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In this issue

Part 3: Fiscal Relations

Part 4: Inter-State Coordination and Dispute Resolution

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Editorial

The Rajiv Gandhi Institute for Contemporary Studies (RGICS) is the knowledge affiliate of the Rajiv Gandhi Foundation. RGICS carries out research and analysis as well as policy advocacy on contemporary challenges facing India. RGICS currently undertakes research studies on the following five themes of general public utility including:

- Constitutional Values and Democratic Institutions
- Growth with Employment
- Governance and Development
- Environment, Natural Resources and Sustainability
- India's Place in the World

As part of our work on the theme of Constitutional Values and Democratic Institutions and the theme Governance and Development, the RGICS had commissioned a study on Federalism in India in late 2022. It was conducted by Arnab Bose, Sr Research Associate, RGICS, with support and guidance from the undersigned. The study is in four parts, as follows:

Part 1 - Features of the Constitution
Part 2 – Union, State and Concurrent Lists and the Judiciary
Part 3 – Fiscal Relations
Part 4 - Inter-State Coordination and Dispute Resolution

Each part deals with the provisions as laid down in the Constitution, and reviews their status in actual practice, documenting several examples where the original provisions have been diluted or ignored in practice.

Last month we had published part 1 and part 2 of the study under the theme of Constitutional Values and Democratic Institutions and are publishing it as the Policy Watch, Jul 2023 issue.

We now present part 3 and part 4 under the theme Governance and Development as the Policy Watch, August 2023 issue.

Vijay Mahajan
Director, Rajiv Gandhi Institute for Contemporary Studies

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Federalism in India

Part 3: Fiscal Relations

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Federalism in India

Part 3: Fiscal Relations

1 Introduction

This paper proposes to discuss various issues of inter-governmental fiscal relations in India in the context of federalism. It focuses on three specific areas including the Finance Commissions, the Planning Commission and the Centrally Sponsored Schemes, as well as the Goods and Services Tax. It begins by highlighting the nature of fiscal federalism under the Indian Constitution and the variety of mechanisms available under the Constitution for inter-governmental fiscal transfers. Thereafter, it reviews the working of the Finance Commission as well as the trends of the various FCs. Then, it looks at the fiscal transfers through the erstwhile Planning Commission and the Centrally Sponsored Schemes. It also discusses some of the key constitutional issues that have arisen out of Article 282 and the transfers through the Planning Commission. Thereafter, it discusses the emergence of the Goods and Services Tax and its impact on Fiscal Federalism in India. Finally, it highlights some of the contemporary challenges for fiscal federalism in India. Finally, it highlights some of the contemporary challenges for fiscal capacity of states in India.

2 Fiscal federalism in the Indian Constitution

The theory of fiscal federalism, as originally developed by Richard Musgrave[1] and Wallace E. Oates,[2] is primarily concerned with the logical division of public sector functions and finances amongst various layers of government. As a sub-field of public finance, it broadly considers the vertical structure of the public sector and the fiscal policy institutions and their interdependence. It explores, in both normative and positive terms, the roles of different levels of government and ways in which they relate to one another through the sharing financial resources through various instruments such as intergovernmental grants. [3]

The foundations of fiscal federalism in India were first laid by the Government of India Act, 1919 which provided for the clear cut separation of revenue heads between the Center and the Provincial governments.[4] The next major step in this direction was the Government of India Act, 1935 wherein, besides the jurisdictional distribution of revenue between Union and States, there was also a provision for revenue sharing and transfer.[5] Since these federal arrangements were effected under the colonial rule there was a strong bias towards the Centre. When independent India adopted its Constitution on 26th January, 1950, the fiscal federal arrangements were largely the logical extensions of the Government of India Act, of 1935.[6]

The Constitution of India provided for the necessary institutional framework, the financial and functional division of responsibilities between the Centre and the states, and a well defined mechanism for intergovernmental transfers particularly from the center to the states and UTs.

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[1] *Musgrave, Richard (1959), Theory of Public Finance: A Study in Public Economy. New York: McGraw-Hill*

[2] *Oates, Wallace E. (1972), Fiscal Federalism. New York, N.Y.: Harcourt Brace Jovanovich Inc*

[3] *Joumard, Isabelle and Per Mathis Kongsrud (2003), Fiscal Relations Across Government Levels, Organisation for Economic Co-operation and Development, Economics Department Working Paper, No. 375.*

[4] *M.M Surry, 2008: Centre State Financial Relations in India 1870—2010: Indian Tax Foundation New Delhi.*

[5] *Ibid*

[6] *Ibid*

The purpose of such a division was to ensure an equitable distribution of financial resources.[7] With regard to India's fiscal arrangement, the Supreme Court of India had made the following observation in the case of Coffee Board v C.T.O:

> Realising the limitations on the financial resources of the States and the growing needs of the community in a welfare State, the Constitution has made specific provisions empowering Parliament to set aside a portion of its revenues for the benefit of the States, not in stated proportions but according to their needs. The resources of the Union Government are not meant exclusively for the benefit of the Union activities. The Union and States together form one organic whole for the purposes of utilization of the resources of territories of India as a whole.

In terms of taxation powers under the Indian Constitution there was a clear demarcation between the Union and the States. Under Article 246 there were three Lists, namely, the Union List, the State List and the Concurrent List. The Union government had the sole authority to charge taxes from the union list which included a list of thirteen taxes. The important taxes listed in the Union List or those assigned to the Centre were taxes on income other than agricultural land, duties of custom, duties of excise except those on alcoholic liquor for human consumption, corporation tax, estate duty in respect of property other than agricultural land, terminal taxes on goods and passengers carried by railways, sea or air, taxes other than stamp duty on transactions in stock exchanges and futures markets and taxes on sale and purchase of goods other than newspapers, when such sale takes place in the course of inter-State trade or commerce. The state legislature had authority to impose taxes listed in the State List which included a list of nineteen taxes.[11]

The important taxes listed in the State List were land revenue, taxes on agricultural income, taxes on land and buildings, taxes on mineral rights subject to restrictions imposed by Parliament, duties of excise on alcoholic liquor for human consumption, taxes on sale and purchase of goods other than newspapers, taxes on goods and passengers carried by road, taxes on vehicles, taxation on professions, taxes on luxuries including on entertainments, taxes on entry of goods into a local area and taxes on advertisements other than those published in newspapers and broadcast by radio or television. It should be noted that while a long list of taxes were assigned to the states under the state list, only the tax on the sale and purchase of goods was significant for state revenues.

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[7] *Bagchi Amaresh, 'Fifty Years of Fiscal Federalism in India: An Appraisal', Working Paper 2, 2003. National Institute of Public Finance and Policy.*

[8] *AIR 1971 SC 870.*

[9] *Article 246 of the Indian Constitution*

[10] *Entries 82-97 of the Union List*

[11] *Entries 45-63 of the State List.*

[12] *Article 248 of the Indian Constitution*

Therefore, it was tax sharing which constituted a significant portion of the State government's revenue receipts. Further, the residuary powers of taxation were given to the Parliament (i.e., the authority to impose taxes not listed in any of the lists). The parliament could levy a gift tax, a wealth tax or an expenditure tax under this article. There were no tax entries available on the concurrent list. In terms of tax legislation, the concurrent jurisdiction was inaccessible. However, the 101st[12] Amendment Act of 2016 provided an exemption by establishing a unique provision for the goods and services tax.[13] The concurrent competence to make legislation controlling goods and services tax has been given to the parliament and the state legislatures by this amendment.

Articles 268-293, mentioned in Part XII of the Constitution, further specified the financial relations between the Centre and the States.[14] The distribution of taxes was based on the principle of separation, where the following scheme of five categories of taxes was considered:[15]

i) Taxes, which were levied, collected and retained by the Union government.
ii) Taxes, which were levied and collected by the Union government but wholly assigned to the States.
iii) Taxes which were levied and collected by the Union government but the net proceed was shared with the States.
iv) Taxes which were levied by the Union but collected and retained by the States.
v) Taxes which were collected, levied and retained by the States.

In a major restructuring of the above scheme through the 80th amendment of the Constitution in 2000, and the 88th amendment in 2003, there was a change in the way tax revenues were distributed and all the Central taxes were made shareable.

In addition to transfers of resources from Union to the States by means of shared tax, there was also a provision for Grants-in-aid to State governments where the revenue received from tax sharing did not meet the expenditure requirements of the government. There were two types of grants-in-aid to the states: Statutory grants and Discretionary grants.

i) Statutory Grants:

Article 275 empowered the Parliament to offer grants to states which were in need of financial assistance, rather than to all states which were charged to the Consolidated Fund of India (CFI).[16] Aside from this standard provision, the Constitution additionally provided for special funds to promote the welfare of scheduled tribes (STs) in a state or to improve the quality of administration of scheduled territories in a state. Under Article 275 statutory grants are awarded to states on the recommendations of the Finance Commission.

ii) Discretionary Grants:

Article 282 empowered the Union and the states to give grants for any public purpose, even if it fell outside of their own legislative jurisdiction.[17] The Centre was responsible for enforcing this regulation.

The division of taxation powers between the Union and the States, as provided under the Constitution, led to an asymmetry between the tax revenues and the functional responsibilities of the governments.[18] While the Centre was assigned taxes with higher revenue potential, States were assigned with more functional responsibilities. To address this issue of gap in resources assigned to the States and their expenditure responsibilities, the Constitution provided an institutional mechanism for the transfer of resources from the Centre.

