any item in the State list? If so, under what situation? Does any of the issues arising from the above give rise to Union-State controversies? (About 250 words) (83/II/1b/40)

4. Riparian rights are a source of disputes. How are they resolved in a federal system? (About 75 words) (86/I/10a/10)

5. Briefly mention the factors, which have promoted concentration of power in the Centre in India, and discuss the response of the States to the tendency. (About 250 words) (86/II/1a/40)

6. Why is the Indian Constitution called quasi-federal? (87/II/8c(B)/3)

7. "The emphasis in modern federations should not be one division and separation but on Collaboration and on Co-operation." Discuss the statement in the context of Indian Policy. (About 250 words) (90/II/1a/40)

8. 'The planning operations in India have led to erosion of federalism.' Discuss (150 words) (91/II/4d/20)

9. What are the essentials of a true federation? Analyse the nature of the Indian Federation. (About 250 words) (93/II/1a/40)

10. Discuss the major extra-constitutional factors influencing the working of federal polity in India. (150 words) (00/I/8c/15)

11. Discuss the administrative relations between the centre and the states in the light of recent controversies. (in about 250 words) (01/I/6a/30)

12. What are the constitutional restrictions imposed upon the power of borrowing of the state governments? (20 words) (04/I/9b/2)

13. Comment on the financial relations between the Union and the States in India. Has post-1991 liberalization in any way affected it? (250 words) (05/I/6a/30)

14. Discuss the major extra-constitutional factors influencing the federal polity in the India. (250 words) (08/I/5b/30)

15. Examine the demand for greater state autonomy and its impact on the smooth functioning of Indian polity. (150 words) (08/I/6b/15)

16. Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss. (2013)

17. Though the federal principal is dominant in our constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian Constitution leans in favour of a strong Center, a feature that militates against the concept of strong federalism. Discuss. (2014)

18. The concept of cooperative federalism has been increasingly emphasized in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings. (2015)


5. Vision IAS GS Mains Test Series Questions

1. “Modern Indian federalism owes its origin to the dual legacies of colonial administration and structure of Indian society.” Elaborate.

Answer:

➢ Dual legacy –
  • colonial administration
    – highly centralized administration
    – this centralized tendency is evident in modern Indian federalism having a unitary bias, for example –
2. **What are the provisions of Inter State Council as mentioned in the Constitution. Have such Councils been helpful in maintaining the solidarity among the States?**

**Answer:**

The Inter-State Council was established under Article 263 of the Constitution of India through a Presidential Order. The Council is a recommendatory body with the following duties:

a) Investigating and discussing such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, as may be brought up before it;

b) Making recommendations upon any such subject and in particular recommendations for the better coordination of policy and action with respect to that subject; and

c) Deliberating upon such other matters of general interest to the States as may be referred by the Chairman to the Council.

The president’s power to establish an Inter-state Council can be used both for advising upon disputes as well as to investigate and discuss subjects of common interest.

The Tenth Meeting of the Inter-State Council held in 2006 discussed the atrocities on Scheduled Castes and Scheduled Tribes and status of implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

In the ten meetings of the Inter-State Council held so far, the Council has taken final view on all the 247 recommendations made by Sarkaria Commission on center-state relations.

It is worth noting that the Punchi Commission recommended that Inter State Councils should have expert advisory bodies/ technical and management experts and should be given more autonomy and sufficient resources which is required for functioning as constitutional body independent of Centre and State.
The Council has been helpful but only to a limited extent. For greater cooperation among the States a stronger political will is required from the Centre. Recent cases of Inter State or Centre State disputes like Mullaperiyar or over Lokayukta appointment in Gujarat show that we have a long way to go in inter state comity.

3. **Economic and financial reforms have huge bearing on Centre – state relations. Discuss the statement in the light of economic and financial reformatory measures initiated in last two decades.**

**Approach:**

Post 1991 India has adopted some landmark reforms in economic and financial sector. How have these reforms modified federation? Have they brought centre-state together, separated them apart or created new opportunities /challenges?

**Answer:**

1. Due to liberalization, states are getting relatively higher share of investment from the market. The states which created the necessary infrastructure for investments have outpaced those states which failed to do so. It has led to inter-state inequality regional disparities. Thus, centre, now needs to focus on the development of under-developed states to ensure equitable development and counter interstate migration.

2. Earlier, states had been demanding that more number of taxes be shared with them by the centre, as they used to share only Income tax and Union Excise Duties. After the 80th Amendment Act, 2000, the center shares all the taxes except those provided under Art 268, 269 and the cesses and surcharges under Art 271. Thus, now the states, though much satisfied, demand only a higher proportion rather than more number of taxes.

3. After the passing of 73rd/74th Constitutional Amendment Acts, states are required to share the revenue with the local govt. It has led to a higher demand of financial resources from the centre.

4. The introduction of Value Added Tax (VAT) in 2005 was a landmark development in the history of tax reforms. Entrusting the decision powers in this regards to the Empowered Committee of State Finance Minister was a significant step toward the realization of cooperative federalism without compromising the autonomy of the states.

5. Although GST is expected to be advantageous for both the center and the states,, but states are concerned about losing their power of taxing the goods and on the other hand are already demanding power to tax the services.

