

# Centre-State Relations/ASR

# Essential Characteristics of a federal Constitution

1. Distribution of Powers
2. Supremacy of Constitution
3. A Written Constitution
4. Rigidity
5. Authority of Courts

# Modifications of the Federal Principle

1. Appointment of Governors
2. Parliaments power to legislate in the national interest. (If RS passes a resolution by 2/3<sup>rd</sup> majority)
3. Parliaments power to form new States and alter boundaries of existing States. (Article 3)
4. Emergency provisions

# LEGISLATIVE RELATIONS

- The Constitution of India makes two-fold distribution of legislative powers-
  1. with respect to territory;
  2. with respect to subject-matter.

# Territorial jurisdiction

- As regards territory Article 245(1) provides that subject to the provisions of this Constitution, **Parliament may make laws for the whole or any part of the territory of India.** According to clause (2) of Article 245 a law made by Parliament shall not be deemed to be invalid on the ground that it has ***extra-territorial operation, i.e. takes effect outside the territory of India.***

# Territorial jurisdiction

- *The legislation may offend the rules of international law, may not be recognised by foreign courts, or there may be practical difficulties in enforcing them but these are questions of policy* with which the domestic tribunals are not concerned”.
- However, *the legislative powers of Parliament and State Legislatures are subject to the provisions of the Constitution*, viz. (1) the scheme of the distribution of powers, (2) Fundamental Rights, (3) other provisions of the Constitution.

# Theory of Territorial Nexus

- The legislature of a State make laws for the whole or any part of the State [Art.245(1)]. This means that **State Law would be void if it has extra-territorial operation i.e., takes effect outside the State.** However, there is one **exception to this general rule. A State law of extra-territorial operation will be valid if there is sufficient nexus between the object and the State.**
- Whether there is sufficient connection is a question of fact and will be determined by Courts in each case accordingly.

# State of Bombay v. R.M.D.C (1957)

- In **State of Bombay v. R.M.D.C**, the Bombay State levied a tax on lotteries and prize competitions. The **tax was extended to a newspaper printed and published in Bangalore** but had wide circulation in Bombay. The **respondent conducted the prize competitions through this paper.** The Court held that there existed a sufficient territorial nexus to enable the Bombay State to tax the newspaper.



# Distribution of Legislative Powers--

## Subject-matter

- In America, the *Sovereign States which were keen to federate*, did not like *complete subordination to the Central Government* hence they believed in *entrusting subjects of common interest to the Central Government while retaining the rest with them. Thus American Constitution only enumerates the powers of the Central Government and leaving the residuary power to the States.* Australia followed the American pattern of only *one enumeration of powers, i.e. of Central Government leaving the residuary powers* to the States because their problems were similar to the Americans.

# Distribution of Legislative Powers-- Subject-matter

- In Canada there is double enumeration, Federal and Provincial and they opted for a strong Centre. *Our Constitution-makers followed the Canadian scheme obviously opting for a strong Centre.* However, they added one more List—the Concurrent List.
- The present Constitution adopts the method followed by the Government of India Act, 1935, and *divides the powers between the Union and the States in three Lists*—the Union List, the State List and the Concurrent List.

# Union List

- The Union List consists of **97 subjects**. *The subjects mentioned in the Union List are of National importance* i.e. defence, foreign affairs, banking, currency and coinage, union duties and taxes.

## *State List*

The *State List* consists of **66 subjects**. *There are of a local importance*, such as, public order and police, local Government, public health and sanitation, agriculture, forest, fisheries, education, State taxes and duties. *The States have exclusive power to make laws on subjects mentioned in the State List.*

## *Concurrent List*

- The *Concurrent List* consists of **47 subjects**. Both Centre and the States can make laws on the subjects mentioned in the Concurrent List. But in case of **conflict** between the Central and the State law on Concurrent subjects, the Central law will prevail. **The Concurrent List is not found in any other federal Constitution.** The framers added this List to the Constitution with a view to secure uniformity in the main principles of law throughout the country. **The Concurrent List was to serve as a device to avoid excessive rigidity to two-list distribution.**

# The Residuary Powers

- Article 248 vests the residuary powers in the Parliament. It says that **Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or the State List.** Entry 97 in the Union List also lays down that Parliament has exclusive power to make laws with respect to any matter not mentioned in the State List or the Concurrent List including any tax not mentioned in either of these Lists. **Thus the Indian Constitution makes a departure from the practice prevalent in U. S. A., Switzerland and Australia where residuary powers are vested in the States.** This reflects the leanings of the Constitution-makers towards a strong Centre.