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[13] *Article 246A of the Indian Constitution*

[14] *Articles 268-293, The Constitution of India*

[15] *Bagchi Amaresh, 'Fifty Years of Fiscal Federalism in India: An Appraisal', Working Paper 2, 2003. National Institute of Public Finance and Policy*

[16] *Article 275 of the Indian Constitution*

[17] *Article 282 of the Indian Constitution*

[18] *Bagchi Amaresh, 'Fifty Years of Fiscal Federalism in India: An Appraisal', Working Paper 2, 2003. National Institute of Public Finance and Policy.*

Accordingly, there were three main channels that governed fiscal transfers in India.[19] First, the Finance Commission which determined the state's share in Central taxes and grants out of the Consolidated Fund of India. Second, the erstwhile Planning Commission which made recommendations on the magnitude of grants and loans to be provided to the states for financing their expenditure on the targeted interventions for socio-economic development, and third, the Centrally Sponsored Schemes (CSSs) which were designed by various Central government ministries in consultation with the Planning Commission, in which, the Centre's funds were transferred to the states implementing the schemes.[20]

Article 280 of the Indian Constitution provided for the formation of a Finance Commission.[21] The primary objective of the Commission was to address the existing vertical and horizontal imbalances. (Vertical imbalances refer to the mismatch between the revenue-raising capacity and expenditure needs of the Centre and the States and Horizontal imbalances exist on account of the inability of some States to provide comparable services due to inadequate capacity to raise funds.)[22] To address these imbalances, the Finance Commissions had been given a constitutional mandate to decide on[23] (i) the proportion of tax revenue to be shared with the States and (ii) the principles which should govern the grants-in-aid to States. The Commission is appointed every five year by the President of India to assess the States' and Union government's revenue and expenditure projection for the next five years and make recommendations on these issues and on any other matter which the President may ask for of each Finance Commission.

The Planning Commission was not mentioned in the Constitution of India. It was set up as an advisory and specialised institution by a Resolution of the Government in March 1950. The Commission had the responsibility of making an assessment of all the resources of the country, augmenting deficient resources and formulating Plans for the most effective and balanced utilization of resources.[24] While the Finance Commission decided on tax shares and grants, the Planning Commission's responsibility was to facilitate loans and grants for implementing development plans. The most important suggestions made by the Planning Commission were those relating to the magnitude of funds to be given from the Union Budget to different States and Union Territories and the magnitude of funds to be given to Central Government Ministries/Departments for Plan expenditure on the Central Sector Schemes.[25]

The Planning Commission made an assessment of the availability of the state's own resources and its capacity to utilize Plan funds before finalizing the size of the State Plan. Once the size of the State Plan was decided, the Planning Commission recommended the Centre to provide assistance to the State for its State Plan.

The Central Ministries provided finance to their State counterparts in the form of grants.[26] Such grants were meant for financing specified projects. These projects may have been wholly financed by such grants or may have required the State governments to share a proportion of cost. The projects that were normally covered under such grants were those that had a considerable amount of interstate spillover, as well as for poverty alleviation program, immunization drives etc.[27]

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[19] *Ibid*

[20] *Ibid*

[21] *Article 280 of the Indian Constitution*

[22] *Bagchi, Amaresh (2001): "Perspectives on Correcting Fiscal Imbalance in the Indian Economy", ICRA Bulletin, Money and Finance, Jan-June 2001*

[23] *Article 280(2) of the Indian Constitution*

[24] *Bagchi Amaresh, 'Fifty Years of Fiscal Federalism in India: An Appraisal', Working Paper 2, 2003. National Institute of Public Finance and Policy*

[25] *Ibid*

[26] *Ibid*

[27] *Ibid*

Finally, articles 292 and 293 defined the borrowing powers of the Union and the State governments, respectively. Article 292 provided the Union government the power to borrow from the security of the Consolidated Fund of India within a limit which was fixed from time-to-time by the Parliament.[28] Similarly, article 293 empowered the States to borrow within the territory of India from the security of the Consolidated Fund of the State.[29] Article 293 further imposed the condition that a State may not raise any loan if any part of the loan extended by the Government of India remained outstanding. In such cases, the permission of the Government of India was required for a State to raise a loan.

3 The Finance Commission

India is a country of vast regional diversity and unequal distribution of natural resources, and the capacity of different states to mobilize their own revenue differs substantially. However, in a federal set up principle of equalization demands that citizens living in different geographical regions, with different capacities to raise revenues, should be able to enjoy similar levels of public services, therefore, the revenue needed to provide these services should be devolved to all regions.[30] The inadequacy of Indian states to raise resources with respect to their expenditure responsibilities has been recognized by the Constitution that has laid out the principles of revenue sharing between the Centre and the states.[31] The particulars of the sharing pattern have been vested in a Constitutional body called the Finance Commission.

[Source: https://wbpscupsc.com/wp-content/uploads/2020/03/Finance-Commission-of-India.jpg](https://wbpscupsc.com/wp-content/uploads/2020/03/Finance-Commission-of-India.jpg)

The Finance Commission is a Constitutional body formulated under Article 280 of the Indian Constitution. It is constituted every five years (or earlier if necessary) by the President of India to review the state of finances of the Union and the States and suggest measures for maintaining a stable fiscal environment. Specifically, the Finance Commission is responsible for addressing fiscal imbalances that arise between a) the Union and state governments (known as vertical imbalance), and b) those that arise across states (known as horizontal imbalance).[32]

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[28] *Article 292 of the Indian Constitution*

[29] *Article 293 of the Indian Constitution*

[30] *Chakraborty, P. 2003. "Unequal Fiscal Capacities across Indian States: How Corrective is the Fiscal Transfer Mechanism?" Paper prepared for the UNU/WIDER Project Conference on Spatial Inequality in Asia, UNU Centre, Tokyo, March 28–29.*

[31] *Ibid*

[32] *Bagchi, Amaresh (2001): "Perspectives on Correcting Fiscal Imbalance in the Indian Economy", ICRA Bulletin, Money and Finance, Jan-June 2001*

For this purpose, the Finance Commission advises the Union government on the following: [33]

- The distribution of resources between the centre and states from the divisible pool of taxes.
- The principles of distributing grants-in-aid to states, which are additional sums paid to states in need of assistance.
- Any other matter referred to it by the President in the interest of sound finance.

The most important part of the Finance Commission's work is to broadly assess the overall gross tax revenues of the union to determine the share of the states in the net divisible pool (NDP) of taxes.[34] Thus, the taxes and duties levied by the Centre are not meant entirely for the Centre, certain taxes and duties leviable by the Centre are totally assigned to or shared with the States in accordance with their needs. Additionally, the architects of the Constitution also realised that even with a share in the proceeds of divisible taxes, some States might still need additional financial assistance. Accordingly, they made provision for annual grants-in-aid of revenues to such States as may be in need of assistance.[35] Thus, the transfers routed through the Finance Commission pertain to sharing of certain Central taxes, as well as grants-in-aid of revenues of the States.

It is important to note that although the Constitution provides for Central transfers, it neither indicates the share of the States in the divisible taxes nor prescribes any principles for the distribution of States' share among the States themselves. The framers of the Constitution consciously avoided any permanent formulae in view of expected changes in the spheres of taxation and public expenditure.[36] Thus, the precise manner of sharing taxes and the actual determination of grants is left to the deliberations of the Finance Commissions.

The recommendations of Finance Commissions are based on a detailed assessment of the financial position of the Central and State Governments. For this purpose, the finance commissions undertake consultations with various state governments and receive their submissions as well as the submissions of the union government.[37] Discussions are also held with public finance experts and studies are commissioned on specific topics. As the Sixth Finance Commission remarked, "The purpose of Finance Commission, as envisaged in the Constitution, is primarily to facilitate a periodical assessment of the fiscal needs of the States and the formulation on an objective basis of proposals for transfer of resources from the Centre to the States through devolution of taxes and grants-in-aid. But an incidental and by no means insignificant advantage of the appointment of a Finance Commission has generally been to rekindle interest in issues pertaining to financial relations between the Centre and the States and to promote an enlightened national debate on the several facets of our federal fiscal set up." [38]

Under Article 281 of the Constitution, the report of the Finance Commission, together with the Explanatory Memorandum on the action taken on the recommendations of the Commission, is laid on the Table of the House by the Government.[39] Further, the Finance Commission (Miscellaneous Provisions) Act, 1951, has conferred on the Commission all the powers of a Civil Court under the Code of Civil Procedure, 1908.[40] The Commissions have also been empowered to require any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission.

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[33] *Article 280 of the Indian Constitution*

[34] *https://www.oecd-ilibrary.org/sites/940cc5ee-en/index.html?itemId=/content/component/940cc5ee-en*

[35] *Article 275 of the Indian Constitution*

[36] *M.P. Jain , Indian constitutional Law(Wadhwa ,Nagpur .5th edn. ,2004)*

[37] *https://www.oecd-ilibrary.org/sites/940cc5ee-en/index.html?itemId=/content/component/940cc5ee-en*

[38] *Ministry of Finance, Government of India. (1973). Report of the Sixth Finance Commission*

[39] *Article 281 of the Indian Constitution*

[40] *https://www.indiacode.nic.in/bitstream/123456789/1941/1/A1951-33.pdf*

Over the years the role of the FC has expanded significantly, and the resource sharing architecture has undergone several changes, however, the basic mandate for FCs in respect to distribution of taxes and grants-in-aid to states has remained unchanged. This change has been partly the result of a changed political reality in the country and partly due to a growing mismatch between revenue and expenditure needs between different levels of government.[41] Consequently, each FC has exercised varying value judgments in determining the allocation criteria and the size of the vertical revenue transfers.[42]

The most vital aspect of intergovernmental fiscal transfers is the size of the distributive pool of taxes which is available for transfers. As shown in table 1, various FCs progressively enlarged the size of the States' share in income tax collections. It increased from 55 per cent as recommended by the First FC to 85 per cent as recommended by the Ninth FC. The rationale for increasing the size of the States' share in net proceeds of income tax has differed across FCs. For instance, by raising the share of the States in net proceeds of income tax, the Third and Fourth FCs tried to compensate the States for the loss they incurred on account of exclusion of corporation tax in the divisible pool; the divisible pool shrank due to the reclassification in 1959 of income tax paid by companies as corporation tax. [43]

Similarly, for the first time, the Fifth FC included advance tax collections in the divisible pool of income tax and distributed the arrears while retaining the share of the States at 75 per cent.[44] Subsequently, the Sixth FC realised that the arrears were no longer available to States and recommended an increase in the States' share in divisible pool of taxes from 75 per cent to 80 per cent for the award period 1974-79.[45] Considering the States' grievance with regard to the levy of surcharge by the Centre as a normal tax measure, the share of States was again raised by the Seventh FC.[46] The Eighth and Ninth FCs did not recommend any change in States' share in net proceeds of income tax. However, the Tenth FC recommended a downward revision in the share of States in net proceeds of income tax to 77.5 per cent for the award period 1995-2000.[47]