6. Implementing the FRBM act, though partially, had led to increased cooperation between the states and the union govt.

7. We can also write about the role of the Planning Commission. It tilts the balance of power towards the Center. There are increasing voices of concern from the States regarding the politicization of Planning Commission. Some have also argued that it may be better to do away altogether with the planning Commission in this age of liberalization and irrelevance of central planning.

The economic reforms that have taken place have brought the centre and the states nearer by strengthening both the governments. In future, the financial and economic spheres are expected to further strengthen federalism.
4. Assess the effectiveness of the institutional architecture of Indian federalism in settling inter-state disputes.

Approach:

- Briefly discuss the major inter-state disputes with examples.
- Discuss about the existing institutional architecture of India federalism in settling inter-state disputes.
- Discuss the effectiveness of the institutional architecture of India federalism in settling inter-state disputes.
- Conclude with some recent steps in this regard.

Answer:

In a constitutional set-up based on the federal principles, sovereignty is divided between the federation and the units. Division of sovereignty implies the creation of boundaries, and this is bound to raise disputes especially in a country like India, which is characterized by a diversity of culture, language, heritage and customs.

On numerous occasions disputes between two or more states have arisen and led to unwarranted situations. The most long-standing and contentious inter-state issue has been the sharing of river waters. Due to increase in demand for water, a number of inter-state disputes over sharing river waters have surfaced. For example, Cauvery water dispute between upstream state (Karnataka) and downstream state (Tamil Nadu), Krishna water dispute between upstream state (Karnataka) and downstream state (Andhra Pradesh), etc.

Further, many boundary issues have cropped up between the states as well. For example, Karnataka and Maharashtra’s claim over Belgaum, tensions between Assam and Meghalaya related to Assam Reorganization Act of 1971 etc. Additionally, there have been violent agitations in some states over migrants and job seekers from other states. This has increased bitterness between the states even further which tends to weaken the roots of healthy federalism.

Existing institutional architecture of India federalism in settling inter-state disputes:

- **Article 131** confers upon Supreme Court of India exclusive jurisdiction to deal with disputes between two or more States.
- Using **Article 262**, Parliament enacted the Interstate River Water Disputes Act, 1956 (IRWD Act) for adjudication of any dispute with respect to the use, distribution or control of the waters of, in any inter-State river or river valley.
- Further, under **Article 136 (Special Leave Petition)**, Supreme Court, in its discretion, may grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. It has been used to resolve the grievances of the states.
- Other institutional setup in this regard are **Inter-State Council** set up under Article 263, **Zonal Councils** to discuss matters of common concerns to states in each zone and **Finance Commission** providing framework for the distribution of taxes between different states.

The effectiveness of the institutional architecture of India federalism in settling inter-state disputes:

- There are nine separate tribunals to adjudicate water disputes. Four of the tribunals took 10 to 28 years to deliver their awards. Currently, there is no definite timeframe to adjudicate disputes and as a result, most inter-state river water disputes continue to linger on.
- Inter-State Council has had just 12 meetings since it was set up in 1990. There was a gap of a decade between the 10th meeting in 2006 and the 11th meeting in 2016, and the council met again in November 2017. Further, the Council does not have the power to investigate issues and there is no compulsion on the government of the day to accept the outcomes of the meetings.
- Even the meetings of Zonal Councils have been sporadic which reduces their utility as an action oriented dispute resolution platform.
- Most of the institutional architecture of Indian federalism is focused on relations between the Union government and the states, and there is far less space to settle inter-state frictions.

Recently, the Union Cabinet approved Inter-State River Water Disputes (Amendment) Bill, 2019 wherein timely and expeditious resolution of inter-state river disputes would be ensured by a single tribunal. Even NITI Aayog’s Governing Council has been used as a platform to discuss policies as well as address inter-state disputes. Recently, a state’s Chief Minister called for greater inter-state cooperation to effectively tackle cross-border crimes.

Further, there is an institutional gap in the Indian union right now, which needs to be filled before inter-state frictions get out of control. The Centre would have to play the role of friend, philosopher and guide to the States in facilitating the growth process. It should take the initiative of re-energizing the Constitutionally-approved institutional mechanisms such as Inter-State Council, so that States get a platform to voice their concerns even more regularly.

5. **Inter-state river water disputes have been among the most pressing issues faced by the Indian federal system. In this context, examine the potential of the Inter-State River Water Disputes (Amendment) Bill, 2019 in addressing the issues involved.**

**Approach:**
- Briefly introduce the inter-state river water disputes and reasons for it being a pressing issue faced by the Indian federal system.
- Mention the issues associated with existing Act i.e. Inter-state River water dispute Act, 1956
- Highlight potential of the Inter-State River Water Disputes (Amendment) Bill, 2019 in dealing with the issues.
- Conclude by suggesting other suitable measures that can be undertaken.