# PRINCIPLES OF INTERPRETATION OF LISTS

- **Predominance of the Union List** - in case of **overlapping between the Union and the State List** it is the Union List which is to prevail over the State List. In case of **overlapping between the Union and the Concurrent List**, it is again the Union List which will prevail. In case of **conflict between the Concurrent List and State List**, it is the Concurrent List that shall prevail.

# Each Entry to be interpreted broadly

- In **Calcutta Gas Ltd. v. State of West Bengal (1962)**, the Supreme Court said that the "widest possible" and "most liberal" interpretation should be given to the language of each Entry. *A general word used in an Entry..... must be construed to the extend to all ancillary or subsidiary matters* which can fairly and reasonably be held to be included in it. The Court should try, as far as possible, to *reconcile entries and to bring harmony between them.*

## *Union of India v. H. S. Dhillon (1972)*

- In *Union of India v. H. S. Dhillon*, the question involved was whether Parliament had legislative competence to pass Wealth-tax Act imposing wealth-tax on the assets of a person in agricultural land. The Court held that in case of a Central Legislation the proper test was to inquire whether the matter fell in List II (State List) or List III (Concurrent List). **Once it is found that the matter does not fall under List II, Parliament will be competent to Legislate on it under its residuary power in Entry 97 of List I. *In such a case it becomes immaterial whether it falls under Entries 1-96 of List or not. (residuary power- given widest interpretation)***



# *International Tourism Corporation v. State of Haryana (1981)*

- But in *International Tourism Corporation v. State of Haryana*, the Supreme Court held that where the competing entries are an entry in List II and entry 97 of List I the entry in the State List must be given a broad and plentiful interpretation and should not be interpreted in favour of Centre by resorting to the residuary power. *The residuary power cannot be so expansively interpreted as to whittle down the power of the State Legislature.* That might affect and jeopardise the federal principle. The resort to the residuary power should be the last refuge.

# *International Tourism Corporation v. State of Haryana (1981)*

- In the instant case the appellants challenged the validity of Section 3 of the Haryana Passenger and Goods Taxation Act, 1952, which permitted **the levy of tax on passenger and goods carried on by carriages plying on the National Highways.**
- **Entry 56 of List II empowers the State to levy taxes on goods and passengers carried on by road or on inland waterways.**
- **It was contended that the State Legislature was incompetent to levy such a tax on motor vehicles plying on National Highways.**

# *International Tourism Corporation v. State of Haryana (1981)*

- The Court rejected this argument and held that ***the State Legislature is competent to levy taxes on passengers and goods carried in the National Highways under Entry 56 of List II.*** The Court held that before exclusive legislative competence can be claimed for Parliament by resorting to the residuary power, the legislative incompetence of the State Legislature must be clearly established. Entry 97 itself is specific that a matter can be brought under that Entry only if it is not enumerated in List II or List III. The decision in the instant case has neutralised much of the affects of the Dhillon's case where the residuary power was given widest interpretation.

## *R. D. Joshi v. Ajit Mills (1977)*

- In *R. D. Joshi v. Ajit Mills*, the Supreme Court held that the **Entries in legislative List must be given wide meaning implying all ancillary and incidental powers. Punitive measures for enforcing social legislation are part of the ancillary powers.**

# Pith and substance

- Within their respective spheres, the Union and the State Legislatures are made supreme and **they should not encroach into the sphere reserved to the other. If a law passed by one encroaches upon the field assigned to the other, the Court will apply the doctrine of pith and substance to determine** whether the Legislature concerned was competent to make it. ***If the 'pith and substance' of law, i. e., the true object of the legislation or a statute, relates to a matter with the competence of Legislature which enacted it, it should be held to be intra vires even though it might incidentally trench on matters not within the competence of Legislature.*** In order to ascertain the true character of the legislation one must have regard to the **enactment as a whole, to its object and to the scope and effect of its provisions.**