Source: https://life.futuregenerali.in/media/nqfbbwh5/what-are-the-benefits-of-paying-income-tax.jpg

[41] *Chalam, K. S. R. V. S and Rajiv Mishra (1997), "Streamlining norms: a renewed approach for Finance Commission", Economic and Political Weekly, June 21.*

[42] *Ibid*

[43] *Reports of the Third Finance Commission and Fourth Finance Commission*

[44] *Report of the Fifth Finance Commission*

[45] *Report of the Sixth Finance Commission*

[46] *Report of the Seventh Finance Commission*

[47] *Report of the Tenth Finance Commission*

Prior to the 80th Constitutional Amendment, two major Central taxes were mainly shared with the States, viz., and income tax other than corporation tax and Union excise duties. The sharing of income tax was mandatory, but the sharing of Union excise duties with States was discretionary and could be shared if Parliament by law so provided. Following the 80th amendment of the Constitution, it became mandatory for the Centre to share all Central taxes (except taxes under Articles 268 and 269 and earmarked cesses, and surcharges under Article 271) with the States.[48]

Consequent upon the 80th Constitutional Amendment the Eleventh FC recommended a share of 29.5 per cent for States.[49] The Twelfth FC recommended increasing the States' share from 29.5 per cent to 30.5 per cent on the premise that additional transfers can be accommodated by rationalising the Centre's participation in areas that fall directly under the purview of the States.[50] Taking into consideration the factors such as, (i) the higher buoyancy of the Centre's taxes than that of the States during 2000-08, (ii) the States' increasing responsibility with regard to rural and urban infrastructure and (iii) the increase in the Centre's non-tax revenues particularly from royalties and the telecommunications sector,[51] the Thirteenth FC recommended raising the States' share in Central taxes to 32 per cent for the award period 2010-15. The fourteenth FC raised the share of the states to 42 percent which was the biggest ever increase in vertical tax devolution.[52]

Table 1: Recommended Share of States in Major Divisible Taxes

Finance Commissions	Income Tax (%)	Basic Excise Duties (%)	Number of Commodities Covered
First FC (1952-57)	55	40	3
Second FC (1957-62)	60	25	8
Third FC (1962-66)	66.6	20	35
Fourth FC (1966-69)	75	20	All
Fifth FC (1969-74)	75	20	All
Sixth FC (1974-79)	80	20	All
Seventh FC (1979-84)	85	40	All
Eighth FC (1984-89)	85	45	All
Ninth FC (1989-95)	85	45	All
Tenth FC (1995-2000)	77.5	47.5	All
	All Central Taxes		
Eleventh FC (2000-05)	29.5		
Twelfth FC (2005-10)	30.5		
Thirteenth FC (2010-15)	32.0		
Fourteenth FC (2015-20)	42.0		

Source: Reports of the Finance Commission

[48] *80th Amendment to the Indian Constitution*

[49] *Report of the Eleventh Finance Commission*

[50] *Report of the Twelfth Finance Commission*

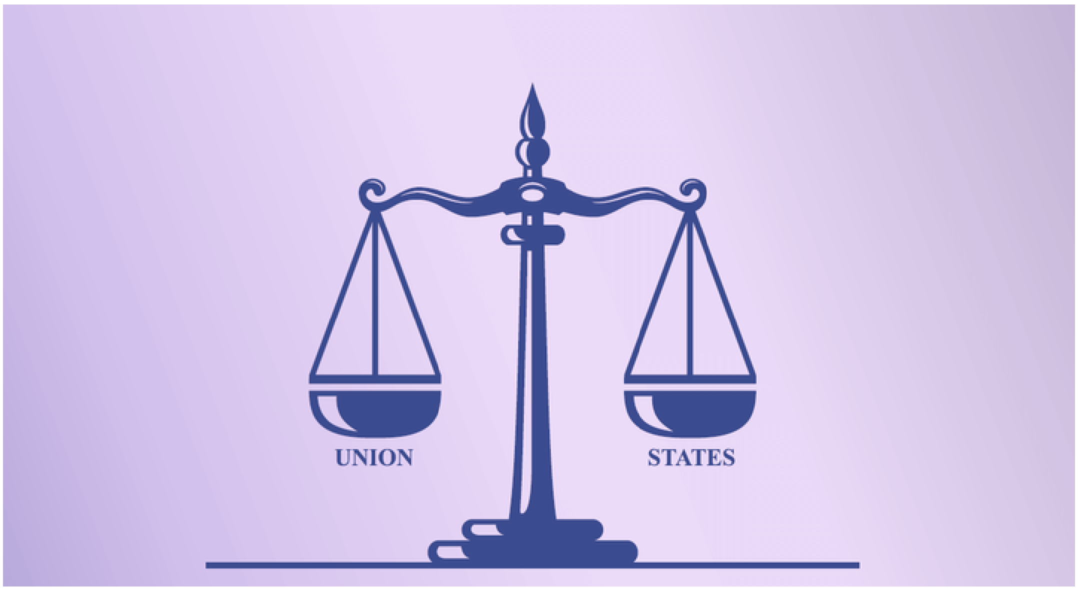
[51] *Report of the Thirteenth Finance Commission*

[52] *Report of the Fourteenth Finance Commission*

Apart from sharing net income tax, States were also dependent on their share in union excise duties to meet their revenue needs. As shown in the above table, the First FC shared Union excise duties with the States in respect to three commodities (tobacco, matches and vegetable products).[53] Thereafter, successive FCs recommended larger devolutions to the States either by increasing the coverage of shareable items or by increasing the states' share. The number of items included in the list of shareable excise duties was increased from 3 to 8, albeit with a reduced share of 25 per cent, by the Second FC.[54] This was further expanded to 35 commodities by the Third FC, but the share was further reduced to 20 per cent.[55] Consequent upon the demand by the States, the coverage of items for the States' share in union excise duties has been made universal since the Fourth FC.

In terms of the union excise duties the first FC had recommended 40 per cent, but thereafter the subsequent FCs had reduced it to 25 per cent (second FC) and 20 per cent (third to sixth FC). The Seventh FC recommended increasing the share of the States in union excise duties back to 40 per cent, on the grounds that providing sufficient resources to States would reduce their dependence on the Centre.[56]

The Eighth FC further enhanced this share to 45 per cent but the increment of 5 per cent was used to meet the assessed post-devolution revenue deficit of States.[57] The Ninth FC retained this scheme in its first Report submitted for 1989-90, but in its second Report for 1990-91 to 1994-95, it recommended distributing the entire amount of 45 per cent as a consolidated amount without any separate component to be used for reducing States' non-Plan revenue deficits.[58] The Tenth FC recommended a share of 47.5 per cent for States in the net proceeds of Union excise duties while setting apart 7.5 per cent of the Union excise duties for distribution on the basis of assessed deficits.[59] With the 80th Constitutional Amendment, a single pool has been prescribed for all shareable Central taxes (except under Articles 268 and 269) since the Eleventh FC.



Source: https://www.clearias.com/up/15th-Finance-Commission-Recommendations.png

[53] *Report of the First Finance Commission*

[54] *Report of the Second Finance Commission*

[55] *Report of the Third Finance Commission*

[56] *Report of the Seventh Finance Commission*

[57] *Report of the Eighth Finance Commission*

[58] *Report of the Ninth Finance Commission*

[59] *Report of the Tenth Finance Commission*

Apart from vertical tax devolution the FCs also determine the inter-state share of taxes. As regards to this, the basic objective of the FC transfers has been to (i) correct the differentials in revenue capacity and cost disability factors inherent in the economies of the States and (ii) foster fiscal efficiency among the States.[60] The criteria used in the past for these purposes can be grouped under (a) factors reflecting needs, such as population and income measured either as distance from the highest income or as an inverse; (b) cost disability indicators such as area and infrastructure distance; and (c) fiscal efficiency indicators such as tax effort and fiscal discipline.[61] The weightage assigned to each factor has varied across each Finance Commission.

As regards to the weight of different variables in the distribution criteria of net proceeds of income tax, only two factors were taken into account till the Seventh FC.[62] Till the Fifth FC population was a dominant factor with the highest weight of 80 to 90 per cent, while contribution in tax collection was a minor factor. There was no change in the horizontal distribution criteria of net income tax proceeds except that there was some adjustment between the respective weights of population and contribution.

In contrast, the Fifth FC felt that the appointment of a new FC should provide an opportunity for a fresh look at various issues in the light of changed circumstances and available information.[63] The Fifth FC identified several inadequacies with regard to contribution criteria (based on tax collections) recommended by earlier FCs. Therefore, apart from population (with a weight of 90 per cent), the Fifth FC added 'assessment' instead of 'collection' with 10 per cent weight in the distribution scheme of income tax proceeds. This distribution scheme remained unchanged till the Seventh FC.

Keeping in view the memoranda submitted by various States, the Eighth FC noted that the criteria for allocating income tax should be more progressive.[64] It recommended that 90 per cent of States' share in income tax remaining after distributing 10 per cent on the basis of contribution should be allocated based on population (with a weight of 22.5 per cent, i.e., 25.0 per cent of 90 per cent), income-adjusted population (with a weight of 22.5 per cent, i.e., 25.0 per cent of 90 per cent) and the distance of per capita income (with a weight of 45 per cent, i.e., 50.0 per cent of 90 per cent).

The distance of per capita from the highest per capita income was considered as a measure of the relative backwardness of States. Since population was used as a scale factor in determining the 'distance' and 'inverse of per capita', its weight in the overall scheme was much larger than 22.5 per cent. Subsequently, the Ninth FC made a major change by introducing a composite measure of backwardness with a weight of 11.25 per cent.[65] The composite indicator of backwardness comprised two indices, viz., (i) population of Scheduled Castes and Scheduled Tribes and (ii) number of agricultural labourers in different States as revealed by Census 1981.