**Answer:**
Depleting groundwater, drying rivers, insufficient rainfall and increasing demand for water have led to disputes between states over sharing of river water. It is a pressing issue for the Indian federal system due to:

- Water being a subject in the state list leads to conflicting claims, which act as a detrimental factor against cooperative federalism.
- **Politicisation of the issue** due to involvement of local public leading to adoption of hardline approach by political leaders of disputing states and making it an emotive issue.
- **Inordinate delay in securing settlement** of such disputes as there is no time limit for adjudication. For example, tribunals for Cauvery, Ravi and Beas disputes have been in existence for over 26 and 30 years respectively without any award.
- **Non-compliance of tribunal awards** by States is the critical weak link in dispute resolution and leads to further enmity between states.
The resolution of these disputes is addressed by Article 262 of the Indian Constitution under which the Parliament passed the Inter-State River Water Disputes Act, 1956. **It has the following issues:**

- Separate tribunal for each Inter-state river water dispute. This further slows down the process due to work on appointment of judges, assessors and other experts.
- No provision for an adequate machinery to enforce the award of the Tribunal.
- Lack of uniform standards, which can be applied in resolving such disputes.
- Lack of adequate resources, both physical and human, to objectively assess the facts of the case.

The **Inter-State River Water Disputes (Amendment) Bill, 2019** has the potential to streamline the adjudication of inter-state river water disputes and make the present legal and institutional architecture robust through the following provisions:

- **Dispute Resolution Committee (DRC)** to be established by the Central Government before referring to the tribunal, to resolve the dispute amicably by negotiations within one year.
- Establishment of a single **Inter-State River Water Dispute Tribunal**, which can have multiple benches.
- **Time limit** on a Tribunal to give its decision on the dispute within two years, which may be extended by another year.
- The decision of the Tribunal shall be **final and binding**. The bill removes the requirement of publication of decision in the official gazette in the original Act.
- It makes mandatory for the Central Government to make a scheme to give effect to the decision of the Tribunal.
- Data collection and maintenance of a **databank** at national level for each river basin by an agency to be appointed by the Central government. It will help in continuous evaluation of the river basins.
- **Composition and tenure of members of a tribunal** is clearly defined.

However, there are fears of over-centralisation and Supreme Court hearing appeals against water tribunal rendering the decisions as not final. So, additional measures can be taken such as bringing water in the concurrent list, river-interlinking and use of Inter-State Council (ISC) in facilitating dialogue and discussion towards resolving conflicts.

6. **Asymmetry as an important characteristic of the Indian federalism has helped cater to the specific needs and requirements of some sub-units. Explain.**

**Approach:**

- Introduce by defining the term asymmetrical federalism.
- Highlight the asymmetric features in the Indian federalism that cater to specific needs.
- Conclude briefly.

**Answer:**

Asymmetric federalism is found in a federation when **different constituent units are accorded different powers and autonomy**. Asymmetric federalism in India is accorded through Constitutional provisions as well as differential treatment of the states by the Union government. The differential treatment is for specific units to cater to specific needs and requirements and may be ad-hoc or long term. **These include:**
Special provisions under the Indian Constitution:

- **Article 371** entrusts the Governor of Maharashtra with a special responsibility to establish **separate development boards** for Vidarbha, Marathwada, etc, while the Governor of Gujarat has a similar responsibility towards Saurashtra, Kutch etc.
- **Article 371A** provides for safeguards to **religious or social practices of the Nagas**, Naga customary law and procedures and restrictions on the ownership and transfer of land in Nagaland. Similar protection is accorded to the Mizos in Mizoram under **Article 371G**.
- **Article 371D** provides for a provision under which the President can pass an order to provide **equitable opportunities and facilities** to people belonging to Andhra Pradesh in public employment and education.
- **Article 371F** provides for special provisions for the state of Sikkim to enable the protection of existing laws of the state before its accession to India.
- **The Sixth Schedule** provides for special administrative provisions such as creation of Autonomous District Councils and Regional Councils for tribal areas in Assam, Meghalaya, Tripura and Mizoram.
- Parliament, by law, has created **Legislative Assemblies** for Delhi, Puducherry and Jammu and Kashmir to enable the people belonging to these Union Territories to have direct representation.
- **Special Category status**: The status has been given to various states such as Nagaland, Mizoram etc., which enables them to get additional financial support from the Centre. This status is accorded to states on account of low population density, difficult terrain, strategic location etc.
- **Centrally Sponsored Schemes (CSS)**: There is scope for differentiation among states in the selection of CSS, their design and contribution ratios. For example, Mission for Integrated Development of Horticulture is a CSS wherein the Central government contributes 60% of the total outlay for developmental programmes in all the states except the North-Eastern and Himalayan states where it contributes 90%.

These arrangements have been devised to incorporate the complex differences and identities among federal units. However, while transparent asymmetric arrangements can be justified as they contribute to nation building, the discriminatory policies followed purely on short term political gains can be harmful to the long-term interests and stability of federalism in India.

7. **The debates on issues such as replacement of the Planning Commission or the introduction of GST often bring to the fore the issue of 'Fiscal Federalism'. What does the term denote? Discuss with the relevant constitutional provisions in mind.**

**Approach:**

The federal structure has been evolving and the 73rd and 74th amendments have further added new layers to it. Answer requires and understanding of the constitutional mechanism of distribution of financial resources between centre and state. Constitutional provisions contained in part XII (Articles268-293) are important markers in this regard with special emphasis on Finance commission under the article 280.

