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## **Centre- State Relations in India**

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**Introduction**

India is a culmination of diverse cultures, languages and interests all of which have played a major role in shaping what the country is today. The concept of a ‘region’ based on language and culture is not alien to the country, but this ‘region’ has evolved over time from being princely state to a British province, and finally into the modern day state. At different times various rulers attempted to consolidate the dissipated fiefdoms into a single political entity under a central rule or a ‘union’ but have failed. This process of

unification is a very important development on how the different regions of the country have interacted and forged a modern identity, building the country.

Independent India faced demands of greater autonomy and separation by modern day states, the seeds for which were sown during the British period. In this context the centre-state relations acquire vital significance. Given the over bearing unitary features in the Indian constitution which clearly states that India is an union of states not a federation of states, the Indian state emerged to be 'quasi-federal' in structure. This setup has been a cause of strain between the powerful centre and relatively weaker states.

Since coalition politics emerged, states have acquired a crucial role, through their regional parties to have a greater say in the national decision making. States today act not only as a pressure group but are at the forefront for trade, business and increasingly play a major role in foreign policy. This chapter aims to explain the changing centre-state relationship. The first section of the chapter gives a brief overview of the history of centre-state relations followed by the constitutional arrangement between the two in the second. The third section highlights the tensions between the centre and the states. The next section followed by it dwells upon the constitutional debates undertaken to analyse centre-state relations and the final section gives a critical impression.

### ***Evolution of Centre-State Relations***

Centre-state relations have evolved over time, with the first light being shed on the topic during the pre-independence years. The centralized administration of India was hindering British rule in India, and therefore the need for an indigenous administrative division for the country was recognized. To facilitate its enactment, a number of lower divisions were created by then viceroy Lord Ripon (1880-1884), which formed the first federal structure for the country through elected municipal boards and rural district boards. These divisions gained strength through the years and were further developed through the Indian Council of 1909 Act (popularly known as the Morley-Minto Reforms) through which central and the provincial councils were given greater responsibilities. While some scholars perceived the reforms as an effort to undermine nationalist efforts of the Indian

National Congress and other likeminded groups, others point it as a success story, in which the freedom movement convinced the British of the need for political reforms.

The British belief in developing the political structure of India can also be attributed to their desire to commit the country as a dominion; a thought given credence during the First World War, when a number of Indian soldiers fought on behalf of the English alliance. To cement the political development of India for greater self-governance, a report was prepared by Edwin Montagu, the then Secretary of State (India) and Viceroy Lord Chelmsford. The document tabled in 1918 to the Indian Constitution Reform Committee was referred to as the Montagu-Chelmsford reforms act, and provided a clearer perspective of the Indian federal model.

Based on the recommendations of the report, the act provided for a 'dyarchy' or dual form of government for the provinces for the next ten years. The Dyarchy was federal in that it shared sovereignty at the provincial level. As documented in the act "For such an organization the English language has no word but 'federal'" (The Government of India Act 1919).

Administrative matters were divided into the centre and the state, with state subjects further divided into transferred and reserved. The transferred subjects were to be governed by the governor in conjunction with the ministers of the legislative council. The act also empowered provinces to prepare budgets, levy taxes and include elected members in the Upper and Lower Houses. Despite this division of powers, it was not a truly federal in nature, since all residual powers were left with the centre, and those with the states were not constitutionally granted, but were through the largesse of the central government.

The aspirations of Indian nationalists were underachieved in the diarchy, particularly since the finances for those sections which were under their control were operated by the British. Renewed protests and representations to the British government to address these concerns failed over the next decade, till the government of India act of 1935 revisited the

issue. Based on recommendations from the locally unpopular Simon Commission, the following salient changes were enacted-

1. The establishment of a federal government in the country, working in collaboration with the provinces.
2. Diarchy introduced by the Act of 1919 was abolished from the State and established in the Centre.
3. The provinces were given complete autonomy and the administrative subjects divided into three lists-
  - a. Federal List that included the subjects assigned to the Central Government;
  - b. The Provincial List that consisted of all the subjects under the sole jurisdiction of the provinces and
  - c. The Concurrent List upon whose subjects both the Centre and Provinces would exercise their combined authority.

The changes formalized a Federal Legislature which consisted of two houses, the Council of States and the Federal Assembly. The Council of States (Upper House) was a permanent body whose one-third members retired every year (Raja: 2012).

The importance of this act can be gauged from the fact that it served as India's constitution for 12 years until Indian independence on 15 August 1947. However, a drawback of this act was that it continued to inflame communal tensions in the country, since separate reserved electorates were maintained and thus Muslims voted for members of their community and similarly for Hindus.

Following independence however, the constituent assembly the body drafting the nation's constitution faced an arduous task to address the federal structure which was now in place. Having witnessed the pernicious after effects of partition, the assembly was clear that it would prefer the unity and integrity of the nation.

Due to the complications associated with the use of the term 'federalism', the constituent body described India as a 'Union of States' to reinforce its territorial integrity and unbreakable nature; while also prescribing the structure of the Union government and the state governments. It further lent credence to a unitary system by placing single citizenship for India rather than a dual citizenship.

The constitutional language gave legally bound states to the larger union and denied them the right to secede. Additionally, there were no provisions of safeguards for the protection of states' rights because the states were not sovereign entities at the time of the formation of the Union" (Singh and Misra: 2013).

While Prime Minister Jawaharlal Nehru was in favor of a central unitary system, Sardar Patel, the then home minister was opposed to it on grounds that it would make administration difficult, particularly on internal divisions which marked the linguistic and cultural divides of the states. The push for federalism, and giving administrative order to the new structure can be understood through the rapid creation of a number of states in the period thereafter- In 1956, eight-new federal states emerged based on ethnic-linguistic diversity, following the State Reorganization Act of that year.