# *Profulla Kumar Mukerjee v. Bank of Khulna (1947)*

- The Privy Council applied this doctrine in *Profulla Kumar Mukerjee v. Bank of Khulna*. In this case the **validity of the Bengal Money Lenders' Act, 1946, which limited the amount and the rate of interest recoverable by a money-lender on any loan** was challenged on the ground that it was *ultra vires* of the Bengal Legislature in so far as it related to 'Promissory Notes', a Central subject. The Privy Council held that the *Bengal Money-lenders' Act was in pith and substance a law in respect of money-lending and money-lenders-a State subject, and was valid even though it trenched incidentally on "Promissory note"-a Central subject.*

# *State of Bombay v. F. N. Balsara(1951)*

- In *State of Bombay v. F. N. Balsara*, the **Bombay Prohibition Act**, which prohibited sale and possession of liquors in the State, was challenged on the ground that it incidentally encroached upon import and export of liquors across custom frontier-a Central subject. The Court held that Act valid because the pith and substance of the Act fell under the State List and not under Union List even though the Act incidentally encroached upon the Union Powers of Legislation.

# Colourable Legislation

- The whole doctrine of colourable legislation is based upon the maxim that "*you cannot do indirectly what you cannot do directly*".
- *State of Bihar v. Kameshwar Singh (1952)*: In this case the *Bihar Land Reforms Act, 1950, was held void* on the ground that *though apparently it purported to lay down principle for determining compensation yet in reality it did not lay down any such principle and thus indirectly sought to deprive the petitioner of any compensation.*



# Repugnancy between a Central Law and a State Law (Art. 254).

- Article 254 (1) says that if *any provision of law made by the Legislature of the State is repugnant to any provision of a law made by Parliament* which is competent to enact or to any provision of the existing law with respect to one of **the matters enumerated in the Concurrent List**, then the law made by Parliament shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void.

# *Karunanidhi v. Union of India (1979)*

- Article 254 (1) only applies where there is inconsistency between a Central Law and a State Law relating to a subject mentioned in the Concurrent List. **But the question is how the repugnancy is to be determined? In M. Karunanidhi v. Union of India, Fazal Ali, J., reviewed all its earlier decisions and summarised the test of repugnancy.**

# *Karunanidhi v. Union of India (1979)*

- According to him a repugnancy would arise between the two statutes in the following situations:
  1. It must be shown that there is **clear and direct inconsistency** between the two enactments [Central Act and State Act] **which is irreconcilable, so that they cannot stand together or operate in the same field.**
  2. **There can be no repeal by implication** unless the **inconsistency appears on the face of the two statutes.**

## *Karunanidhi v. Union of India (1979)*

3. Where the two statutes occupy a particular field, but **there is room or possibility of both the statutes operating in the same field without coming into collusion with each other, no repugnancy results.**
4. Where there is **no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.**

# Repugnancy -Exception

- The above rule of repugnancy is, however, subject to the exception provided in clause (2) of this Article. **The State law if it has been reserved for the assent of the President and has received his assent, shall prevail notwithstanding such repugnancy. But it would still be possible for the Parliament under the provision to clause (2) to override such a law by subsequently making a law on the same matter.**

# *Deep Chand v. State of U. P (1959)*

- *In Deep Chand v. State of U. P.*, the validity of U. P. Transport Service (Development) Act, 1955 was involved. **By this Act the State Government was authorised to make the Scheme for nationalisation of Motor Transport in the State.** The law was necessitated because the *Motor Vehicles Act, 1939 did not contain any provision for the nationalisation of Motor Transport Services.* Later on, *in 1956 the Parliament with a view to introduce a uniform law amended the Motor Vehicles Act, 1939, and added a new provision enabling the State Government to frame rules of nationalisation of Motor Transport.* The Court *held* that since both the Union Law and the State Law occupied the same field, the *State Law was void to the extent of repugnancy to the Union Law.*

# *Zaverbhai v. State of Bombay (1954)*

- In *Zaverbhai v. State of Bombay*, Parliament enacted the ***Essential Supplies Act, 1946, for regulating production, supply and distribution of essential commodities. A contravention of any provision of the above Act was punishable with imprisonment up to 3 years or fine or both.*** In 1947, considering the punishment inadequate, the ***Bombay Legislature passed an Act enhancing the punishment*** provided under the Central Law. ***The Bombay Act received the assent of the President and thus prevailed over the Central Law and become operative in Bombay.*** ***However, in 1950 Parliament amended its Act of 1946 and enhanced the punishment.*** It was held that as both occupied the same field (enhanced punishment) the ***State law became void as being repugnant to the Central law.***