**Answer:**

- Fiscal federalism refers to allocation of fiscal rights and responsibilities across different levels of government under the provisions of constitutional arrangement in a federal polity.
• The fiscal relations between the Centre and the States have been defined under the Constitutional provisions governing generation and distribution of revenues between the Union and the States as envisaged articles 268-293 in part XII of the constitution.
• The 73rd and 74th constitutional amendment further stipulated a long list of functions and sources of funds for both rural and urban local bodies.
• Constitution clearly delineates scheme of distribution of taxing powers which constitute the major sources of revenue for both the Union and the States.
• In practice Fiscal federalism in India has been marked by vertical and horizontal imbalances and the recent decades have seen rising demands for greater say of states in sharing of resources, revenues, functions and responsibilities. While the resources of the States are limited, they have larger responsibilities for social, educational and economic development of the people. Further there are wide differences in the level of development of the States.
• In order to address the issues of this vertical and horizontal imbalance in the Centre-State and inter-State relations, the Constitution of India has provided for inter-governmental transfers through the mechanism of Finance Commission (Article 280) which is constituted once in five years to recommend transfers of central revenue to the States for a five yearly fiscal cycle.
• Additionally, pursuant to 73rd and 74th Amendments each State was mandated to appoint a State Finance Commission for allocation of taxes and fees to local government as well as recommending the State’s tax devolution and grants.
• Thus, there are three main channels of Central transfers to States; the finance commission transfers, plan transfers and assistance for central sector and centrally sponsored schemes. Till recently such transfers also took place through the Planning Commission.
• In a major push to Fiscal federalism in the 2014 Budget the government shifted huge outlays to states by transferring large chunks of central plan outlays. Consequently state plans financed by the Centre have moved up from 26 percent of the total plan expenditure to 59 percent.

8. “The extra-ordinary feature of the Indian federalism is that many states get a differential treatment through appropriate constitutional provisions in light of the peculiar social and historical circumstances.” Analyse.

Approach:
First discuss the need of extra-ordinary features in the constitution apart from federal structure in India. Refer to each of the provisions along with discussion on the intentions behind their introduction. Assess whether the provision are successful. Discuss opposition to special provisions. Conclude with emphasis on mechanisms apart from special provisions to address the problems.

Answer:
The relationship between union and states is not uniform in India. Though the division of powers adopted by the constitution is common to all states yet the constitution has provided for special provisions to accommodate the wide-ranging social and cultural diversity of Indian states.

Most of the special provisions pertain to North-Eastern (N-E) states and state of Jammu and Kashmir (J&K). Article 371 of the constitution deals with such special provisions not only w.r.t NE states but also Andhra Pradesh, Gujarat and Maharashtra. Special provisions under article 371 A and G treats states of Nagaland, and Mizoram differently.
• Special provisions to Nagaland and Mizoram states are given to address the problem of law and order. The sizeable indigenous tribal population with distinct history and culture wish to be governed by their own laws, customs and traditions. They were introduced to stem alienation and insurgency in these states. Closer look at the present situation in Nagaland point to otherwise. In case of Nagaland provisions have been able to address insurgency and large scale violence but law and order problem still persists. Naga leaders approached central government in 2012 to seek political means for lasting peace within the state. In case of Mizoram problem of insurgency has been addressed successfully following the Mizoram peace Accord signed between government and Mizo National Front (MNF) in 1986.

• The other State, which has a special status is Jammu and Kashmir. Immediately after Independence Pakistan and India fought a war over Kashmir. Under such circumstances the Maharaja of Kashmir acceded to the Indian union. Most of the Muslim majority States joined Pakistan but J&K was an exception. Under these circumstances, it was given much greater autonomy by the Constitution under article 370. However, in practice the autonomy is much lesser than what the article suggests. Though insurgency is substantially addressed in the state, problem of alienation and breach of the trust is potent. There is growing demand in the state for greater autonomy in practice as defined in article.

• Many people believe that a formal and strictly equal division of powers applicable to all units (States) of a federation is adequate. Therefore, whenever such special provisions are created, there is some opposition to them. There is also a fear that such special provisions may lead to separatism in those areas. Therefore, there are controversies about such special provisions.

Though there are apprehensions on the special provisions mentioned, yet it has been seen that those special provisions in constitution have contributed to the health of the federation. They ought to portray the fundamental goal of preserving the diversities under broad unity. These provisions should be followed in letter and spirit to strengthen the feeling of oneness in the people.

9. In what way is the Indian constitution federal? Do you consider increasing assertiveness shown by some states as antithetical to national interest or a healthy development for Indian democracy?

Approach:

• This question has 3 parts – first you need to show the federal features of Indian constitution
• Then discuss the ill effects of confrontation between center and states on important issues. Some examples are national security (NCTC), economy (FDI in multi brand retail) and foreign policy (Sri Lanka)
• Show that it’s only natural process and healthy for our democracy

Answer:

Part 1

• Article 1 describes India as “union of states”. Despite this there are several features in the constitution which make it federal. Such as
  ○ Written constitution
  ○ Supremacy of the constitution
  ○ Division of powers between center and states has been provided (7th schedule)
  ○ Independent judiciary
  ○ Bicameralism (Rajya Sabha)
Part 2

- Unfortunately the word federalism has become an excuse for confrontational politics between center and states. And issues of crucial national importance such as NCTC, FDI in Multi Brand Retail, and important foreign policy decisions are taken on the grounds other than national interest. Seen from this perspective, federalism seems to be antithetical to national interest.