In between 1960 and 1966, five-new federal states such as Gujarat, Maharashtra, West Bengal, Nagaland, and Haryana were established (Pathak). The fact that an overwhelming majority of the states were ruled by the Indian National Congress party, the party at the centre also helped the cause of unitary-federalism, wherein both the centre and the state were on the same page on matters of administration.

It was in 1967 when the quasi-federal structure was tested; for the first time in history, the Congress was defeated in the provincial elections of Bihar, Haryana, Kerala, Madhya Pradesh, Orissa among others. This led to the breaking of the harmonious relationship between the centre and the states.

The rise of Indira Gandhi in the political landscape marked a significant shift for federal relations, as her centralized style of working led to a number of authoritarian measures, including the removal of Congress chief ministers she suspected of being antagonistic to her interests. In their place, Gandhi installed ministers close to her (Indianetzone: 2010). Additionally, the centre started abusing Article 356 of the constitution to forcibly dismiss opposition-led state governments. Gandhi herself used Presidential rule in states 71 times.

The changed political dynamics forced the rise of regional parties and the imposition of the emergency in 1977 created ripples of concern over central power in the states. The hardships imposed during the period led to the dilution of powers through the 44th constitutional amendment. To resolve differences with the states, the government constituted the Sarkaria Commission.

Among the recommendations of the commission were safeguards against the misuse of Article 356. The commission outlined that the tool be used only as a last resort, when all available alternatives had been exhausted. It also recommended that the centre should exhaust its paramount responsibility to contain the situation under Article 355, which requires that it shall be the duty of the union to protect the states against external aggression and internal disturbance. This section has however remained largely dormant, in light of the restrictions imposed in Article 356 (Venkatesan: 2003).

Interestingly, the commission furthered the notion of centralized relations within India, by stating “Federalism is more a functional arrangement for cooperative action, than a static institutional concept. Article 258 (power of the Union to confer powers etc on states in certain cases) provides a tool by the liberal use of which cooperative federalism can be substantially realised in the working of the system. A more generous use of this tool should be made than has hitherto been done, for progressive decentralisation of powers to the governments of the states” (The Outlook: 2003).

The period of time when the commission was being studied came in the backdrop of significant changes to the country, both economically and politically. These dynamics would significantly affect the future of centre-state relations till the present decade.

The liberalization policies of the 1990s expounded greater freedom to innovations and entrepreneurs, who in addition to being encouraged by the centre were to be supported by the states too. This was possible only through a realm of decentralization. Coincidentally global developments such as greater cooperation on matters of public health and security raised the standards of governance, also initiated reforms within the country for effective decentralization to strengthen the hands of the states in carrying out their local functions.

To achieve these changes the constitution was amended in 1993, under the 73<sup>rd</sup> and 74<sup>th</sup> amendments. The significant changes under these two were as follows:

- Accord to municipal corporations and panchayats constitutional status
- Provide the structure of urban local bodies; provides for their regular, free and fair elections; makes provision for reservation of seats for SC, ST and OBCs; fixes their term to five years; protects them against arbitrary dissolution, specifies their powers and responsibilities; and attempts to strengthen the fiscal base of the urban local bodies (NCERT:2012).

Their significance was that it strengthened administrative federalism by encouraging the delegation of administrative and financial powers from the states to the local bodies. It made India into a 'federation of federations' by scattering hundreds of thousands of constitutionally valid local governance units across the country.

The quantum of aid provided to the states during this period also increased in an effort to reduce the debt deficit and these in turn made the states much more powerful than they earlier were. What also helped the cause of the states was the growing clout of the regional parties which were prominently gaining in strength. Following the Sarkaria commission report, the centre created the Inter-State Council (ISC) which was chaired by



the prime minister and consisted of all the state chief ministers and six members of the union cabinet (Mahajan: 2007).

The rise of these regional parties based on linguistic, regional and caste identities allowed them to gain significant electoral successes, which further consolidated their power with coalition governments being formed at the centre. According to Christophe Jaffrelot “The smaller parties served, at least theoretically, as a balance against the excessive concentration of authority in Delhi” (Jaffrelot: 2012).

The tensions between the centre and the states were progressively becoming more complex, as further elucidated in this paper. Challenges remain on three pertinent arguments-

- a. Retaining the present federal structure,
- b. Redefining the federal structure and
- c. Reassessing the Constitution which means redefining federalism and also changing the form of government at the Centre (Singh and Misra: 2013).

Even after 60 years of independence, the question of federalism and centre-state relations in the country remains unresolved and a work in progress. Recurring questions continue to dominate our study of the theme; these include identity (example- the Telangana separatist movement), resources (example- water disputes) and institutional (example- the role of the governor).

The inherent distrust of states is reflected in the working of the union government, including the lack of using the Inter-State Council and repeated differences over important legislations with the states (example- the stalling of the Lokpal bill in the upper house). Despite regional parties having gained prominence in the union government, the demands of the regional parties and their concerns are not adequately addressed. This continued feature will play a role in the years ahead.

### **Constitution arrangement between the Centre and the State**

The constitution lays down the division of powers between the Centre and the states in the Seventh Schedule in three lists exhausting “all the ordinary activities of government”.

- a. Union List
- b. State list
- c. Concurrent list.

The Union List gives the Centre exclusive authority to act in matters of national importance and includes among its 97 items defence, foreign affairs, currency, banking duties and income taxation.

The State List, with 66 items includes public order and police, welfare, health, education, local government, industry, agriculture, and land revenue.

The Concurrent List contains 47 items over which the Centre and the states share authority.

#### *Legislative Relations*

The constitution's Part XI outlines the relationship between the Union and the States, under which Articles 245-255 deal with the distribution of legislative powers between the two. According to Article 245, parliament may make laws for the whole or any part of the territory of India, and the state legislature can make laws for the whole or any part of the province, however, no law made by parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Article 246 specifies the subject-matter of laws made by parliament and by the state legislatures. It empowers parliament to make laws on all the three lists - the Union list, the State list and the Concurrent list.