The Tenth FC adopted a different approach from the previous FCs and stopped using 'contribution' as one of the factors for distribution.[66] It argued that the country as a whole represents a common economic space and market, and economic interdependence among States was growing. Therefore, it was difficult to identify locally generated income in the non-agriculture sector and, hence, there was no need to retain 'contribution' as a criterion. The Tenth FC also discarded the inverse income formula and assigned a larger weight of 60 per cent to distance of per capita income along with population (20 per cent) and some new factors, viz., tax effort (10 per cent), area adjusted (5 per cent) and index of infrastructure (5 per cent). Therefore, there was an explicit emphasis on incentivisation of States for their tax efforts.

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[60] *Sen, Tapas K. & Trebesch, Christoph, 2004. "Use of socio-economic criteria for intergovernmental transfers: The case of India," Working Papers 04/10, National Institute of Public Finance and Policy.*

[61] *Ibid*

[62] *Reports of the First to Sixth Finance Commissions*

[63] *Report of the Fifth Finance Commission*

[64] *Report of the Eighth Finance Commission*

[65] *Report of the Ninth Finance Commission*

[66] *Report of the Tenth Finance Commission*

Assessing the prevailing fiscal situation of the States, the Eleventh FC recommended restructuring States' finances through in-built incentives for fiscal discipline and linking them to the principles of devolution.[67] The Eleventh FC introduced a new index of fiscal discipline; tax effort and the index of fiscal discipline were together given a weight of 12.5 per cent. The Twelfth FC evolved a new formula that balanced equity with fiscal efficiency.[68] Equity considerations, however, dominated in the scheme of federal transfers implementing the equalisation principle. Accordingly, it accorded 50 per cent weight to income distance along with 25 per cent weight to population. While 'area' was assigned a weight of 10 per cent, better fiscal management in terms of tax efforts and fiscal discipline was given a higher weight of 15.0 per cent by the Twelfth FC compared with the 12.5 per cent weightage given by the Eleventh FC.

The Thirteenth FC recommended using the concept of 'fiscal capacity distance instead of 'income distance'.[69] Instead of using a single average of GSDP to assess the fiscal distance between States, it recommended estimation of per capita fiscal capacity at reasonably comparable levels of taxation from their respective group averages of non-special category and special category States. The Thirteenth FC accorded the highest weight to fiscal capacity distance (47.5 per cent), followed by population (25 per cent), fiscal discipline (17.5 per cent) and area (10.0 per cent).

Table 2 below shows the various factors and the respective weightage used by the 11th to 14th Finance Commissions. The Fourteenth FC again went back to the previous weightage and accorded the highest weight of 50 per cent to Income Distance followed by 17.5 per cent to population 1971, 15 per cent to area, 10 per cent to population 2011, and 7.5 per cent to forest cover.

- Population is an indicator of the expenditure needs of a state. Over the years, Finance Commissions have used population data of the 1971 Census. The 14th Finance Commission used the 2011 population data, in addition to the 1971 data.
- Area is used as states with larger areas have to incur additional administrative costs to deliver services.
- Income distance is the difference between the per capita income of a state and the average per capita income of all states. States with lower per capita income may be given a higher share to maintain equity among states.
- Forest cover indicates that states with large forest covers bear the cost of not having that area available for other economic activities. Therefore, these states may be given a higher share.

Source: http://www.mpnewsflash.com/fifth-state-finance-commission-formed

[67] *Report of the Eleventh Finance Commission*

[68] *Report of the Twelfth Finance Commission*

[69] *Report of the Thirteenth Finance Commission*

Table 2: Weight of Criteria used by 11th to 14th Finance Commissions

Criteria	11th	12th	13th	14th
Income Distance	62.5	50.0		50.0
Population 1971	10.0	25.0	25.0	17.5
Population 2011				10.0
Index of Infrastructure	7.5			
Fiscal Discipline	7.5	7.5	17.5	
Tax Effort	5.0	7.5		
Fiscal Capacity Discipline			47.5	
Area	7.5	10.0	10.0	15.0
Forest Cover				7.5
Total	100	100	100	100

Source: Reports of the Finance Commission

Besides the shareable Central taxes, another important source of resource transfers to the States from the Centre is grants-in-aid contributions. The guiding principles for grant allocation among States as recommended by the First FC were broadly followed by most of the subsequent FCs. Under Article 275, the First FC recommended that grants should be determined based on (i) the budgetary needs of States, (ii) tax efforts, (iii) economy in expenditure, (iv) equalisation of standard of social services, (v) State-specific obligations and (vi) broad purposes of national importance.[70]

According to Srivastava and Rao (2009), the First FC explicitly stated the best theoretically accepted principles for guiding the determination of fiscal transfers.[71] The Second FC observed that grants-in-aid should be a residuary form of assistance given in the form of general and unconditional grants; it was of the view that grants for broad purposes may be given, provided they were spent exclusively for that purpose.[72]

The Third FC also recommended specific-purpose grants for improvements in communications. Most of the subsequent FCs generally agreed to the principles laid out by the First FC, but they were primarily in favour of unconditional revenue grants. The Seventh FC made some departures from the previous FCs while recommending capital grants to meet capital expenditure as well. This was in recognition of the fact that revenue grants were not adequate for meeting the maintenance expenditure on administrative and residential buildings.[73]

Over the years the FCs had often been criticised for their gap-filling approach for grants-in-aid that led to significant adverse incentives.[74] Singh (2006) argues that the gap-filling approach of grants reduced State government incentives for fiscal discipline while doing little to reduce inter-State inequalities.[75] However, from the Ninth FC there has been a shift to normative approach.[76] Under the normative approach states are assessed in terms of revenues that they ought to raise given their respective capacities. Similarly, expenditures are assessed on the basis of needs consistent with an average or minimum acceptable level of services and are not driven by the past history of expenditures.

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[70] *Article 275 of the Indian Constitution*

[71] *Srivastava, D.K. and C. Bhujanga Rao. (2009), "Review of Trends in Fiscal Transfers in India"*

[72] *Ibid*

[73] *Ibid*

3.1 The 15th Finance Commission - Some key recommendations [77]

The Fifteenth Finance Commission was constituted on 27 November 2017 against the backdrop of the abolition of the Planning Commission and the introduction of the Goods and Services Tax (GST). The Chairman of the Fifteenth Finance Commission was Mr N. K. Singh. The Commission was required to submit two reports. The first report, consisting of recommendations for the financial year 2020-21, was tabled in the Parliament in February 2020. The final report with recommendations for the 2021-26 period was tabled in the Parliament on February 1, 2021.

i) Criteria for horizontal devolution

Table 3 below shows the criteria used by the Commission to determine each state's share in central taxes, and the weight assigned to each criterion. The criteria for distribution among states for period 2021-26 are same as that for the period 2020-21. However, the reference period for computing income distance and tax efforts are different (2015-18 for 2020-21 and 2016-19 for 2021-26).

Table 3: Criteria for Sharing among States

Criteria	15th FC (2020-21)	15th FC (2021-26)
Income Distance	45.0	45.0
Area	15.0	15.0
Population (2011 census)	15.0	15.0
Demographic Performance	12.5	12.5
Forest and Ecology	10.0	10.0
Tax and Fiscal Efforts	2.5	2.5
Total	100	100

Source: Reports of the 15th Finance Commission

- Income Distance: Income distance is the distance of a state's income from the state with the highest income. A state with a lower per capita income is supposed to have a higher share to maintain equity among states. In this regard the income of a state was computed as the average per capita GSDP during the three years between 2016-17 and 2018-19.
- Demographic Performance: The demographic performance criterion has been used to reward efforts made by states in controlling their population. States with a lower fertility ratio are scored higher on this criterion. The Terms of Reference of the Commission required the use of population data of the 2011 census while making recommendations.
- Forest and Ecology: This criterion has been arrived at by calculating the share of the dense forest area of each state in the total dense forest area of the country.

[74] *Article 275 of the Indian Constitution*

[75] *Srivastava, D.K. and C. Bhujanga Rao. (2009), "Review of Trends in Fiscal Transfers in India"*

[76] *Ibid*

[77] *Ibid*

- Tax and Fiscal Efforts: This criterion has been used to reward states with higher tax collection efficiency. It is measured as the ratio of the average per capita tax revenue of a state and the average per capita state GDP during three years between 2016-17 and 2018-19.
- Population: The population data referred to is of Census 2011

ii) Share of states in central taxes

- The share of states in the central taxes for the 2021-26 period was recommended to be 41%, the same as that for 2020-21.
- This is less than the 42% share recommended by the 14th Finance Commission for the 2015-20 period.
- The adjustment of 1% was to provide for the newly formed union territories of Jammu and Kashmir, and Ladakh from the resources of the centre.

iii) Grants

Over the 2021-26 period, the following grants are to be provided from the centre's resources:

- Revenue deficit grants: 17 states to receive grants worth Rs 2.9 lakh crore to eliminate the revenue deficit.
- Sector-specific grants: Sector-specific grants of Rs 1.3 lakh crore to be given to states for eight sectors. These include (i) health, (ii) school education, (iii) higher education, (iv) implementation of agricultural reforms, (v) maintenance of PMGSY roads, (vi) judiciary, (vii) statistics, and (viii) aspirational districts and blocks. A portion of these grants are to be performance-linked.
- State-specific grants: The Commission recommended state-specific grants of Rs 49,599 crore. These to be given in the areas of (i) social needs, (ii) administrative governance and infrastructure, (iii) water and sanitation, (iv)preservation of cultural and historical monuments, (v) high-cost physical infrastructure, and (vi) tourism. The Commission recommended a high-level committee at the state level to review and monitor the utilisation of state-specific and sector-specific grants.
- Grants to local bodies: The total grants to local bodies to be Rs 4.36 lakh crore (a portion of grants to be performance-linked) including (i) Rs 2.4 lakh crore for rural local bodies, (ii) Rs 1.2 lakh crore for urban local bodies, and (iii) Rs 70,051 crore for health grants through local governments.
    - The grants to local bodies to be made available to all three tiers of Panchayat- village, block, and district.
    - The health grants to be provided for: (i) conversion of rural sub-centres and primary healthcare centres (PHCs) to health and wellness centres (HWCs), (ii) support for diagnostic infrastructure for primary healthcare activities, and (iii) support for urban HWCs, sub-centres, PHCs, and public health units at the block level.
    - Grants to local bodies (other than health grants) to be distributed among states based on population and area, with 90% and 10% weightage, respectively.
    - The Commission has prescribed certain conditions for availing these grants (except health grants). The entry-level criteria include: (i) publishing provisional and audited accounts in the public domain and (ii) fixation of minimum floor rates for property taxes by states and improvement in the collection of property taxes (an additional requirement after 2021-22 for urban bodies).
    - No grants to be released to local bodies of a State after March 2024 if the state does not constitute State Finance Commission and act upon its recommendations by then.
- Disaster risk management: The Commission recommended retaining the existing cost-sharing patterns between the Centre and States for disaster management funds. The cost-sharing pattern between centre and states is (i) 90:10 for north-eastern and Himalayan states, and (ii) 75:25 for all other states. It has further recommended a total corpus of Rs. 1.6 lakh crore for states for disaster management for 2021-26, of which the Union's share is Rs. 1.2 lakh crore

4 The Planning Commission and centrally sponsored schemes

The Constitution of India under Article 282 provides that the Union or the States may provide grants for any public purpose, notwithstanding that the purpose is not one with respect to which the Parliament or the legislature of the State, as the case may be, make laws.[78] This miscellaneous financial provision of the constitution has been used for the devolution of funds for socio-economic planning through a non statutory body called the Planning Commission.