Part 3

- However, growing assertiveness by states can also be seen as a sign of maturing federal democratic framework. Center which in the past used to take unilateral decisions on issues which affect the interest of a state is now faced with reality wherein states are demanding that they be taken onboard on decisions which affect them.
- Also states expect that the center respect the constitutional separation of powers and shouldn’t encroach on the constitutional space that legitimately belongs to them.
- Hence in a way, center is being encouraged to make its decision making more democratic particularly on issues that directly affect states. This is in keeping with the federal spirit of the constitution and paves the way for more collaborative federalism which is a healthy sign for our democracy.

10. The “centralised planning with pronounced socialist bias” has been responsible for the increasing dominance of centre over state. Discuss.

Approach:

The Indian state has adopted the socialist ideology to realize the development goals through planning which has become centralised. We have to show that how this entire process has skewed the federal set up in favour of the Union?

Answer:

Socialist bias:

The need to heal the wounds of colonialism marked by abject poverty, wide inequality, huge under development and low level of education inspired constitutional framers to adopt the socialist pattern of development. Further, centrifugal tendencies in the wake of partition and fear of secessionism were a major reasons behind the focus towards increasing centralization. Thus, the union started playing a great role in the spheres of the health, agriculture, education, roads, animal husbandry, land policy forest etc though they are in the state list. The central planning laid down plans even in those areas which are exclusively in the state list. The First FYP stated that development in these areas places special responsibility on the centre. Such views ignore the federal set up and undermine the role of states.

Centralised Planning:

1. Centrally sponsored schemes are devised by the centre but implemented by the state machinery.
2. Planning commission has encroached upon the autonomy of the states as it can accept, modify or reject the states’ proposals for development programmes, for which central assistance is sought and which can be granted only on the acceptance of PC.
3. Although states are represented in the NDC but it is a body of non-experts which have no match with a specialised body like the Planning Commission. States
surrendered the sales tax on sugar, tobacco and textiles etc to the centre in a single meeting of the NDC, without proper debate in the states.

4. Centralised planning had led to the creation of parallel organisations in centre as well as the states. For example, community development programme is not mentioned in any list but it covers the areas of state list. Through the parallel machinery for its implementation, the centre is virtually encroaching the state list.

5. With the beginning of direct cash transfer a significant proportion of revenue earlier given to states for passing on to autonomous agencies (including Panchayats) for implementing various Central schemes is now directly given to the latter, bypassing the states. Constitutional experts and scholars of federalism find this intrusion an affront to the states’ autonomy and unhealthy for the future of Indian federalism.

11. In a paradigmatic shift from the command and control approach of the past, NITI Aayog accommodates diverse points of view in a collaborative, rather than confrontationist setting. Comment.

Approach:
- Compare the present and past approach of planning in India
- Discuss NITI Ayog’s inclusive approach and criticisms

Answer:
Niti Aayog replaces the Planning Commission which was responsible for assessing national resources and drafting five-year plans for India. There are various reasons which demanded a transition to a new institution of NITI Aayog:

- Political character of the institution- Far from being the think-tank for providing strategic vision for the country, the Commission was reduced to a political tool of the central government for dictating the policy choices of state governments and micro managing implementation.
- By the mid-1960s after a series of plan failure the Planning Commission changed from an investment to a spending body. The phenomenal increase in government plans and schemes, dating to the mid-1980s, took place at the Commission’s behest and coincided with India’s looming fiscal crisis.
- Huge diversity of the country made centralized planning an incongruity
- State governments have better information about what is required at the local level
- Plethora of Centrally Sponsored Schemes with one size fits all approach
- It also served as a template for other extra-constitutional establishments (for example, the National Advisory Council) that came to lord over elected governments and states.
- The fall of centrally-planned economies across the world. These plans curtailed the free play of market forces, reduced opportunities for private entrepreneurship and eventually inhibited India’s growth.
- Direct conflict with the trend in the Finance Commission, a constitutional body unlike the Planning Commission. While each successive Finance Commission has tried to devolve greater revenues to states, the Planning Commission in turn encroached on all funds to implement Plan targets.
- The states had little recourse in terms of resolving the outstanding issues of conflict either with the central government or with other states.

Niti Aayog which consists of a full time organizational structure (PM as chairman and a CEO appointed by PM), also comprise a governing council which includes state chief ministers and lieutenant governors of Union territories. In this way it reflects the
changes required in India’s governance structures and provide a more active role for the state governments in achieving national objectives.

Niti Aayog replaces the command and control structure of the planning commission and accommodates diverse view in a collaborative way as follows:

- By acting as a “think-tank” that will provide Governments at the central and state levels with relevant strategic and technical advice across the spectrum of key elements of policy.
- Ending slow and tardy implementation of policy, fostering better Inter-Ministry coordination and better Centre-State coordination. It will help evolve a shared vision of national development priorities, and foster cooperative federalism, recognizing that strong states make a strong nation.
- Provision to convene regional councils to address specific issues and contingencies having an impact on more than one state or a region for a specific tenure.
- By having full-time members and up to two part-time members from leading universities, research organizations and other relevant institutions.
- By fostering cooperative federalism through structured support initiatives and mechanisms with the states on a continuous basis.
- Developing mechanisms to formulate plans at the village level and aggregating these progressively at higher levels of government as well as offering a platform for resolution of inter-sectoral and inter-departmental issues in order to accelerate implementation of the development agenda.
- By creating a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and partners.