Article 246(4) allows parliament to make laws with respect to any matter for any part of the territory of India not included [in a state] notwithstanding that such matter is a matter enumerated in the State List. Article 247 talks about power of parliament to provide for the establishment of certain additional courts for the better administration of laws made

by parliament or of any existing laws with respect to a matter enumerated in the Union List.

Article 248 provides residuary powers of legislation whereby, the Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List and such power shall include the power of making any law and imposing a tax not mentioned in either of those Lists.

Article 249 provides power to parliament to legislate with respect to a matter in the State List in the national interest. Under Article 249, the Council of States or the Rajya Sabha (by passing resolution with support of two-thirds of people present and voting) may give the parliament special legislative powers over any matter included in the state legislative list.

Article 250 provides for power of parliament to legislate for the whole or any part of the territory of India with respect to any matter in the State List if a 'Proclamation of Emergency' is in effect. In case of inconsistency between the laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States, under Article 251, the law passed by Parliament, irrespective of when it was authorized, shall prevail, till deemed inoperative over state law.

Article 252 provides that by agreement between the states or by consent of two or states legislatures, it would be lawful for Parliament to make laws with respect to any matters included in the State List relating to those states. It shall also be open to any other state to adopt such Union legislation in relation to itself by a resolution passed in that behalf in the state legislature (Basu 2009 : 330).

Under Article 253 Parliament has power to make any law for the whole or any part of the country 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. Article 254 states that in case of inconsistency between laws made by Parliament and laws made by the Legislatures of States in matters of Concurrent List, the law made by the Parliament shall prevail over state law and shall continue till the central law is

declared void. Article 255 states that no Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given either by the Governor or by the President.

### *Administrative Relations*

Articles 256-261 deal with the administrative relations between the Union and the States. Articles 256 and 257 direct states to ensure compliance with the parliamentary laws and any existing laws which apply in that state, and also direct that the executive power of the Union shall extend to the giving of such directions to a state as the Government of India deems necessary for that purpose. Under Article 258 and 258A the governor of a State may, with the consent of the central government, entrust either conditionally or unconditionally to that government, or to its officers functions in relation to any matter to which the executive power of the State extends.

Under Article 260, the central government may by agreement with the government of any territory not being part of the territory of India, undertake any executive, legislative or judicial functions vested in the government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

Under Article 261 full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State. Article 261(3) provides that the final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Article 262 provides that parliament by law may provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of waters of, or in, any inter-State river or river valley and also provide for the exclusion of the jurisdiction of all Courts, including the Supreme Court, to entertain such disputes. Exercising this power, parliament has enacted the Inter-State Water Disputes Act (1956), providing for

the constitution of an *ad hoc* tribunal for the adjudication of any dispute or complaint with respect to the use, distribution or control of waters of, or in, any inter-State river or river valley. Under Article 263(a) the president can establish an inter-State council for inquiring into and advising upon inter-State disputes, if at any time it appears to him that the public interests would be best served by the establishment of such a council (Basu 2009: 353).

### *Financial Relations*

Part XII (Articles 264-291) of the constitution deals with finance, property, contracts and suits. Articles 268-272 deal with distribution of taxes and revenues between the union and the states. In addition to this, under Article 275, grants-in-aid shall be made in each year by the union to such states as parliament may determine to be in need of assistance; particularly for the promotion of welfare of tribal areas, including special grants to Assam in this respect (Basu 2009: 339).

Articles 270, 273, 275 and 280 provide for the constitution of a finance commission for the tenure of five years to recommend to the president certain measures relating to the distribution of financial resources between the Union and the States. The constitution of the commission has to be read with the Finance Commission Act of 1951, which has supplemented the provisions of the Constitution (ibid). Under Article 271, parliament may at any time increase any of the duties or taxes referred to in Article 269 and Article 270 by a surcharge for purposes of the union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India. Article 292 confers unlimited powers to the Union to borrow from the Consolidated Fund; however restrictions have been imposed on borrowings by the States in the same under Article 293.

Part XIII (Articles 301 and 307) deal with Trade, Commerce and Intercourse within the territory of India, and provides for the arrangement of trade and commerce between the Union and the States. Article 302 empowers parliament to impose restrictions on the

freedom of trade, commerce or intercourse between one state and another or within any part of the territory of India as may be required in the public interest.

Article 303(1) states that neither parliament nor the legislature of a state shall have power to make any law giving, or authorising the giving of, any preference to one state over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the lists in the Seventh Schedule.

Article 304 allows the state legislature to impose any tax on goods imported from other states [or the union territories] which similar goods manufactured or produced in that State are subject to provide equal taxes to domestic and imported products (Article 304(a)); and to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that state as may be required in the public interest (Article 304(b)).

Article 305 provides for the saving of existing laws and laws providing for state monopolies. Article 307 states that parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary along the lines of the Inter-State Commerce Commission of United States of America, however it has yet to be operationalised in India.

### *Extra Constitutional Mechanisms*

#### Planning Commission

The Planning Commission is a non-constitutional body created in 1950 which formulates India's Five-Year Plans, among other functions. It is an arm of the central/union government, and functions directly under the prime minister.

#### National Development Council

National Development Council is another non-constitutional body created in 1952, to advise the Planning Commission in formulating the economic policies of the country. It comprises of the Prime Minister, the Union Cabinet Ministers, Chief Ministers of all States or their substitutes, representatives of the Union Territories and the members of the Commissions thereby giving both centre and states their say in the economic planning process of the country.