The resolution to set up the Planning Commission in India was passed in March, 1950, in an era when centralised planning was perceived to be a means of raising the country's standard of living.[79] A pressing need was felt for a body that could perform a comprehensive appraisal of nationwide resources and formulate a plan for the utilisation of the same.[80] Thus, the Planning Commission had the mandate of coordinating the development plans of the centre and the states, such that they conformed to the national objectives.[81]

The PC was not explicitly mandated to play a role in financing plans and determining inter-governmental fiscal transfers, however, over time, as development planning gained emphasis, the Commission took over the responsibility of determining the size and quantum of the financial assistance given to states to implement the plans prepared by the PC. Another non-statutory body, the National Development Council, was also set up shortly after the Planning Commission, and also played an important role in designing Central welfare programmes.[82]

Image Source

[78] *Article 282 of the Indian Constitution*

[79] *Government of India (1950), "Resolution on setting the Planning Commission"*

[80] *Ibid*

[81] *Prabhat Patnaik, 'From the Planning Commission to the NITI Aayog' (2015) 50(4) Economic and Political Weekly 10*

[82] *Ibid*

The Planning Commission of India was responsible for allocating grants and loans to the States under two non statutory routes: one, via support to State plans called the Central plan assistance and two, via Centrally Sponsored Scheme of the Central Ministries known as specific purpose grants.[83] It transferred resources through itself as well as through different ministries or Departments.

The loans and grants recommended through different ministries/grants were known as discretionary transfers.[84] Since the advent of Five Year plans, the main purpose of the PC was to provide budgetary resources to bridge the gap between the State-generated resources and the approved Plan outlay. It distributed plan transfers to the states through its Normal Central Assistance (NCA) scheme.[85] Each state was allocated a portion of the total plan transfers which was tied to its development plan budget and was negotiable on a bilateral basis. These transfers were in addition to the funds available to the states through the Finance Commission and Union Ministries, which were known as non-plan transfers.[86]

Until 1969 there were no objective criteria to distribute the Plan assistance for State Plan Schemes. The PC used to approve the state Plan Schemes providing scheme-wise pre-determined loans and grants to states. This type of plan assistance provided by the PC was referred to as Schematic Pattern of Assistance.[87] This pattern of assistance carried lot of arbitrariness and failed to achieve the objective of equalization.

Consequent upon the demand by several States in the National Development Council in 1968, the Central Government constituted a committee under the chairmanship of D.R. Gadgil, the then Deputy Chairman of the Planning Commission, to evolve an objective criteria to distribute plan assistance among the states and Union Territories. Consequently, the Gadgil Formula was adopted for the distribution of plan assistance for State Plan Schemes since the Fourth Five Year Plan (1969-70).[88] The same formula was adopted for the Fifth, the Sixth and the Seventh Five Year Plans with minor modifications. A new formula was adopted since the Eighth Five Year Plan (known as the Mukherjee Formula) Table 4 highlights the criteria used in both these formulae.

As shown in the table, the Gadgil Formula was modified by withdrawing the 10% weightage given to the continuing commitments and adding it to the per capita income.[89] This was further revised in October 1990 as 55 per cent for population, 25 per cent for per capita Income, 5 per cent for fiscal management and 15 per cent for special development problems (Mukherjee Formula).[90]

According to the Gadgil Formula the total plan assistance provided to a Non-Special Category State was to be uniform for the loan to grant ratio of 70:30. Such a ratio, in the case of special category states was to be 90:10.[91] Fiscal transfers through the Planning Commission since the adoption of the Gadgil Formula became more equalising compared to the previous periods.[92]

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83 *Sudarsana Rao, R: Grants-in-Aid and Economic Development in India, Chug Publications, 1986.*

84 *Ibid*

85 *Central Plan Assistance (CPA) (also known as plan transfers) constitutes financial assistance provided to support five-year plans by the centre to the states. It comprises Normal Central Assistance (NCA), Additional Central Assistance (ACA) and Special Central Assistance (SCA). NCA is provided as part of state development budgets, ACA is provided for the implementation of externally-aided projects (EAPs) and Centrally-Sponsored Schemes such as Rashtriya Krishi Vikas Yojana etc., and SCA is provided for special projects such as Western Ghats Development Programme, Border Areas Development Programme etc. The Planning Commission is responsible for the allocation of CPA.*

86 *Rao, MG (2002), "State Finances in India: Issues and Challenges", Economic and Political Weekly, 37(31): 3261-3271*

87 *Rao, M.Govinda and Tapas K. Sen (1996): "Fiscal Federalism in India- Theory and Practice", Macmillan, Delhi*

88 *Ibid*

89 *Planning Commission (2014), 'Databook for Planning Commission'.*

90 *Ibid*

91 *Ibid*

92 *Rao, M.Govinda and Tapas K. Sen (1996): "Fiscal Federalism in India- Theory and Practice", Macmillan, Delhi*

Table 4: Objective Criteria for Determining Distribution of Fiscal federalism Plan Assistance

Criteria	Weightage (%)	
	Gadgil Formula (%)	Mukherjee Formula
Population	60	55
Per Capita Income	10	25
Tax Effort	10	
Continuing Commitments on Major and Medium Integrated Multi Purpose Projects (IMP)	10	
Special Development Problems	10	15
Progress in Fiscal Management		5
	4th, 5th, 6th and 7th Five Year Plan and 1990-91 Annual Plan	8th, 9th, 10th and 11th Five Year Plans

Source: Planning Commission (2014), 'Databook for Planning Commission'

In the six decades of its existence, the Planning Commission delivered eleven five-year plans and it claimed credit in the increased agricultural and industrial production, modernisation of technology (satellite, defence equipment production), liberalisation of the economy (increased reach of the banking sector, among other developments), and improvement in social indicators (increased female education, reduction in caste rigidities).

Besides the central assistance for State Plan Schemes, the central government has been providing loans and grants to Plan schemes known as 'Centrally Sponsored Schemes' and 'Central Sector Schemes'. These schemes are sponsored by the Central Ministries and hence the expenditure on these schemes is a part of the Central Plan for which provision is made in the Central Government Budget.[93] A portion of the CSS are schemes designed by the Union but implemented by the States in accordance with the terms of the Union grant and another are designed and implemented by the Union directly in the States.[94] These Central Sector Schemes pertain to subjects over which the Union has legislative and executive competence.[95]

Over the years the resources transferred through the Planning Commission for State Plan Schemes, for Central Sector Schemes and Centrally Sponsored Schemes increased substantially. For instance, the total Central Planned Assistance (CPA) in 1990-91 was Rs. 27,433 crore and was increased to Rs. 555,322 crore by 2012-13. The ratio of plan expenditure to Gross Domestic Product (GDP) also rose from 4.68% to 5.54% over the same period.[96] Over the years, the Planning Commission became responsible for allocating almost half of the total grants from the centre to the states, and plan expenditure became a significant component of total public expenditure.

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[93] *Union of India Expenditure Budget 2020-21: Central Sector Schemes*

[94] *Bibek Debroy 'Restructuring of centrally sponsored schemes cannot be done without consultation with States.' (12 September 2019) Financial Express.*

[95] *Union of India Expenditure Budget 2020-21: Central Sector Schemes*

[96] *Planning Commission (2014), 'Databook for Planning Commission'*

In 2014 the Planning Commission and National Development Council were replaced by the NITI Aayog, another non-statutory body headed by the Prime Minister.[97] Although the NITI Aayog does not frame Five Year Plans, its role overlaps with that of the Planning Commission insofar as it plays a significant role in the design of CSS.[98] In fact, Reddy and Reddy (2019)[99] note that while there is no longer a separate set of normal plan devolutions, a significant number of discretionary transfers between the Union and the States continue.

4.1 Constitutional issues with Article 282, the Planning Commission and the Central Sector Schemes

The use of Article 282 to provide grants to States has generated a lot of debate over the years. In 1965, in his Minute to the Report of the Fourth Finance Commission, Justice P.V. Rajamannar observed that the wording of Article 282 required that any grant to a State by the Union would need to be for a specific public purpose and could not be used for general-purpose grants.[100]

Other criticisms of CSS stemmed from the extra constitutional nature of the Planning Commission. In 1990, H.K. Paranjape argued that while "Article 282 confers on the Union or a State a spending power without conferring legislative power," in practice, the PC took on a central role in development priorities of States, even on matters within state competence.[101] Concerns were also raised that the excessive reliance on ad hoc grants artificially limited the role of the Finance Commission.[102]

In the same year, in an opinion to the Ninth Finance Commission, the jurist N.A. Palkhivala submitted that Article 282 was intended only to be used as a residuary provision, and that the distribution of grants to States should be determined by the Finance Commission under Article 275.[103]

Source: https://vidhilegalpolicy.in/wp-content/uploads/2021/06/imageedit_6_4197386445.png

97 *Puja Mehra, 'NDC to be scrapped, NITI Aayog council likely to get its powers' (1 January 2016) The Hindu*

98 *Nirvikar Singh, 'Fiscal Federalism,' in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds) The Oxford Handbook of the Indian Constitution (OUP 2016).*

99 *Y.V. Reddy and G.V. Reddy, Indian Fiscal Federalism (OUP 2019)*

100 *Justice P.V. Rajamannar, Minute to the Report of the Fourth Finance Commission*

101 *H. K. Paranjape, 'Planning Commission as a Constitutional Body.' (1990) Economic and Political Weekly, 25(45)*

102 *M. Govinda Rao, 'A Review of Indian Fiscal Federalism' in Report of the Commission on Centre-State Relations Supplementary Volume II: Research Studies.*

103 *Second Report of the Ninth Finance Commission for 1990-1995 (1989)*

There have also been many contrary views with respect to the constitutionality of transfers under Article 282. In 1968, the Administrative Reforms Commission (ARC) noted that the reliance on Article 282 for making grants for CSS "though not unconstitutional, is not neat."[104] In doing so, the ARC noted that the framers of the Constitution had anticipated that large, specific-purpose grants would need to be made for the development of the States.