# Parliament's power to Legislate on State Subjects

- Though *in normal times the distribution of powers must be strictly maintained and neither the State nor the Centre can encroach upon the sphere allotted to the other* by the Constitution, yet in certain exceptional circumstances *the above system of distribution is either suspended or the powers of the Union Parliament are extended over the subjects mentioned in the State List.* The exceptional circumstances are :



# *(1) Power of Parliament to legislate in the national interest*

- According to Article 249, if the Rajya Sabha passes a resolution supported by 2/3 of the members present and voting that it is ***necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated within State Law, then it shall be lawful for the Parliament to make laws for the whole or any part of the territory of India with respect to that matter so long as the resolution remains in force.*** Such a resolution normally lasts for a year; it may be renewed as many times necessary but not exceeding a year at a time. These laws of Parliament will, however, ***cease to have effect on the expiration of the period of six months after resolution has ceased to operate.***

## *(2) During a Proclamation of Emergency*

- *According to Article 250 while the Proclamation of Emergency is in operation the Parliament shall have power to make laws for the whole or any part of the territory of India with respect to all matters in the State List. Such a law, however, shall cease to have effect on the expiration of six months after the proclamation of emergency has ceased to operate.*

### *(3) Parliament's power to legislate with the consent of the States*

- **According to Article 252 if the Legislature of two or more States pass resolution to the effect that it is desirable to have a law passed by Parliament on any matters in the State List, it shall be lawful for Parliament to make laws regulating that matter. Any other State may adopt such a law by passing a resolution to that effect. Such law can only be amended or repealed by the Act of Parliament.**

## *(4) Parliament's power to legislate for giving effect to treaties and international agreements*

- *Article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions. In other words, the normal distribution of powers will not stand in the way of Parliament to pass a law for giving effect to an international obligation even though such law relates to any of the subject in the State List. Art. 253 enables the Government of India to implement all international obligations and commitments.*

## *(4) Parliament's power to legislate for giving effect to treaties and international agreements*

- Treaties are **not** required to be ratified by Parliament. They are, however, **not self-operative.** **Parliamentary legislation will be necessary for implementing the provisions of a treaty.** But laws enacted for the enforcement of treaties will be subject to the **constitutional limits that is, such a law cannot infringe fundamental right.**

*(5) In case of failure of constitutional machinery in a State*

- ***Under Article 356 Parliament is empowered to make laws with respect to all matters in the State List when the Parliament declares that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.***

# Federal Character –modified (arguments)

- Thus from the scheme of distribution of legislative powers between the Union and the States it is **quite evident that the framers have given more powers to the Union Parliament as against the States.** The States are not vested with exclusive jurisdiction -even over the subjects assigned to the States by the Constitution and thus it makes the States to some extent subordinate to the Centre. Indeed **this is a clear departure from the strict application of the federal principle followed in America and Australia. *Critics of our Constitution take these provisions in support of their arguments that due to these provisions the federal character of the Indian Constitution, if not disappeared, has been greatly modified.***

# Merits rather than demerits

- It is submitted that these provisions are **merits rather than demerits** of the Indian Constitution. **They enable the Centre to legislate in exceptional circumstances on the State subjects without amending the Constitution** and thus **introducing a certain amount of flexibility in the scheme of distribution of powers.** Moreover, they are only resorted to in most cases with the consent of the States. **Again, they are invoked only where there are exceptional circumstances and that too for a limited period.** Thus the framers have incorporated the federal principle in our Constitution in a modified form in the light of the experience of other federations and in view of the peculiar requirements of our country.



# ADMINISTRATIVE RELATIONS

- The Union Government is responsible for maintaining peace and order in the country. Therefore, *co-operation and co-ordination between the Centre and the State administrative authorities is indispensable.*
- In emergency the Government of India exercises complete control over the State and functions as if it is a unitary Government.