### *Parliamentary Acts*

In addition to these, several acts have been passed by the parliament to coordinate Centre-State relations. Zonal Councils have been established by the States Reorganisation Act, 1956 whereby territory of India has been divided into five zones- Northern, Southern, Eastern, Western and Central; to discuss matters of common concern to the States and Territories comprised in each Zone. These include, economic and social planning, border disputes, inter-state transport, matters arising out of the reorganization of states, etc.

They also give advice to the state governments as well as the central government. Additionally, a North-East Council was set up under the North-Eastern Council Act, 1971 to deal with the common problems of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram. The River Boards Act was enacted in 1956 to provide for an establishment of a river board for the purpose of advising the governments interested in relation to the regulation or development of an inter-state river or river valley. The inter-state Water Disputes Act was made in 1956 to provide for the reference of an *inter-state* river dispute for arbitration by a Water Disputes Tribunal, whose award would be final according to Article 262(2) (Basu 2009: 354).

### **Tensions in Centre-State relations**

Indian federalism has been marked as "quasi-federal" with strong unitary features. The rationale behind this was the experience of foreign rule and partition. In order to have a strong nation and to curb the secessionist tendencies a strong centre was seen as the

requisite. This is evident in the constitutional arrangements made to divide the power between the centre and the states in which the Centre has been prioritised. Over the years, states have been urging for greater autonomy to manage their affairs but the centre has been reluctant towards it to maintain the status quo. This uneven distribution of power between the centre and the states has been the main source of tension between the two since independence. Not only does the central government have a wide range of powers in its own right under the Union List, but these powers are also enhanced by the fact that the central government is vested with a variety of powers that enable it, under certain circumstances, to invade the legislative and executive domain of the states (Hardgrave Jr and Kochanek 2000: 135). For example under Article 249 that grants special legislative powers to the centre the 42nd amendment was passed by which education, forest, protection of wildlife were shifted from the state list to the concurrent list causing curtailment of power of states and widening the engulf between the centre and the state.

There are certain powers with the centre such as the emergency powers in the Indian constitution enable India, under special circumstances, to transform itself into unitary state. Unfortunately it has been observed that the centre has misused this discretionary power to control the state's affair. The abuse of Article 356 to dismiss state governments and malfeasance in the governor's position are few examples. For instance in 1975, the central government under Prime Minister Indira Gandhi made the 38th and 42nd amendment to the Constitution, which made the governor's decision to issue an ordinance non-justiciable. It also allowed the Governor to act on behest of the central government making his constitutional obligation irrelevant. The governors merely became a tool in the hands of the central government to undermine the federal structure of the constitution. The union government was empowered to make different kinds of proclamations on different grounds to intervene in the states reducing the state autonomy considerably. The 42nd amendment enlarged the scope of emergency further and adversely affected state autonomy. Through this amendment Article 257A was inserted whereby the union could send armed forces to the state if it was deemed that the provinces law and order was in grave state (Jain 1993: 53).



Uneven financial relations between the centre and the states have also been the cause of strife between the centre and the state. Under Article 293(3) Control over aggregate borrowing by states is vested with the central government, appropriately for central macroeconomic control over fiscal imbalances in the federation taken as a whole (the third layer is not permitted to run fiscal imbalances) (Rajaraman 2007:5). Most of the important and heavy taxes levied in the states are collected by the centre and then the state is at the mercy of the Union for grants for development. Further these grants are not evenly given. Under the Centrally Sponsored Schemes (CSS) usually the grants are slanted towards the poor states which have minimal role in the national income than the developed states which fetch greater income in the form of taxes. Further the Planning Commission and the Finance Commission which are largely responsible for planning the development schemes and financing them are both under the Central government which again leaves States at the mercy of the Centre to get funds for development of their states. With the passage of 73rd and 74th amendments constitutional status was guaranteed to the panchayats and the municipalities respectively. The aim of the amendments was towards greater de-centralisation in the country. However most of the provisions are still dependent on the centre debunking the cause of de-centralisation. For example the local self government is largely dependent on Centre Sponsored Schemes of welfare to be implemented in their respective areas. This is another area of conflict between the centre and the states.

Post independence India has faced many situations including- insurgency, naxalism, secessionist tendencies, terrorism, etc which have threatened country's internal security. To ensure the overall internal security of the country, the union government has come up with laws like Armed Forces Special Power Act (AFSPA) whereby the centre can deploy armed forces in "disturbed" parts of the country. Since maintaining law and order is a state subject, the act generated tensions between the centre and the states as the latter saw the act as union strategy to curb their autonomy in maintaining law and order in their states. Similarly the states have been accusing the centre of misusing the Central Bureau of Investigation (CBI), to further its own interest causing friction in their relationship. Of Recently, controversy was sparked in the union government's decision to station National Counter Terrorism Centre (NCTC) in the states which empowered the agency to search

and arrest people without keeping the state government, police or anti-terror squad in the loop intensifying the centre-state conflict.

After the structural reforms of 1991 states have acquired greater autonomy in the developmental processes of their states. In such circumstances the role of planning commission becomes a hindrance for the states causing strife. Further in the coalition era of Indian politics, though the regional parties have acquired prominence in the centre as well as in their respective states this has led to increase in bargaining power of some state which are in power at the centre over those who are not. This has emerged as constant tension between the union and the states.

### **Debates in Centre-State Relations**

The tensions between the centre and the state are not healthy for the functioning of Indian democracy. Repeated efforts have been made to study the relationship by various groups. The relations between the two in political, economic, financial and administrative spheres have also been periodically reviewed (Ninth Five Year Plan Vol. 1).