12. **Enumerate the objectives of NITI Aayog. Also, discuss the performance of this body since its inception and suggest measures to make it more effective.**

**Approach:**
- Briefly write down the broad mandate of NITI Aayog and enlist its objectives.
- Discuss the performance of NITI Aayog (Achievements and shortcomings) in the last three years.
- Mentioning lacunae, suggest some measures to make it more effective.

**Answer:**

NITI Aayog, established in 2015, is a think-tank entrusted with the mandate of re-imagining the development agenda by dismantling old-style central planning.

**Objectives**
- To evolve a shared vision and foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- To pay special attention to the sections of our society that may be at risk of not benefitting adequately from economic progress.
- To design strategic and long term policy frameworks and monitor their progress and their efficacy.
- To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.
Performance of NITI Aayog

Achievements:

- **Cooperative federalism**: State governments have been given prominence in the functioning of NITI Aayog and it has also expedited the resolution of issues between the central ministries and state and UTs.
- **Competitive federalism**: NITI finalized indices to measure incremental annual outcomes in critical social sectors like health, education and water etc.
- **Human development**: It started a special initiative focusing on 115 aspirational districts which need to improve on key indicators like health, nutrition, education, basic infrastructure and poverty has been launched.
- **Evidence based policy making**: It focuses on policy formulation based on adequate data, like it brought out three year action agenda and development of composite water management index, promotion of GIS based planning and revamped India Energy Security Scenarios (IESS), 2047.
- **Reforms in Agriculture**: It brought out policy paper on reforms in APMC Act, rejuvenating fertilizer sector, doubling farmer’s income, Model Act on Agricultural Land Leasing etc.

Shortcomings/Criticism:

- Niti Aayog’s three-year action agenda has too wide approach for imminent challenges.
- Limited focus on implementation challenges, bureaucratic reforms and government-citizen interaction, which is core to several good ideas remaining on paper.
- It doesn’t focus adequately on the practical aspects of its recommendations. It lacks creation of a feedback loop, fixing accountability of bureaucrats and process reforms are missing.

Measures to make NITI Aayog more effective

- Rather than measuring the performance alone, NITI also needs to emphasize on building the capacity to perform.
- For sectoral specialty, it needs to design customized solutions depending on the impediment by taking help from external experts.
- People’s participation should also be provided enough attention in the administrative structure of NITI Aayog.

Implementing these measures, will help NITI Aayog metamorphose into an organization which can transform implementation of policy reforms and play a more meaningful role in shaping the country’s future.

13. *Mention the structure and functions of NITI Aayog. Also, comment on its contemporary relevance.*

**Approach:**

- Give a brief introduction about establishment of NITI Aayog.
- Describing the structure of NITI Aayog, bring out its functions.
- Then discuss its contemporary relevance.
- Conclude with few issues that can hamper relevance of NITI Aayog.
The National Institute for Transforming India (NITI) Aayog, established in 2015, is the premier policy ‘Think Tank’ of the Government of India, providing both directional and policy inputs. While designing strategic and long term policies and programmes for the Government of India, NITI Aayog also provides relevant technical advice to the Centre and States. An important evolutionary change from the past, NITI Aayog acts as the quintessential platform of the Government of India to bring States to act together in national interest, and thereby fosters Cooperative Federalism.

Structure of NITI Aayog:

- The Governing Council of NITI Aayog with the Prime Minister as its Chairperson, comprises of Chief Ministers of all states and Lt. Governors of UTs without legislature.
- Regional Councils are constituted to address specific issues which can affect more than one state in a region. They can be headed by the Prime Minister or his nominee and include the Chief Ministers and Lieutenant Governors/Administrators of States/UTs in the region.
- Apart from that, NITI Aayog has a Vice Chairperson, full time members, ex officio members and a CEO appointed by the Prime Minister.
- Experts, specialists and practitioners with relevant domain knowledge as special invitees nominated by the Prime Minister.

Functions of NITI Aayog:

- To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States in the light of national objectives.
- To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- To design strategic and long term policy and programme frameworks and initiatives, and monitor their progress and their efficacy.
- To maintain a state-of-the-art Resource Centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.

Relevance of NITI Aayog in contemporary time:

- NITI Aayog is acting as a funnel through which new and innovative ideas come from all possible sources like industry, academia, civil society or foreign specialists and flow into the government system for implementation.
- It fosters spirit of cooperative federalism within the States by expediting pending issues and conceptualizing Ek Bharat, Shrestha Bharat to foster inter-state engagements,
- Since it does not have power to allocate funds to states, it has enhanced free and democratic participation of states in the planning and working for development of the country. This has changed the states’ approach from competing to get more funds from the centre to competing to get better results.
- It is also encouraging knowledge dissemination and innovation through initiatives like Good Practices Resource Book, Atal Innovation Mission, Global Entrepreneurship Summit etc.
- It collects real time data through its Development Monitoring and Evaluation Office and connects the various ministers, thereby reducing inertia in the system.
- It is promoting evidence based policy making through various tools such as composite water management index, GIS based planning etc.
With states getting much more untied funds from the center after the recommendations of 14th FC, it has become pertinent that state’s capacity to utilise those funds effectively also be developed. NITI Aayog fosters this development through coordination, competition, advice and dissemination of best practices. Further, it has the potential to metamorphose into an organization, which can transform implementation of policy through reforms and play a more meaningful role in shaping the country's future.