# Control of Union over States

- Articles 256 to 263 provide for Union control over States **even in normal times through following ways:**
  - (a) Direction by the Union to the State Governments.
  - (b) Delegation of Union functions to the States,
  - (c) All-India Services.
  - (d) Grants-in-aid.

# Direction by the Centre to the States

- Article 256 provides that the executive power of the State shall be so exercised as to ensure compliance with the laws made by Parliament and the executive power of the Union shall also extend to the giving of such directions to a State as it may deem essential for the purpose. Thus power to give direction was necessary because, if the Centre was not vested with such power the proper execution of the laws passed by the Parliament would become impossible.

# Direction by the Centre to the States

- Accordingly, Article 257 enacts that the States must exercise their executive power in such a way so as not to impede or prejudice the exercise of the executive power of the Union in the State. For this purpose the Central Government can give directions to a State as to in which way the State should exercise its executive power. The powers of the Central Government also extend to giving directions to a State in two specific matters:- (1) the construction and maintenance of means of communication which are declared to be of national or military importance, (2) measures to be taken for the protection of the railway within the States.

# Additional Costs

- If in carrying out the directions of the Union Government given under clause (2) the State **incurs additional costs** the Union Government under Art. 257 (4) shall pay to the State Government such sum as may be agreed. If the Centre and States **cannot come to an agreement regarding the compensation** to be paid by the former to the latter, **the matter is to be referred to the arbitrator to be appointed by the Chief Justice of India.**

# Coercive Sanction

- **The Constitution prescribes a coercive sanction for the enforcement of its directions through Art. 356. Article 356 provides that if the State has failed to comply with or to give effect to any directions given by the Central Government then the President is empowered to declare an emergency to the effect that the State Government cannot be carried on in accordance with the provisions of the Constitution and assume for himself all functions of the State.**

# Delegation of Union's function to the States

- Under Article 258, clause (1) the Parliament may, with the consent of the State Government, **entrust either conditionally or unconditionally to that Government or to its officers functions relating to any matter falling within the executive powers of the Union.** Under clause (2) Parliament is also empowered to use State machinery for the enforcement of Union Laws and for this purpose may confer power or impose duties upon the State or its officers or authorities thereof in respect of these matters to see that the laws are made applicable to the State.

# Delegation of Union's function to the States

- It is to be noted that while under clause (1) the delegation of power is made with the consent of the State the consent of the State is not necessary under clause (2) and delegation can be made by Parliament by law.
- *If a law is passed delegating powers and imposing duties, it would be the duty of the officers of the State to implement the law. Thus, Parliament can interfere in internal administration of the States even without the consent of the State. This constitutes a great encroachment on the autonomy of the State,* and reduces the States as mere agents of the Centre.



# Delegation of State's powers

- Like the Central Government, **the State Government can also delegate its power to the Union and its officers.** Article 258 - A lays down that the Governor of the State may **with the consent of the Government of India**, entrust to the Government or its officers, functions, relating to any matter to which the executive power of that Government extends. It is thus clear that where it is **not inconvenient for either Government to directly carry out its administrative functions it may get those functions executed through the other Government.**

## (c) All-India Services

- Beside the separate services for the Union and the States the Constitution provides for the creation of an **additional “All-India service” common to the Union and the States.** According to Article 312 if the Rajya Sabha passes a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the nation’s interest to do so, Parliament may by law provide for the **creation of one or more All-India Services common to the conditions of persons appointed to any service.**

## (d) Grants in-aid

- Under the Constitution the financial resources of the State are very limited though they have to do many works of social uplift under directive principles. In order to cope with their ever-expanding needs, the Central Government makes grants-in-aid to the States. **Grant-in-aid to States thus serve two purposes: (1) through it Central Government exercises a strict control over the States because grants are granted subject to certain conditions. If any State does not agree to the conditions - the Central Government may withdraw the grant, and (2) it generates a Centre-State co-ordination and co-operation if a State wants to develop its welfare schemes for the people of the State it may ask for financial help from the Centre.**

# Inter-Government Tax Immunities

- The doctrine of inter Government immunities was for the first time recognised by the American Supreme Court in the leading case of *Mechulloch v. Maryland*. The Congress had established a bank in the State of Maryland. The State of Maryland levied a tax which Mechulloch, the cashier, refused to pay on the ground that a State could not tax an instrumentality of the Central Government. The Supreme Court of America held that **the State had no power to levy a tax on Centre's property.** Later on, the rule was applied to give immunity to state properties from Central taxation.