In 1966 the Administrative Reforms Commission (ARC) constituted a committee under M.C. Setalvad to examine centre-state relations. Without suggesting amendments to the constitution, the ARC recommended delegation of more financial and administrative functions for bringing efficiency and moving greater decentralisation (Jain 1993: 46). While the government has accepted and implemented several recommendations of the Administrative Reforms Commission (Ninth Five Year Plan Vol. 1) on centre-state relations, tensions continued to persist. Another effort made towards analysing this relationship was in 1969, the Tamil Nadu government constituted the Rajamannar Committee under Justice Rajamannar. The committee reported an uneven distribution of constitutional power as the reason for state's subordination and its discontent; and urged for greater state's autonomy. However the Rajamannar Committee report did not favor from either the union government or the press (Jain 1993: 51). A major analysis of the centre-state relations then came in the form of the Sarkaria Commission (1983) and Punchhi Commission (2007).

### *The Sarkaria Commission*

To examine centre-state relations, the Government of India constituted its first ever commission in 1983 under the chairmanship of Justice Rajinder Singh Sarkaria, Shri B. Sivaraman and Dr. S.R. Sen; popularly known as the Sarkaria Commission. The commission submitted its report to the Indian government recommending, some of its findings are briefly discussed in this section:

#### Legislative Relations

The commission recommended that all the residuary powers to legislate in the field of taxation must be retained by the parliament while any other residuary field apart from taxation must come under the purview of the Concurrent List.

Residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of Parliament, while the residuary field other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation (Para 2.6.18).

Since the proper implementation of Union laws is only possible through the machinery of the states, there is a need for a harmonious and smooth relationship between the centre and the states to run the system.

"The enforcement of Union laws particularly those relating to the Concurrent sphere, is secured through the machinery of the States. Coordination of policy and action in all areas of concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is, therefore, a prerequisite of smooth and harmonious working of the dual system. To secure uniformity on the basic issues of national policy with respect to the subject of a proposed legislation, consultation may be carried out with the State Governments individually, and collectively at the forum of the proposed Inter Governmental Council"(Para 2.14.01) .

Further the commission also recommended that the Union occupy only that much part in the Concurrent List which concerns national interest, in other fields' states must be allowed to take actions within Union law. Also the Union must legislate on the subjects related to the Concurrent list with prior consultation with the states and the Inter-Governmental Council suggested by the commission under Article 263

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 the details for State action within the broad frame-work of the policy laid down in the Union Law. Further, whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the State Governments, individually, but also, collectively, with the Inter-Governmental Council, which as we have recommended, should be established under Article 263. (Para 2.23.05).

#### Administrative Relations

On administrative relations, the commission observed that though Union laws take precedence over the State laws, they are meant to set a coordination between the state and the centre and thus non-compliance on the part of the state should be dealt patiently by the centre rather than invoking Article 365, which should be the last resort.

Articles 256, 257 and 365 are wholesome provisions, designed to secure coordination between the Union and the States for effective implementation of Union laws and the national policies indicated the rein. Nonetheless, a direction under Articles 256 and 257 and the application of the sanction under Article 365 in the event of its non-compliance, is a measure of last resort. Before issue of directions to a State or application of sanction under Article 365, utmost caution should be exercised and all possibilities explored for setting points of conflict by all other available means (Paras 3.5.25 & 3.5.27).

Most importantly, the commission envisaged the future of federalism in India based on the cooperation between the centre and the states. As the commission rightly observed:

"Federalism is more a functional arrangement for cooperative action, than a static institutional concept. Article 258 provides a tool, by the liberal use of which, co-operative federalism can be substantially realised in the working of the system. A more extensive and generous use of this tool should be made, than has hitherto been done, for progressive decentralisation or powers to the Governments of the States and/or their officers and authorities" (Para 3.7.10).

#### Article 370

The Commission insisted that Article 370 is not a transitional provision and refrained from commenting on deletion of the article that the special status given to the state of Jammu and Kashmir under Article 370 stating that it's not merely a legal but also a political and constitutional issue. Under *point no. 2.42.04* the Commission notes-

"It is important to note that the process of extending the various provisions of the Constitution to the State, has been gradual and founded on consensus and experience, to the mutual advantage of the Union and the State. Because of the special circumstances in which Jammu and Kashmir became an integral part of India, the question whether its distinct constitutional status ought or ought not to continue, bristles with political complexities and is not a mere legal issue. We, therefore, refrain from making any suggestions in this regard".

#### Article 356

On Article 356, it recommended it be used in extreme cases where all other options ceased to work and only to prevent the constitutional breakdown of state machinery.

Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State. All

attempts should be made to resolve the crisis at the State level before taking recourse to the provisions of Article 356. The availability and choice of these alternatives will depend on the nature of the constitutional crisis, its causes and exigencies of the situation. These alternatives may be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action Under Article 356 will lead to disastrous consequences (Para 6.7.04).

Furthermore, state governments will have to be duly warned against this in proper time as opposed to arbitrarily dismissing their government, unless immediate action is required.

Accordingly, a warning should be issued to the errant state, in specific terms that it is not carrying out its government functions in accordance with the constitution. Before taking action under Article 356, any explanation received from the state should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences (Paragraph 6.7.08).

#### Role of Governor

The commission recommended that the governor be an eminent person and not belong to the state to which he is to be posted. Dealing with the controversial role of governor, the commission recommended on a positive role of the governor to maintain the stability of the state concerned while exploring all the possibilities of a majority government before dissolving the state assembly in case of a constitutional breakdown of the state 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, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the

Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, the caretaker government should be allowed to function. As a matter of convention, the caretaker government should merely carry on the day to-day government and desist from taking any major policy decision. (Para graph 6.4.08) (b) If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly."

### Inter-Governmental Council

The Commission recommended a permanent Inter-Governmental Council (IGC) be set up under Article 263 which will evolve guidelines for identification and selection of issues to be brought before it and accordingly take up issues of national importance relating to subjects of common interest which fall within the ambit of clauses (b) and (c) of Article 263.