The ARC's objection was not to the use of CSS as a tool for development, but the extent to which they were used. One of the key recommendations of the report is that CSS be confined to areas of national importance only, and that the states must have discretion to determine the allocation of resources on most development issues within their jurisdiction.[105] Subsequent reports on Union-State relations, such as the Sarkaria Commission Report,[106] and the Puncchi Commission Report[107] have also reasoned that the use of Article 282 for transfers from the Union to the States is not unconstitutional.

Some of these questions pertaining to the use of Article 282 by the Union were settled by the Bhim Singh v. Union of India case in 2010, where the Supreme Court examined the constitutionality of the Members of Parliament Local Area Development Scheme (MPLADS).[108] This scheme provided Members of Parliament (MPs) with grants to use for creating durable assets in their constituencies. It was challenged on the grounds that the wording of Article 282 only provided the power to make grants in exceptional situations for well-defined public purposes, and could not be used for broad grant-making powers. To do so would effectively amount to encroachment into subjects within the competence of States.

The Court disagreed with this and reasoned that it would be improper to place limitations on the interpretation of Article 282, and that it should be given the widest possible construction. It noted, "Article 282 is normally meant for special, temporary or ad hoc schemes. However, the matter of expenditure for a "public purpose," is subject to fulfilment of the constitutional requirements. The power under Article 282 to sanction grant[s] is not restricted."[109] Consequently, the term "public purpose" was to receive a wide interpretation and would extend even to purposes that had not yet been determined, such as in MPLADS. Another issue with respect to MPLADS was the lack of accountability within the scheme. However, the Court rejected the view that the scheme lacked any accountability structure. It noted that there were limits on the scope of work that may be undertaken by MPs and there was a requirement that MPLADS must be implemented through the Panchayati Raj institutions wherever possible. There was also a provision to provide information on the works and the expenditure for them. According to the Court this was an adequate accountability mechanism.[110]

The Bhim Singh case effectively opened the way for CSS to be used for a wide range of development activities, by way of a grant under Article 282. Subsequent decisions have also upheld the view that the Government has wide discretion to determine "public purpose" for which to make grants under this provision, and that the Court would not interfere with this decision.[111] It is important to note, however, that Article 282 only confers a power to "incur expenditure" and not to carry out legislative or executive acts.[112] Thus, while the Union can make grants by CSS, the implementation of these schemes properly falls within the competences of the States.

[104] *Administrative Reforms Commission (ARC), Report of the Study Team on Centre State Relation-ships. (1968).*

[105] *Ibid*

[106] *Report of the Commission on Centre-State Relations (Sarkaria Commission) (1989)*

[107] *Report of the Commission on Centre-State Relations (Puncchi Commission) (2010)*

[108] *Bhim Singh v. Union of India (2010)5 SCC 538.*

[109] *Ibid*

[110] *Ibid*

[111] *Subramaniam Balaji v. State of Tamil Nadu (2013) 9 SCC 659*

[112] *Bhim Singh v. Union of India (2010)5 SCC 538*

Post Bhim Singh there has been attempts to limit the CSS system. In 2011, the Chaturvedi Committee report recommended that the number of CSS in operation be reduced, and 20% of funds for CSS be treated as "flexi funds" to be used at the State's discretion.[113] Likewise, the Fourteenth Finance Commission recognised that States had experienced difficulties in meeting the State contribution to CSS and had recommended that a greater proportion of Union funds be devolved as untied grants.

Consequently, in line with the recommendations of the Fourteenth FC, the Union increased the proportion of transfers to States under the divisible pool of taxes to 42% and reduced the component of CSS.[114] In spite of these limits to the number of schemes in operation, CSS still form an important part of India's development agenda. As of 2020-21, there were a total of 30 CSS in operation.[115] Further, the Ministry of Finance stated in 2018 that the budgetary allocation for CSS has increased by 40% over the period of 2015-16 to 2018-19.[116]

5 Fiscal Federalism: Some Key Issues

5.1 The Goods and Services Tax and Fiscal Federalism

The Goods and Services Tax (GST') is a uniform indirect tax which is levied on all goods and services produced across the country, as well as all goods and services which are imported from outside the country.[117] It proposes to simplify the previous indirect tax system by encompassing taxes such as the State VAT, Central Excise, Service Tax and a few other indirect taxes into a single broad-based, comprehensive tax which is to be levied on all goods and services (barring a few).[118]

The 101st Amendment to the Constitution led to the introduction of the GST in July 2017, and the replacement of the previous indirect tax law regime with the GST Model.[119] This change was brought about by the addition of Articles 246A, 269A & 279A to the Constitution, along with changes in the Seventh Schedule containing the Union & State Lists, to accommodate the task of subsuming previously charged indirect taxes into a single tax while defining the subject matter and distribution of powers between the Centre and the States.[120]

Article 246A provides for both the Union and States to make laws concurrently with respect to the goods and services tax.[121] It puts inter-state trade exclusively under the jurisdiction of the Union government, while intra-state trade is open to the jurisdiction of both the Union and State government.

Article 269A furthers the same notion expounds that in case of inter-state trade, GST is to be levied and collected by the Union government and thereafter be shared by both the Union and States as per the recommendations of the GST Council.[122] This provision also makes it clear that the proceeds collected in regard to inter-state trade are not credited to the Consolidated Fund of India or the state but their respective share is assigned to both the Centre and State governments.

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113 *Report of the Committee on Restructuring Centrally Sponsored Schemes (Chaturvedi Committee), (2011).*

114 *Report of the Fourteenth Finance Commission.*

115 *Lok Sabha Unstarred Question No. 1872 (07.03.2018).*

116 *Lok Sabha Unstarred Question No. 2981 (28 December 2018).*

117 *Sandeepan Banerjee & Mona Banerjee, Rethinking the Prospects and Challenges of Implementing GST in India, 5 International Journal of Commerce, Business and Management, 156, 163, (2016)*

118 *Ibid*

119 *https://gstcouncil.gov.in/brief-history-gst*

120 *https://legislative.gov.in/sites/default/files/Cons.amend%20101-060717.pdf*

121 *Article 246A of the Indian Constitution*

122 *Article 269A of the Indian Constitution*

Article 279A deals with the formation of the GST Council which is a body established to deliberate upon all or any issues with respect to the amount of tax to be charged, exemptions to be provided, threshold limits, apportionment of inter-state trade tax or any other matter with regard to the implementation, determination and application of the goods and services tax.[123]

Its composition includes the Union Finance Minister as Chairperson, with the Union Minister of State and other Ministers in-charge of Finance or Taxation of the States acting as members in the council. All decisions have to be taken by a 3/4th majority by the council, wherein the Central government holds 1/3rd of the votes and all other State governments combined together hold 2/3rd of the votes.

While it was envisaged that the GST would bring all goods and services under a single tax rate, however, after much deliberations by the Parliament, it was decided to divide it into four tax slabs: 5%, 12%, 18% and 28% as shown in table 5. The rationale behind the division into slabs was to secure the interests of the weaker sections of society.[124]

Table 5: Tax Rate Slabs within GST

Tax Rate (%)	Category
5	Household necessities such as sugar, spices, tea etc.
12	Items like computers and processed food.
18	Hair oil, soaps, toothpaste, capital goods and industrial intermediaries.
28	Luxury items like cars, AC, refrigerators, cigarettes and aerated drinks.

Source: R. Vasanthagopal, GST in India: A Big Leap in the Indirect Taxation System, 2 International Journal of Trade, Economics, and Finance 2, 9 (April 2011).

In order to ensure stability of the new taxing structure certain items such as petroleum products, alcohol and electricity have not yet been brought within the ambit of GST.[125] Items such as cereals, fruits and vegetables, jute, contraceptives etc., have also been exempted keeping in mind the nature of these products.[126] The tax components of which are charged under GST are:[127]

- CGST – Central GST wherein tax collected is provided to the Centre.
- UTGST – Union Territory GST wherein tax collected is used for administration of the Union Territory.
- SGST – State GST wherein tax collected is provided to the States.
- IGST – Integrated GST wherein tax collected is shared between Centre and State

[123] *Article 279A of the Indian Constitution*

[124] *R. Vasanthagopal, GST in India: A Big Leap in the Indirect Taxation System, 2 International Journal of Trade, Economics, and Finance 2, 9 (April 2011).*

[125] *https://timesofindia.indiatimes.com/business/faqs/gst-faqs/list-of-items-kept-outside-the-purview-of-gst/articleshow/60191839.cms*

[126] *Ibid*

[127] *C. P. Chandrasekhar & Girish Kumar ed.,GST: Fiscal Centralism in a Federal Polity, 32 (Mahatma Gandhi University, 2016)*

[Source: https://www.squareyards.com/blog/types-of-gst-in-india-gstart](https://www.squareyards.com/blog/types-of-gst-in-india-gstart)

The GST is based on the application of the destination principle, i.e., the taxes are to be applied in the state where the product is sold and has to be levied on every stage of production, from the distribution chain to the retail level, with the applicable offsets with respect to the taxes levied at the previous levels.[128] Dr. K. Gopakumar has explained the GST as, "a value added Tax on the supply of goods and services in the course of business. The dealer that affects the supply under the GST regime is liable to pay tax only on value addition by off-setting the tax paid for the acquisition of goods or services in previous transaction against the supply. The total tax burden is therefore borne by the ultimate consumer and in that sense the GST is a consumption tax." [129]

The implementation of the GST by the Central government was envisaged as a transformational reform to unify tax administration in India, however, five years since there is a growing mistrust on issues of GST compensation and the decision-making structure of the GST Council. Many critics have argued that it impacts fiscal federalism and curtails state autonomy.[130] This criticism is primarily based on two arguments.