## **Exemption of Union Property from State Taxation**

- Article 285 imposes a restriction on the State to tax property of the Union. Clause (1) says that unless Parliament otherwise provides **the Union property shall be exempt from all taxes imposed by a State or any authority within a State.** The word 'property' includes every kind of property, e.g. movable or immovable.
- **Article 287** prohibits a State from imposing tax on **consumption or sale of electricity** supplied to the **Government of India or Utilized for construction, maintenance or operation of any railway** unless Parliament by law otherwise provides.

# Exemption of State property or income from Union Taxation

- The immunity from Centre's taxation is given **only to property and income of a State from direct taxes. Immunity is not given from Union's Indirect taxes, e.g. duties of Customs and Excise. The immunity does not extend to commercial interest, assets and income of the State. Thus, if a State runs roadways or does business in purchasing and reselling of food grains, etc. it acts as a private trader, businessman or an industrialist.** In this capacity, it does not enjoy any immunity under the Constitution. Parliament may provide for taxation of such activities. **(Com transactions – no exemption)**

# Union of India v. State of U.P.(2008)

- In Union of India v. State of U.P., an appeal was filed by Union of India Challenging the orders of recovery of service charges on Railway properties situated at Allahabad. The Supreme Court held that the **service charges for supply of water and maintenance of sewerage system of Railway colonies provided by Jal Sanshtan is not 'tax' on the property of the Union but is 'fee'**, and hence, not violative of Article 285 of the Constitution. **it is a charge for service rendered by the Jal Sansthan who has to maintain staff for regular supply of water as well as sewerage system,**the exemption of property of Union is from 'tax' not from 'fee'.

# CONSTITUTIONAL MECHANISM FOR THE SETTLEMENT OF CENTRE STATE AND INTER STATE DISPUTES

- Judicial Mechanism under article 131
- Disputes relating to waters under article 262
- Inter-State Council under article 263



# Article 131. Original jurisdiction of the Supreme Court.

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have **original jurisdiction** in any dispute—

(a) between the **Government of India and one or more States**; or

(b) between the **Government of India and any State or States on one side and one or more other States on the other**; or

(c) **between two or more States,**

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

# Dispute in the nature of legal right of the either party

- Both the parties need to be State or Union
- Necessary component of the dispute- public law; **not relating to the ordinary business and commerce** (UoI vs Rajasthan AIR 1984 SC)
- **Purely political questions are outside the preview of article 131.** (Bihar vs. UoI 1970 SC)
- **Article 262: Adjudication of disputes relating to waters of inter-State rivers or river valleys is outside the jurisdiction of article 131.**

# Water Disputes: Article 262

Adjudication of disputes relating to waters of inter-State rivers or river valleys.

- (1) **Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.**
- (2) Notwithstanding anything in this Constitution, **Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint** as is referred to in clause (1).

# The Inter-State Water Disputes Act, 1956

## FEATURES

- The central government is empowered to constitute a tribunal on receiving a complaint from a state government regarding **actual or likely inter-state river or river valley dispute**
- The tribunal consists of a **chairman and two other members**
- The **decision of the tribunal is final**
- *Jurisdiction of the other courts is barred*

## Gandhi Sahitya Sangh v. Union of India(2003)9SCC356

- Validity of the Act - Petitioner challenged the constitutional validity of the Inter-State Water Disputes Act, 1956 and the order passed by the Union of India - Respondent setting up and constituting the Cauvery Water Disputes Tribunal under Section 4 of the Inter-State Water Disputes Act, 1956 - Held, water disputes between two States can only be brought by a **State and not by an individual or a society** - *Petitioner had no locus standi to challenge the validity of the Act or setting up of the Tribunal - Therefore, petition dismissed*

# Establishment of Inter-State Council

- The President of India in exercise of the powers under Art. 263 has constituted the Inter-State Council on May 28, 1990. It consists of the following members: **(a) Prime Minister; (b) Chief Ministers of all States; (c) Chief Ministers of Union Territories having a Legislative Assembly and Administrators of Union Territories not having a Legislative Assembly; (d) Six Ministers of Cabinet Rank in the Union Council of Ministers to be nominated by the Prime Minister.**

# Establishment of Inter-State Council

- The Ministers of State having independent charge in the Union Government may be invited when any item relating to their Ministry is to be discussed.
- The **Prime Minister shall be the Chairman of the Inter-State Council** and preside over its meeting. In his absence he may nominate any Union Minister of Cabinet Rank to preside over the meeting.