The commission stressed a separate identity of the National Development Council should be maintained. However, its status should be formalised and duties reaffirmed through a presidential order passed under Article 263 and it should be renamed as the National Economic and Development Council. Furthermore, the commission stressed that the five Zonal Councils which were constituted under the States Reorganisation Act, 1956 should be constituted afresh under Article 263 (Paragraph 9.3.05; 9.4.07; 9.8.07).

### *The Punchhi Commission*

Almost two decades after the Sarkaria Commission, the second commission to examine the Centre-State relations was constituted in 2007 and chaired by Justice Madan Mohan Punchhi, a former Chief Justice. Other members were Shri. Dhirendra Singh, Shri. Vinod Kumar Duggal, Prof. N.R. Madhava Menon and Dr. Amaresh Bagchi.

The Punchhi Commission tried to study the changing dimension of centre-state relations in light of liberalisation, globalisation, decentralisation (72-73 Amendments), and events which largely shaped the relationship following the Sarkaria Commission. After an extensive study the commission submitted its report in 2010. Some of its major recommendations are:

#### Article 356

The commission favoured amendments to Articles 355 and 356 to enable the centre to bring specific trouble torn areas under its rule for a limited period, however at the same time warning about the misuse of the article by the Union. It recommended that it only be enacted in case of failure of state's constitutional machinery.

A wide literal construction of Article 356 (1), will reduce the constitutional distribution of the powers between the Union and the States to a licence dependent on the pleasure of the Union Executive. Further, it will enable the Union Executive to cut at the root of the democratic Parliamentary form of government in the State. It must, therefore, be rejected in favour of a construction which will preserve that form of government. Hence, the exercise of the power under Article 356 must be limited to rectifying a 'failure of the constitutional machinery in the State'. The marginal heading of Article 356 also points to the same construction. (Volume II 2010:106)

#### Role of the Governor

The S.R. Bomai case (1994) brought to the forefront the differences between the centre and the state over the role of the governor. According to the Supreme Court's judgement, the governor's position was put under judicial review. The commission took cognizance of the case and also endorsed the Sarkaria Commission's recommendation that a governor be an eminent person and does not belong to the state where he is to be posted. At the same time it also recommended that the state chief minister have a say in the appointment of governor.



The commission reiterated the Sarkaria Commission suggestion that in a potential situation of political break-down, the governor explore all possibilities a government enjoying majority support in the Assembly. If not possible then the outgoing ministry acts as a "caretaker government", provided that the ministry was defeated solely on a major policy issue, unconnected to allegations of maladministrations or corruption, and is agreeable to continue till fresh elections are held. The governor should then dissolve the legislative assembly, leaving the resolution of the constitutional crisis to the electorate (Volume II 2010:113).

Unlike Sarkaria, the Punchhi Commission strongly recommended a fixed tenure of five years for a governor. Condemning the arbitrary dismissal of governors, it said that "the practice of treating governors as 'political footballs' must cease". To protect the functioning of the governor, it proposed that removal provisions by an impeachment by the state legislature, similar to the President by parliament (Volume II 2010: 67).

The Punchhi Commission also recommended that the discretionary powers constitutionally conferred upon the governor be exercised with due advice from the Council of Ministers.

The concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. The normal rule is that the Governor acts on the aid and advice of the Council of Ministers, but there are exceptions under which the Governor can act in his own discretion. The powers in exercise of which the Governor has to use his personal discretion have now been settled through judicial pronouncements. In relation to other powers, even though the Constitution uses phrases like "he thinks fit" and "in exercise of his discretion", the Governor must act on the aid and advise of the Council of Ministers (Volume II 2010: 67).

Commenting on the role of the governor in the appointment of the chief minister, the commission laid down clear guidelines. It upheld the view that a pre-poll alliance should

be treated as one political party, and laid down the order of precedence that ought to be followed by the Governor in case of a hung house as follows:

- (a) Call the group with the largest pre-poll alliance commanding the largest number ;
- (b) The single largest party with support of others;
- (c) The post electoral coalition with all parties joining the government ; and lastly ,
- (d) The post electoral alliance with some parties joining the government and remaining including independents supporting from outside (Volume II 2010:73)

### Inter-State Council

The commission like its predecessor stressed on strengthening the National Development Council and Zonal Councils for better cooperation between the centre and the states. Furthermore, it strongly recommended that the Inter-State Council (ISC) be constituted and substantially strengthened as the key player in intergovernmental relations. The ISC will act as a constitutional mechanism in harmonizing centre-state relations which has become urgent in the changed circumstances. According to the commission, once the ISC is made a vibrant, negotiating forum for policy development and conflict resolution, the functions of the National Development Council can also be considered to be transferred to the ISC (Volume II 2010 :210).

### Fiscal Relations

The commission laid out a broad set of recommendations in dealing with the fiscal relations between the centre and the state. Commenting on the growing regional imbalances among the states, the commission was of the view that the 'one-size fits all' approach to fiscal consolidation has constrained fiscally strong states to raise more resources and therefore, recommended state-specific official deficit targets in the Fiscal Responsibility and Budget Management (FRBM) legislations of States. According to the commission, fiscal correction may factor in the variations in the initial fiscal situation across states and be made state-specific (para 5.12.02, Volume II 2010:103). It

recommended that the Planning Commission finalise the Five-Year Plans in consultation with states to ensure broad correspondence with the national objectives.

The commission emphasized states be given freedom to plan according to their own needs and priorities within the framework of nationally accepted priorities (para 7.2.04, Volume II 2010:106.) The Planning Commission's role should be coordination rather than of micro-managing plans of the central ministries and the states (para 7.8.02, pp.108).