14. For inclusive and sustainable growth, India needs both cooperative as well as competitive federalism. Discuss.

Approach:
Recent government decision has led to the discussion on whether federalism should be cooperative or competitive. This question is based on it and the answer should consist of the following:
- Introduce the concept of inclusive and sustainable growth.
- Briefly explain cooperative and competitive federalism. Also cite examples.
- Discuss the need to maintain a balance on the two approaches.

Answer:
In a country as diverse as India, the States play an important role in achieving the objectives of inclusive and sustainable growth, which call for equitable growth opportunities to all stakeholders.

The essence of Co-operative federalism in this regard is that the Centre and the State Governments should be guided by the broader national concerns. It encourages the Government at different levels to take advantage of a large national market, diverse and rich natural resources and the potential of human capabilities in all parts of the country. A case in point could be GST where manufacturing states are giving up their tax earnings for equal sharing with consuming states for the sake of uniform tax laws.

While a harmonious relationship and co-operative spirit between the Centre and the states and among the States themselves is welcome, a healthy competition among the States for evolving efficient and socially inclined policies and programmes is also desirable. This calls for the need to have competitive federalism. Under the concept of Competitive federalism, States would vie with each other to attract investments and also hopefully provide better public goods and services.

It requires States to reform their programmes and provide goods and services that they can self-fund. States compete with each other to attract funds and investment, which facilitates efficiency in administration and enhances developmental activities. Recent initiatives like Vibrant Gujrat and Resurgent Rajasthan are some of the examples of competitive federalism. Healthy competition strives to improve physical and social infrastructure within the state. Recent 14th Finance Commission recommendation also followed competitive federalism idea. Now States should be allowed to chalk out their programmes and schemes with greater financial strength and autonomy, while observing financial prudence and discipline.

Even as it is important for states to compete at a certain level, there is greater need to take the disparity among the States into consideration. Some States may have specialized factor conditions such as skilled labour, capital and infrastructure which others may not be endowed with.

Therefore, to expect all States to catch up uniformly in the process of growth and development would be a fallacy. Many States still need the help of the Centre and
require extra funding before they can imagine competing. Hence purely relying on the spirit of competitive federalism may not work in our country as some traditionally disadvantaged states like north-eastern states may not be able to compete on their own. Therefore both the systems of Competitive and Cooperative Federalism are not mutually exclusive and a balance between the two is needed for inclusive and sustainable growth.

15. **It is contended that GST regime will significantly curb the financial autonomy of states by taking away substantial taxation powers. In this regard, examine the impact of the GST regime on federal structure of our polity. What are the proposed mechanisms in the bill which seek to address this issue?**

**Approach:**
- Highlight impact of GST on federalism – eroding states’ autonomy and cooperative & competitive federalism.
- Proposed mechanisms within the GST Act for dealing with such provisions.
- Critique and way forward.

**Answer:**
GST, by subsuming an array of indirect taxes seeks to simplify tax administration, improve compliance and eliminate economic distortions in production trade and consumption.

However, it is argued that it erodes states’ autonomy in matters of taxation:
- According to constitution states have complete autonomy to levy sales tax, which broadly formed 80% of their revenue. This will be replaced by a uniform GST rate.
- GST Council:
  - A constitutional body (not the states) will decide a single rate of CGST and SGST
  - The centre wields veto -1/3rd representation in the GST Council where any decision has to have 3/4th consensus
  - all states have exactly one vote –no distinction between manufacturing and consuming states
- Elected states’ govt laid emphasis on social spending (welfare expenditure), which was financed by new levies. GST will take away this power.
- Panchayat and city finances have not been discussed in GST

On the other hand, GST seeks to enrich the cooperative and competitive federalism:
- It makes states significant partners in decision making national level macroeconomic management.
- GST brings plentiful revenues and significantly higher GSDP with lower inflation. This is done by increasing compliance, enhancing tax base.
- It eliminates ‘cascading’ of taxes which in turn lead to cutting production costs and making exports more competitive.
- It will ensure check on tax evasion.
- GST seeks to increase aggregate revenues that will create a new type of autonomy (through largely untied fiscal devolution).

Owing to the diverse advantages of introduction of GST on the lines of international best practices, various mechanisms have been built within the bill to address such issues arising out of it:
- **GST Compensation**: the Centre is committed to compensate for loss of revenue due to shift from origin based to consumption based taxation structure, for 5 years on the recommendations of GST Council.
- **GST Council**: a joint forum of Centre and States, which would function under the chairmanship of Union Finance Minister. It will make recommendations on important issues like tax rates, exemption limit, threshold limits etc.
- In case of alcoholic liquor for human consumption, States would continue to levy the taxes presently being levied, i.e., State Excise Duty and Sales Tax/VAT.

16. **Can we say that cooperative federalism in India has strengthened in the post-liberalisation era? Give reasons in support of your answer.**

**Approach:**
- Give a brief introduction about federalism and cooperative federalism.
- Then highlight the factors that have led to strengthening of cooperative federalism in the post-liberalisation era.
- Give a brief conclusion regarding need of cooperation in the wake of liberalisation.