Firstly, under Article 279A(9), any decision taken by the GST Council has to be passed by a majority of not less than 3/4th of the members present and voting. Additionally, under sub-clause (a) & (b) of the same provision, the Union government has been bestowed with 1/3rd of the total votes whereas all other states combined have been given 2/3rd of the total votes. Such a distribution gives the Union government an indirect veto power over any deliberations as no decision can be passed without 3/4th majority, for which the affirmation of the Union government becomes necessary. This clearly undermines state autonomy in deciding their fiscal policy.

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[128] *Ibid*

[129] *Ibid*

[130] *Jayanta Roy Chowdhury, Balancing Fiscal Relations 16, Yojna 'A Development Monthly', 31, 32 (2017)*

Secondly, if any issue arises out of the recommendations put forth by the GST Council, the power to establish a mechanism to resolve such disputes has also been vested in the GST Council itself, which is in clear violation of the principles of natural justice. These two issues with respect to the GST Council can directly impact the federal structure of India in general and the fiscal distribution of powers in particular, and can act as obstacles for State governments to put forth their interests in the GST Council.

According to Prabhat Patnaik the implementation of the GST has meant that the states have absolutely no power in deciding what tax rates to impose on what commodities, a right that was given to them under the Constitution.[131] Thus, the freedom of the states to pursue alternative strategies has been severely hindered and the states have become completely dependent on the centre.

Recently, the issue of pending GST compensations has also surfaced where many Opposition-ruled states have accused the Centre of not providing them with their dues that have been seriously undermined their efforts to combat the health crisis and initiate a plan for the post-pandemic economic recovery.[132]

In the context of federalism a recent Supreme Court judgment has an important bearing. The Supreme Court in the Union of India vs Mohit Minerals case in May 2022 observed that, "the 'recommendations' of the GST Council are the product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST."[133]

Thus according to the SC, the GST Council recommendations are not binding on the states and the states can exercise their independent power to legislate on GST under Article 246A of the 101st Constitutional Amendment Act. The GST reform which was largely possible through federal negotiations requires a more consultative and consensus-building framework to deepen fiscal federalism. As five years of GST has been completed, there is a need for a more open and robust consultative approach between the Centre and the states, especially on issues of resource distribution and decision making.

Source: https://vakilsearch.com/blog/what-is-gst-applicability/

[131] https://www.sabrangindia.in/article/gst-anti-constitutional-prabhat-patnaik

[132] https://indianexpress.com/article/india/opposition-says-non-bjp-states-not-getting-gst-dues-nirmala-sitharaman-says-dont-politicise-7821597/

[133] https://indiankanoon.org/doc/98511521/

5.2 Fiscal capacity of states [136]

The ability of States to finance current expenditures from their own revenues has declined from 69 per cent in 1955-56 to less than 38 per cent in 2019-20. While the expenditure of the States has been shooting up, their revenues have not. The situation of state finances is bleak. As per a study of the Budgets of State Governments by the Deutsche Bank,[137] the average fiscal deficit of 17 big states was 2.8 per cent of their GSDP in 2019, the average tax base was 6.4 per cent while the average borrowing was 25.2 per cent, or 3.9 years' tax collections! The average was from a wide range, with Maharashtra and Gujarat having borrowed equal to 2.2 and 3 years of tax collections respectively, while Rajasthan and Punjab had borrowings equal to 5.8 and 6.7 years of tax collections respectively. Just to make this easy to understand, most housing finance companies do not give loans to individuals more than 1.5 years' of their income. So clearly, even the best of the States have borrowed too much.

The situation was grave as it is in 2019 and the economic downturn post COVID has brought it to the brink. As per a study by India Ratings, cited in the Financial Express, 1st Oct 2020, the collective fiscal deficit of 18 states was at 40.7 percent in in April-June, while the revenue deficit soared to 285 percent of their of Budget Estimates in April-June.

Under such a situation, the States have to look to the Centre for funds. The Centre pretty much reneged on its commitment to pay compensation to the States under The Goods and Services Tax (Compensation to States) Act, 2017. Under this, compensation was to be provided to States for a period of five years from the enactment of the respective State GST Act, with the growth rate of revenue for the five-year period assumed to be 14 percent per annum, starting 2015-16 as the base year. To enable the Centre to make these payments, a GST compensation cess was established and the collections from that were used to pay the States.

The mechanism worked fine in the first two years, but in the FY 2019-20, there was a problem. As per data put together by PRS India based on replies to parliamentary questions, the cess collection was Rs 95,444 crore whereas the compensation payable was Rs 165,302 crore. The Finance Minister announced in the Budget Speech in Feb 2020 that compensation would be limited only to collections of the GST compensation cess. The Centre on 28 August wrote to States suggesting they borrow to make up for the Rs 2.35 lakh crore shortfall in GST revenues. The States were understandably reluctant to do so. Eventually, the Centre on October 15 made a "concession" to the States and offered to borrow from the market and pass it on to States as a 'back-to-back loan' that will reflect on their own books.

The mechanism of a Finance Commission was provided in the Constitution to ensure that the devolution of the tax revenues from the Centre to the States is principle-based. Successive Finance Commissions have tried to play this role quite diligently, but even at the peak, the Finance Commissions' recommendations never exceeded 50 per cent of the total funds devolving from the Centre to the States, thereby leaving a lot to the discretion of the ruling dispensation at the Centre.

The Chairman of the 15th Finance Commission, Mr NK Singh said on Sep 21 that the recommendations of the first report, including that of devolution, may no longer hold, because of the pandemic. He went on to add that the five year horizon for Finance Commissions may be too long in the era of volatility and uncertainty. But if the horizon is reduced, it could lead to short-term ad hoc-ism and pave the way for quick fix solutions with the Centre as the saviour of the last resort for the States.

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[134] https://economictimes.indiatimes.com/news/economy/policy/government-notifies-gst-compensation-cess-extension-to-march-2026/articleshow/92449494.cms

[135] https://indiankanoon.org/doc/98511521/

[136] https://www.thehindu.com/opinion/lead/the-poor-state-of-indias-fiscal-federalism/article65690849.ece

[137] https://economictimes.indiatimes.com/markets/expert-view/for-fy21-fiscal-deficit-could-be-kept-at-3-5-3-6-but-off-budgetary-resources-raised-kaushik-das-deutsche-bank/articleshow/73802717.cms?from=mdr

There are three other issues causing fiscal ill-health of states.

- States are forced to pay a higher interest for market borrowings
- Diversion of a State's funds to Centrally Sponsored Schemes
- Issues Pertaining to Cesses and Surcharges

(i) States are forced to pay a higher interest- about 10 per cent against 7 per cent by the Union for market borrowings.[138] The Union gains at the expense of States by exploiting these interest rate differentials.

(ii) Diversion of a State's funds to Centrally Sponsored Schemes.[139] By turning States into mere implementing agencies of the Union's schemes, their autonomy has been curbed. There are many centrally sponsored schemes accounting for 90% of the allocation, and States are required to share a part of the cost. The states spend about 25% to 40% as matching grants at the expense of their priorities. The diversion is thereby depleting resources for its own schemes.

(iii) Issues Pertaining to Cesses and Surcharges:[140] The increased share of devolution, mooted by 14th Finance Commission, from 32% to 42%, was subverted by raising non-divisible cess and surcharges that go directly to the Union government. This non-divisible pool in the Centre's gross tax revenues increased to 15.7% in 2020 from 9.43% in 2012, shrinking the divisible pool of resources for transfers to States. The imposition of cesses for subjects that fall within the State list is a fiscal subversion of the Seventh Schedule. Examples of such subjects include agriculture, hygiene, health, and education.

The dilution of specificity is recognised as a core aspect of cesses. The Supreme Court in Maru Ram v. Union of India (1981) interpreted the word 'specific' to be "precise, exact, definite and explicit". A simple comparison of the post-independence phase (Salt Cess Act, 1953 or Iron Ore Mines Labour Welfare Cess Act, 1961) with the current phase (Swachh Bharat Cess or Krishi Kalyan Cess) illuminates the loss of specificity in these cesses. There has been a tendency to impose cess for financing of national highways, basic education, environment, etc. These essentially constitute broad expenditure heads and not specific heads.

6 Conclusion

Foreseeing the need to address vertical and horizontal fiscal imbalances in India, the constitution-makers made provisions for enabling intergovernmental fiscal transfers through instruments such as shared taxes and grants-in-aid, and an institutional mechanism, the finance commission. Over the years the FCs along with the erstwhile Planning Commission played a distinctive role in inter-governmental fiscal relations in India. This paper has attempted to review the nature of fiscal relations in India through the working of the Finance Commission, Planning Commission and the Centrally Sponsored Schemes.

The paper also highlights some of the fundamental changes are happening ex post the abolition of the Planning Commission, the creation of the National Institution for Transforming India (NITI) Aayog, the constitutional amendment to introduce the Goods and Services Tax (GST), the establishment of the GST Council, and the historically high tax devolution to the states based on the 14th Finance Commission's recommendations and their impact on fiscal federalism in the country.

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138 https://www.thealphabet.news/economy/how-truncated-fiscal-federalism-is-eroding-states-finances-in-india-1432703

139 https://www.thehindu.com/opinion/lead/the-poor-state-of-indias-fiscal-federalism/article65690849.ece

140 *Ashrita Prasad, Kotha, Vinti Agarwal , Arghya Sengupta, Rav P Singh. 2018. Cesses and Surcharges: Concept, Practice and Reform (Report to Fifteenth Finance Commission). Vidhi Centre for Legal Policy.*

7 References

1) Administrative Reforms Commission (ARC), Report of the Study Team on Centre State Relation-ships. (1968).