The commission recommended that state concerns with regard to accentuation of vertical imbalances, the revenue neutral rates of Goods and Services Tax (GST) be worked out with care. The rates for the central and state components should be determined taking into account not only the present activities but likely revenue growth of taxes to be subsumed under GST (para 9.5.01, Volume II 2010:110)

#### Local Self Government

The 73rd & 74th Constitutional Amendments gave constitutional status to Panchayats and the Urban Local Bodies. The amendments intended to de-centralise power and make local governments more autonomous. Commenting on the tense fiscal relations between the centre and the states regarding their functioning, the commission admitted a mismatch between the functions devolved to the Panchayats and funds given

Considering a prolonged demand made by the states, the commission recommended the release of Centrally Sponsored Scheme (CSS) funds only through the consolidated funds of the states directly to the Panchayats instead of project implementing agencies set up by the central ministries listed in 11th Schedule (Volume IV 2010:154; 155).

The commission also insisted that Articles 243-I, 243-Y, 275 and 280 which contemplate a direct linkage between the state and local bodies in the matter of funds and provide for grants-in-aid to states and any other arrangement, while providing direct flow of funds from the centre to the local bodies would not be in consonance with these Articles (Volume IV 2010:157).

It is clear therefore that the local bodies would need to function under the general guidance and supervision of the States. Any arrangement which would disturb this system or which has the potential to become a source of conflict between local bodies and the States should be discouraged. The umbilical cord which connects the local bodies to the States are stronger and so it is all the more important that funds to them flow only through the States (Volume IV 2010:156).

### Communal Violence Bill

The commission also upheld the view that though maintenance of law and order is the state's domain, maintenance of communal harmony was a joint responsibility with the centre. It recommended an amendment to the Communal Violence Bill to permit deployment of central forces without state consent, for a brief period to stabilise peace in case of communal violence in the state. It did not comment whether the state's consent should be obligatory to take the call or not.

The Commission felt the need for establishment of a standing mechanism for ensuring quick and organized response for any event involving communal tension as well as for planning of preventive and control measures. In that context, constitution of an Empowered Committee of the Union Home Ministry with State Home Ministers as members was suggested to locate the root of the problem, work out preventive action, ensure its expeditious implementation and do continuous monitoring till the situation has been brought under control.

The views of the Union Home Ministry, which is the administrative Ministry for the subject under the Allocation of Business Rules, are to

- (i) provide support in terms of issue of advisories (including those under Article 355) and paramilitary military forces and give all other assistance without direct intervention and
- (ii) in addition to the above, in the event of major and prolonged violence to pick up the provisions of The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2009 (since

reintroduced in Parliament) for direct intervention in the event of the failure of the State machinery, setting up joint command to oversee the control of violence and conduct of relief and rehabilitation operations.(Volume V 2010:13,14)

#### National Investigation Agency and National Integration Council

In order to address increasing demands for internal security, the commission favored the creation of an "over-arching structure" to maintain internal security, similar to the US Homeland Security department. It suggested amendments to the existing National Investigation Agency (NIA) Act (2008). The commission also suggested strengthening the National Integration Council (NIC), which would be responsible for curbing internal security threats such as communal violence, naxalism etc, and would play a role in confidence building measures between the centre and states in regions like Jammu and Kashmir, and North-Eastern States. This was necessary "for removing biases and suspicions against the population of the rest of the country which exists amongst the people of the State in some parts".

The commission admitted the need for a federal structure for a functional cooperation between the centre and the states. (Volume V 2010: 45; 85; 86).

#### **Conclusion**

The history of centre-state relations has not been smooth. Post independence when Nehruvian consensus tried to hold different states and their interests together, over-centralisation was felt during the Indira Gandhi period, in 1970s which caused tremendous strain in the centre-state relations. Since the 1980s Indian politics has witnessed a growing assertion by states and regional identities in the form of greater autonomy and demands for restructuring of centre-state relations. With the advent of the coalition era in 1990s centre-state relations moved from a cooperative to bargaining relationship. The 73rd and 74th constitutional amendments which marked a watershed in

the decentralisation process of the country can be seen as adaptation of centre-state relations with changing needs and demands.

Repeated efforts have been made towards improving relations in by various studies including the Administrative Reforms Commission, the Rajamannar Committee, the Sarkaria Commission and the Punchhi Commission. But these findings have been inadequate. First, the commissions' recommendations have not been taken seriously by the union government and second the commission itself suffered from pertinent lack of understanding of centre-state relations based on research.

Further both the Sarkaria and Punchhi Commissions refrained from commenting on the role of the CBI and deployment of armed forces. Commenting on the Sarkaria Commission, Amal Ray argued the addressed issues up are not unique but rather emanate from criticisms of made by the opposition parties, including the role of the governor, resource position of the states, status of the planning commission, etc.

Since, however, these (recommendations) are not viewed as conjoint aspects of a certain type of federalising process in India which does not reflect a perennial process of mutual adaptation in a spirit of 'give and take', the report of the Sarkaria Commission is not likely to provide a new consensus of balance between unity and diversity, that is, between nation and region. At best their recommendations may be treated as some sort of a temporary compromise intended to ease the current strain between New Delhi and the non-Congress(I) state governments (Ray: 1988).

According to N.K. Singh, the present centre-state scenario raises three issues. First is the structure of financial devolution. Singh argues:

While the recommendations of the constitutionally mandated Finance Commission have lent stability, while giving emphasis to equity and efficiency, the same cannot be said of other devolutions. The additional plan flows from the Centre, while largely formulaic, are not statutorily defined and bilateral consultations between states and the Planning

Commission are not devoid of quasi-political considerations. Besides, devolutions through the ministries in respect of central sector schemes are even less transparent. There is no way to check the overall allocation of funds across states to consider the allocation for capital and current expenditure and to look at the conditions under which these funds are allocated (Singh:2006)

The second issue is the absence of a well-functioning institutional mechanism for Centre-State dialogue. Both the National Development Council (NDC) and Inter-State Councils which were expected to facilitate this dialogue have failed to do so. States continue to complain about unilateral decisions taken by the Central Government. Therefore there is a need to redefine the mandate of NDC, while the Inter-State Council must be re-housed as part of the Prime Minister's Office (the Prime Minister is the Chairman of the Council) for making the dialogue with the states an ongoing process. This is of vital importance as both coalition politics and regional parties are here to stay in the foreseeable future.