# Duties of the Council

- The Council shall be a recommendatory body and it shall perform the following duties:

**(a) investigate and discuss subjects of common interest;**

**(b) make recommendations for the better co-ordination of policy and actions on such subjects;**

**(c) deliberate on such matters of general interest to the States referred by the Chairman to the Council.**



# Procedure of the Council

- The Council shall, in the conduct of its business, observe the following procedure: (a) the Council shall **adopt guidelines for identifying and selecting issues** to be brought before it, (b) the Council may meet at **least thrice in every year** at such time and place as the Chairman decides; (c) the meetings of the Council shall be held *in camera*; (d) the members (including the Chairman) shall form the **quorum** for a meeting of the Council; (e) all questions at a meeting of Council **shall be decided by consensus**; (f) the Council may in the conduct of its business observe such other **procedure as it may with the approval of the Central Government, lay down from time to time.**

# Composition of the Zonal Councils

A zonal council consists of a

- Union Minister nominated by the President,
- Chief Ministers of all the states constituting the zone,
- Two other ministers from each state,
- Two representatives of the union territories, if there is a union territory in the zone.
- **The Union Minister nominated by the President, presides over the meetings of the zonal council.**
- The Chief Secretaries of the States in the zone and a nominee of the Planning Commission (N Institution for transforming India) acts as advisors to the Council. **The advisors take part in the deliberations of the council but they have no right to vote.**
- The Chief Ministers act as Deputy Chairman of the Council by rotation. **The decisions of the council need not be unanimous. The majority opinion is accepted. The chairman has no right to vote but in case of tie, he casts his deciding vote.**

# Zonal Councils

- The Northern Zonal Council, comprising the States of [Haryana](#), [Himachal Pradesh](#), [Jammu and Kashmir](#), [Punjab](#), [Rajasthan](#) and the Union Territory of [Chandigarh](#);
- The North-Central Zonal Council, comprising the States of [Bihar](#), [Madhya Pradesh](#), [Uttar Pradesh](#), [Uttarakhand](#) and [National Capital Territory of Delhi](#);
- The North-Eastern Zonal Council, comprising the states of [Assam](#), [Arunachal Pradesh](#), [Manipur](#), [Meghalaya](#), [Mizoram](#), [Nagaland](#) and [Tripura](#);
- The Eastern Zonal Council, comprising the States of [Chhattisgarh](#), [Jharkhand](#), [Odisha](#), [Sikkim](#), [West Bengal](#) and the Union Territory of [Andaman and Nicobar Islands](#)
- The Western Zonal Council, comprising the States of [Goa](#), [Gujarat](#), [Maharashtra](#) and the Union Territories of [Dadra and Nagar Haveli](#) and [Daman and Diu](#);
- The Southern Zonal Council, comprising the States of [Andhra Pradesh](#), [Karnataka](#), [Kerala](#), [Tamil Nadu](#), [Telangana](#) and the Union Territories [Lakshadweep](#) and [Puducherry](#).

# Advisory Body

**A zonal council is primarily an advisory body. It discusses matters of common interest of the constituent states. It makes recommendations to the states composing the council and also to the union government on matters such as**

- (a) social planning,
- (b) economic planning,
- (c) inter-state transport,
- (d) border disputes, and
- (e) matters concerning minorities.

## Objective and Functions of Zonal Councils in India

**Some of them (functions and objectives) are :**

- to encourage and foster emotional integration of the country,
- to discourage growth of regionalism, linguistic chauvinism and other such tendencies,
- to encourage and foster a spirit of co-operation between the union and the states so that the governments of the union and the states may pursue policies conducive to the overall development of the nation as a whole.
- to encourage and foster a spirit of co-operation and mutual help among the states needed for the implementation of **development projects with interstate ramifications**, and

# Sarkaria Commission

- The Congress Government headed by Mrs. Indira Gandhi, appointed the Sarkaria Commission to review the Centre-State relationship and recommend changes in the existing set-up if necessary.
- On **Article 356, it was recommended that it be used "very sparingly, in extreme cases, as a measure of last resort, when all other alternatives fail** to prevent or rectify a breakdown of constitutional machinery in the state.