**Answer:**
Federalism implies division of administrative, financial and legislative powers between union and states while cooperative federalism implies that they share a horizontal relationship where they cooperate with each other in larger public interest.

Our polity started on a cooperative model after independence but successive governments with strong prime ministers at the center and regional political parties in some state led to confrontational type of relationship. However, post-1990 or post-liberalisation era, various factors led to strengthening of cooperative federalism.

- **End of single party rule** at Centre has diluted the Prime-ministerial form of government. Thus, union governments are not as powerful as they were earlier.
- **Emergence of coalition government** at Centre has made it difficult to misuse constitutional provisions such as 356 etc. for selfish political reasons.
- **Dependence of Union government on support of regional political parties** has helped regional leaders to think from all India perspective and union to think from point of view of regional parties. Thus, less confrontation and more cooperation.
- **Presidential activism** - since 1990 onwards successive presidents have become proactive in ensuring constitutionalism and unafraid of using discretionary power in case council of minister misuses constitutional provisions for selfish political reasons.
- **Judicial activism** - since 1990 (for ex- S R Bommai case) has ensured that union government don’t misuse constitutional provisions. This has provided a sense of security to state governments.
- **Implementation of 73th and 74th constitutional amendment** – has also focused on union, state and local relations unlike union-state relation only earlier. Earlier states were demanding more powers from union without doing same for local government but now states are more accommodative to the complex dynamics of union-state relations.
- **Active media** - with explosion of electronic media after liberalization and spread of social media in recent times, it has become very difficult for any government to adopt anti-democratic measures like dismissing State governments.
- **Changed political culture** – People, with increasing awareness about their rights, are unwilling to accept governments which adopt confrontational approach.
towards centre for political reasons forcing states to behave in a more responsible manner.

In fact, recent government initiatives affirm the move toward cooperative federalism.
- Replacement of planning commission with Niti Ayog symbolizes strengthening of cooperation between centre and states.
- Implementation of GST is significant movement towards cooperative federalism in taxation. GST council provides the institutional framework in this context
- The recommendations of Fourteenth Finance Commission and its implications also augur well for Cooperative Federalism by providing more fiscal space and agency to the states.
- The restructuring of Centrally Sponsored Schemes (CSS) is also a move in consonance with the broader developments in this context.

Both union and states have been forced to come together to make economic reforms and social schemes successful. Further, the forces of liberalization along with Information technology revolution and knowledge revolution are making the diverse and pluricultural society of India even more complex and interdependent.

In fact, we are moving towards competitive federalism where states not only cooperate with centre but also compete with each other for investments and budgetary support based on their performance. Thus, the success of reforms depends on political stability, policy certainty as well as adaptive approach of the governments. It also needs uniform policies between different tiers of governance. This makes the concept of cooperation not optional but necessary.

17. **Even though Indian federalism has matured quite a bit, with states having far greater control of their economic and political management, serious structural problems still remain. Discuss.**

**Approach:**
- In the introduction, elaborate on how Indian federalism has matured over the years.
- Then highlight greater control of states on their economic and political management.
- Then the mention the persisting structural problems.
- To conclude mention initiatives taken to strengthen federalism and issues that needs to be addressed.

**Answer:**

Indian federalism has come a long way from single party, overly centralized union government towards the era of cooperative and competitive federalism. Indian states have much greater control over their economic and political management. This is illustrated as under:

**Economic decentralization**
- 14th Finance Commission recommendations to increase tax receipt devolution to state from 32% to 42% gave a massive boost to financial autonomy to the states.
- Union Government had also raised the non-statutory share from 21% to 26% and about 57.6% of the gross tax receipts were to be transferred to the states.
• States are encouraged to participate in economic diplomacy. For eg- Tripura & Punjab were allowed to sell surplus electricity to Bangladesh & Pakistan respectively.
• Implementation of Goods and Services tax, as a universal code for indirect taxes, has also boosted fiscal federalism.

Control over political management
• Under Niti Aayog, inclusion of the CMs of states and their regular interactions with the centre for policy formulation aim towards Union-State Policy coordination and coherence in formulation and design of schemes.
• Inter-State Council, Zonal Council, Governors’ Conference, Chief Ministers’ Conference are established mechanism to promote the idea of cooperative federalism and they are being institutionalised by convening them regularly.

Structural Issues
• **Responsibility v/s resources**: The state government is responsible and accountable for basic services like health, education, sanitation, police, electricity etc. However, they have constrained access to resources.
• **Lack of expertise**: The members of All-India services protected by Article 311 are generalist and all-purpose but lack specialized skills required to manage various services while enjoying a monopoly over all key public offices.
• **Failure of third tier of federalism**: Part IX of the Constitution created a scheme of local government. However, this tier remains constrained due to lack of funds, functions and functionaries.
• **Rigidity at centre**: There exists rigidity in Union legislation on subjects like education with resultant failure to improve outcomes despite vast expenditure.
• **Interference by centre**: Nominated governors still viewed as controlled by the centre.

Thus, these structural issues need to be addressed. Apart from these there are some low hanging fruits which may be considered such as streamlining of central schemes with administrate control given to the states, making Inter-state council functional that largely remains unutilized hitherto and participative policymaking by involving both rural and urban local government.
Heartiest Congratulations to all successful candidates

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