Third, given the pace of change, the challenge is how to deal with recalcitrant states on issues which are in the domain of states but have national implications. This raises larger questions of “how to balance devolutions from being performance-driven rather than entitlement outcomes and the need to harmonise considerations of equity with efficiency when the two may lead in the opposite direction” (Singh: 2006).

Another emergent issue in centre-state relations is the increasing role of states in foreign policy formulation. Since most states share an international boundary, they need to be involved and consulted on external affairs that affect them (Joshi: 2013). For example- India’s foreign policy towards Sri Lanka needs to consider the Tamil problem, due to the concerns of Tamil Nadu state; similarly, the decision on sharing the Teesta river water with Bangladesh affects West Bengal. Thus a need for a federal foreign policy for which states have an enhanced role in foreign policy is bound to have an affect in their own state.

The recent sparks in the centre-state relations over the issue of Jan Lokpal Bill and the National Counter Terrorism Centre (NCTC) suggest that reforms have been inadequate. Thus these relations need reviewing. The changing forces of globalisation require greater transparency and accountability, which is possible only in a decentralised system. Such a decentralised system requires greater regional state autonomy and harmonious centre-state relations. It can be said that since independence circumstances of India has changed and therefore there is a need for a fresh perspective to these relations with the passage of time.

### **Model Questions:**

#### *Short Answer Type Questions*

- Q.1. Examine the centre-state relations debate in post coalition era?
- Q.2. Discuss the recent trends in the centre-state relations.
- Q3. Trace the evolution of the centre-state relations in India.
- Q.4. In the light of debates in centre-state relations do you think adequate attention has been paid towards improving the centre-state relations?
- Q5. Briefly examine the causes of tensions between the centre and the state in the post-independence era?

#### *Multiple Choice Questions:*

Q1. In which year the quasi-federal structure was tested for the first time in India post independence?

- (a) 1965
- (b) 1967
- (c) 1970



(d) 1968

Q2. Who among these were the members of the Sarkaria Commission?

- (a) Justice Rajinder Singh Sarkaria, Shri. Dharendra Singh, Shri. Vinod Kumar Duggal
- (b) Justice Rajinder Singh Sarkaria, Shri B. Sivaraman, M.C. Setalvad
- (c) Justice Rajinder Singh Sarkaria, Prof. N.R. Madhava Menon and Dr. Amaresh Bagchi
- (d) Justice Rajinder Singh Sarkaria, Shri B. Sivaraman and Dr. S.R. Sen

Q3. What introduced dyarchy or dual government for the first time in India?

- (a) Government of India Act 1909
- (b) Government of India Act 1919
- (c) Government of India Act 1935
- (d) Government of India Act 1940

Q4. Who authored the book- *India- Government and Politics in a Developing Nation*?

- (a) Robert Hardgrave Jr and Stanley A. Kochanek
- (b) Christopher Jafferlot
- (c) Lloyd I. Rudolph and Susanne Hoeber Rudolph
- (d) Balveer Arora

Q5. Who among these constituted the Punchhi Commission?

(a) Justice Madan Mohan Punchhi, Shri. Dhirendra Singh, Shri B. Sivaraman and Dr. S.R. Sen, Prof. N.R. Madhava Menon, Dr. Amaresh Bagchi.

(b) Justice Madan Mohan Punchhi, Shri B. Sivaraman, Prof. N.R. Madhava Menon

(c) Justice Madan Mohan Punchhi, Shri. Dhirendra Singh, Shri. Vinod Kumar Duggal, Prof. N.R. Madhava Menon and Dr. Amaresh Bagchi

(d) Justice Madan Mohan Punchhi, Dr. Amaresh Bagchi, Dr. S.R. Sen

Q6. Which state appointed the Rajamanna Committee to look into the centre-state relations?

(a) Kerela

(b) Tamil Nadu

(c) Andhra Pradesh

(d) Karnataka

Q7. Who chaired the committee made by Administrative Reforms Commission of 1966 to look into centre-state relations?

(a) Shri B. Sivaraman

(b) Dr. S.R. Sen

(c) Prof. N.R. Madhava Menon

(d) M.C. Setalvad

Q8. Which of these articles from the Constitution deals with the administrative relations of the union and states?

- (a) Part XI Articles 256-261
- (b) Part XII Articles 264-291
- (c) Part XIII Articles 301-307
- (d) Part XI Articles 245-255

Q9. What was highlighted with the S.R. Bomai case of 1994?

- (a) It brought to the forefront the differences between the centre and the state over the Armed Forces Special Power Act
- (b) It brought to the forefront the differences between the centre and the state over the role of Finance Commission
- (c) It brought to the forefront the differences between the centre and the state over the centrally sponsored schemes
- (d) It brought to the forefront the differences between the centre and the state over the role of the governor.

Q10. Match the following with the year of their constitution-

- |                              |            |
|------------------------------|------------|
| (A) The Sarkaria Commission  | (i) 1966   |
| (B) The Rajamannar Committee | (ii) 1969  |
| (C) The Punchhi Commission   | (iii) 1983 |
| (D) The Stelvad Committee    | (iv) 2007  |

Codes:

- (A) (B) (C) (D)

(a) (i) (ii) (iii) (iv)

(b) (iii) (ii) (iv) (i)

(c) (iv) (iii) (ii) (i)

(d) (iii) (iv) (ii) (i)