# Some Recommendations of SARKARIA COMMISSION

- It recommended that the residuary powers of legislation in regard to taxation matters should remain exclusively in the competence of Parliament while the residuary field other than that of taxation should be placed on the concurrent list.
- Ordinarily, the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and details for state action.

# Some Recommendations

- That the *enforcement of Union laws*, particularly those relating to the concurrent sphere, is secured through the machinery of the states.
- The Commission has suggested that there should be *consultation by the Centre on all concurrent subjects before passing any law.*
- To ensure uniformity on the basic issues of national policy, with respect to the subject of a proposed legislation, *consultations may be carried out with the state governments individually and collectively at the forum of the proposed Inter-Governmental Council.*



# Sarkaria Commission

- It made a strong suggestion that Article 370 was not a transitory provision.
- In **financial sphere** also, the Commission has **not suggested major change in the basic scheme** of the Constitution
- The **various suggestions asking for transfer of subjects to the State or Concurrent list have been rejected.**

# Sarkaria Commission

- The Commission has *rejected the demand for curtailing the powers of the Centre saying that a strong Centre is necessary to preserve the unity and integrity of the country.*
- The Commission's view is that there is **no need for drastic changes in the existing provisions of the Constitution**. In its view the *fundamental provisions of the Constitution have done reasonably well* and withstood the stresses and strains of heterogeneous society.

# **Recommendations of the Commission to Review the Working of the Constitution**

# Inter-State Council

- The Commission, while endorsing the recommendations of the Commission on Centre-State Relations (Sarkaria Commission), recommends that in resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of inter-State Council. This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously.

# Treaty

- The Commission recommends that for reducing tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of *prior consultation by the Union Government with the inter-State Council* may be considered before *signing any treaty vitally affecting the interests of the States regarding matters in the State List.*

# Office of Governor

- The Commission feels that the Governor of a State should be appointed by the President, *after consultation with the Chief Minister of that State.* Normally the five year term should be adhered to and removal or transfer of the Governor should be by following a similar procedure as for appointment i.e. *after consultation with the Chief Minister of the concerned State.*
- The Commission recommends that in the matter of selection of a Governor, the following matters mentioned in para 4.16.01 of Volume I of the Sarkaria Commission Report should be kept in mind:
  - He should be eminent in some walk of life.
  - He should be a person from outside the State.
  - He should be a detached figure and not too intimately connected with the local politics of the State.
  - He should be a person who has **not taken too great a part in politics generally, and particularly in the recent past.**

## Failure of Constitutional Machinery

- The Commission recommends that before issuing a proclamation under article 356 **the concerned State should be given an opportunity to explain its position and redress the situation**, (unless the situation is such, that following the above course would not be in the interest of security of State, or defence of the country, or for other reasons necessitating urgent action).
- The Commission recommends that **the question whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the Assembly and nowhere else.** If necessary, the Union Government should take the required steps, to enable the Legislative Assembly to meet and freely transact its business. **The Governor should not be allowed to dismiss the Ministry, so long as it enjoys the confidence of the House. It is only where a Chief Minister refuses to resign, after his Ministry is defeated on a motion of no-confidence, that the Governor can dismiss the State Government.**

# **Failure of Constitutional Machinery**

- In a situation of political breakdown, the **Governor should explore all possibilities of having a Government enjoying majority support in the Assembly.** If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should **ask the outgoing Ministry, (if there is one), to continue as a caretaker government.**
- The Commission recommends that **normally President's Rule in a State should be proclaimed on the basis of Governor's Report under article 356(1).** *The Governor's report should be a "speaking document",* containing a precise and clear statement of all material facts and grounds, on the basis of which the President may satisfy himself, as to the existence or otherwise of the situation contemplated in article 356.



# Dissolution of Assembly

- The Commission recommends that *article 356 should be amended to ensure that the State Legislative Assembly should not be dissolved before the proclamation issued under article 356(1) has been laid before Parliament and it has had an opportunity to consider it.*