2) Ashrita Prasad, Kotha, Vinti Agarwal , Arghya Sengupta, Rav P Singh. 2018. Cesses and Surcharges: Concept, Practice and Reform (Report to Fifteenth Finance Commission). Vidhi Centre for Legal Policy.

3) Bagchi Amaresh, 'Fifty Years of Fiscal Federalism in India: An Appraisal', Working Paper 2, 2003. National Institute of Public Finance and Policy.

4) Bagchi, Amaresh (2001): "Perspectives on Correcting Fiscal Imbalance in the Indian Economy", ICRA Bulletin, Money and Finance, Jan-June 2001

5) Bibek Debroy 'Restructuring of centrally sponsored schemes cannot be done without consultation with States.' (12 September 2019) Financial Express.

6) Chakraborty, P. 2003. "Unequal Fiscal Capacities across Indian States: How Corrective is the Fiscal Transfer Mechanism?" Paper prepared for the UNU/WIDER Project Conference on Spatial Inequality in Asia, UNU Centre, Tokyo, March 28–29.

7) Chalam, K. S. R. V. S and Rajiv Mishra (1997), ''Streamlining norms: a renewed approach for Finance Commission'', Economic and Political Weekly, June 21.

8) C. P. Chandrasekhar & Girish Kumar ed.,GST: Fiscal Centralism in a Federal Polity, 32 (Mahatma Gandhi University, 2016).

9) Government of India (1950), "Resolution on setting the Planning Commission".

10) H. K. Paranjape, 'Planning Commission as a Constitutional Body.' (1990) Economic and Political Weekly, 25(45).

11) Jayanta Roy Chowdhury, Balancing Fiscal Relations 16, Yojna 'A Development Monthly', 31, 32 (2017).

12) Joumard, Isabelle and Per Mathis Kongsrud (2003), Fiscal Relations Across Government Levels, Organisation for Economic Co-operation and Development, Economics Department Working Paper, No. 375.

13) Justice P.V. Rajamannar, Minute to the Report of the Fourth Finance Commission.

14) Lok Sabha Unstarred Question No. 1872 (07.03.2018).

15) Lok Sabha Unstarred Question No. 2981 (28 December 2018).

16) M. Govinda Rao, 'A Review of Indian Fiscal Federalism' in Report of the Commission on Centre-State Relations Supplementary Volume II: Research Studies.

17) M.M Surry, 2008: Centre State Financial Relations in India 1870—2010: Indian Tax Foundation New Delhi.

18) M.P. Jain , Indian constitutional Law (Wadhwa ,Nagpur .5th edn. ,2004).

19) Musgrave, Richard (1959), Theory of Public Finance: A Study in Public Economy. New York: McGraw-Hill.

20) Nirvikar Singh, 'Fiscal Federalism,' in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds) The Oxford Handbook of the Indian Constitution (OUP 2016).

21) Oates, Wallace E. (1972), Fiscal Federalism. New York, N.Y.: Harcourt Brace Jovanovich Inc.

22) Planning Commission (2014), 'Databook for Planning Commission'.

23) Prabhat Patnaik, 'From the Planning Commission to the NITI Aayog' (2015) 50(4) Economic and Political Weekly 10

24) Puja Mehra, 'NDC to be scrapped, NITI Aayog council likely to get its powers' (1 January 2016) The Hindu.

25) Rao, M.Govinda and Tapas K. Sen (1996): "Fiscal Federalism in India- Theory and Practice", Macmillan, Delhi

26) Rao, M. Govinda (2002), "State Finances in India: Issues and Challenges", Economic and Political Weekly, 37(31): 3261-3271.

27) Report of the Commission on Centre-State Relations (Sarkaria Commission) (1989).

28) Report of the Commission on Centre-State Relations (Puncchi Commission) (2010).

29) Report of the Committee on Restructuring Centrally Sponsored Schemes (Chaturvedi Committee), (2011).

30) Report of the First Finance Commission

31) Report of the Second Finance Commission

32)Report of the Third Finance Commission

33) Report of the Fourth Finance Commission

34) Report of the Fifth Finance Commission

35) Report of the Sixth Finance Commission
36) Report of the Seventh Finance Commission
37) Report of the Eighth Finance Commission
38) Report of the Ninth Finance Commission
39) Report of the Tenth Finance Commission
40) Report of the Eleventh Finance Commission
41) Report of the Twelfth Finance Commission
42) Report of the Thirteenth Finance Commission
43) Report of the Fourteenth Finance Commission
44) Report of the Fifteenth Finance Commission
45) R. Vasanthagopal, GST in India: A Big Leap in the Indirect Taxation System, 2 International Journal of Trade, Economics, and Finance 2, 9 (April 2011).
46) Sandeepan Banerjee & Mona Banerjee, Rethinking the Prospects and Challenges of Implementing GST in India, 5 International Journal of Commerce, Business and Management, 156, 163, (2016).
47) Sen, Tapas K. & Trebesch, Christoph, 2004. "Use of socio-economic criteria for intergovernmental transfers: The case of India," Working Papers 04/10, National Institute of Public Finance and Policy.
48) Singh, Nirvikar (2006), ''State Finances in India: A Case for Systemic Reform'', In S. Narayan (ed.), Documenting Reforms: Case Studies from India. India: Macmillan.
49) Srivastava, D.K. and C. Bhujanga Rao. (2009), "Review of Trends in Fiscal Transfers in India".
50) Sudarsana Rao, R: Grants-in-Aid and Economic Development in India, Chug Publications, 1986.
51) Union of India Expenditure Budget 2020-21: Central Sector Schemes.
52) Y.V. Reddy and G.V. Reddy, Indian Fiscal Federalism (OUP 2019).

Federalism in India

Part 4: Inter-State Coordination and Dispute Resolution

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Federalism in India

Part 4: Inter-State Coordination and Dispute Resolution

1 Introduction

In a constitutional set-up where powers are distributed between the centre and various federating units, the units act independently in the exercise of their internal sovereignty. In such cases it is natural to expect conflicts of interest arise between the units. Hence, in order to maintain the strength of the Union, it is essential that there should be adequate provision for inter-governmental collaboration as well as constitutional mechanisms for the settlement of disputes between the units as well as their prevention by consultation and joint action.

This paper proposes to discuss various issues of inter-state relations and conflicts in independent India in the context of federalism. It focuses on 4 specific areas including article 131, inter-state water disputes, Inter State Council and the National Development Council. It begins by highlighting the variety of mechanisms available under the Constitution for inter-state collaboration and the settlement of inter-state disputes.

Thereafter, it highlights Article 131, which provides for the judicial determination of disputes between the States by vesting exclusive jurisdiction within the Supreme Court. Then, it looks at the issue of inter-state water disputes in India, followed by the coordination amongst states through the inter-state council. Finally, it discusses the National Development Council. The larger aim is to understand some of the major issues concerning inter-state relations in India.

2 Constitutional mechanisms for inter-state coordination and dispute resolution

When a number of governments function within a polity as they do in a federation, areas of tensions, differences and disputes are bound to arise between them from time to time. Therefore, it becomes necessary to have some mechanism to resolve these disputes in order to have a smooth functioning of the federation. The Indian Constitution provides a variety of mechanisms with this in view. The Constitution looks at disputes in the widest possible sense so as to cover not only disputes that come up before the judiciary, but also disputes which require an extra-judicial mechanism of resolution.[141]

If any inter-governmental dispute involves a question of law one needs to resort to the judiciary. For this purpose, the Supreme Court of India has been given original jurisdiction in any legal dispute between two governments. The principal provision for dealing with such inter-State disputes involving a legal right is article 131 of the Constitution. This article covers any dispute which involves any question (whether of law or of fact), on which the existence or extent of a legal right depends.[142] The disputes could be between:

a) the Government of India and one or more States; or
b) 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,

[141] https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf

[142] *Article 131 of the Indian Constitution*

However, the jurisdiction of the SC does not extend to a dispute arising out of any treaty, agreement, covenant, or other similar instruments which have been entered into or executed before the commencement of the Constitution and continues in operation after such commencement.[143] As a matter of practice, when an important case comes before the Supreme, the Court may itself issue notices to the Attorney-General of India and the Advocate-Generals of States, inviting them to place their respective points of view before the court, so that the matter may be decided after all its aspects have been considered.[144]

Another method to take recourse to the judiciary in the matter of inter-governmental disputes is by invoking the Supreme Court's advisory jurisdiction.[145] A question of law or fact of public importance may be referred to the court for its advice by the President. The court holds a hearing and delivers its opinion in the open court. This provision has been taken recourse to several times, for example, in the 1958 Kerala education bill case,[146] where opinion was sought on the Constitutional validity of certain provisions of the Kerala Education Bill 1957, and the 1963 Sea Customs case,[147] where opinion of the SC was sought in regard to certain provisions of the Sea Customs Act, 1878.

India has a number of interstate rivers and river valleys which have lead to a number of disputes between states on the use, distribution and control of rivers flowing through two or more states. The Constitution therefore makes special provisions for resolving such disputes. Under article 262 of the Constitution, power has been given to Parliament to provide by law for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of any interstate river or river valley.[148] The law so enacted can exclude the jurisdiction of the Supreme Court and other courts from taking cognizance of any such dispute. Under this provision, the Parliament has enacted two Acts:

a) The River Boards Act, 1956,[149] which provides for the establishment of river boards for the regulation and development of interstate rivers and river valleys, and for advising the governments in matters concerning the regulation of any interstate river or river valley. The board also advises governments to resolve conflicts by co-ordination of their activities. Further, the boards may also prepare schemes for regulating or developing interstate rivers, may allocate among the governments the costs of executing any such scheme, and may oversee the progress of such schemes.

b) The Inter-State Water Disputes Act, 1956,[150] provides for the adjudication of disputes related to interstate rivers and river valleys. Whenever such a dispute arises, a State may request the Centre to refer the same to a tribunal for adjudication. The tribunal appointed by the Centre consists of a person nominated by the Chief justice of India from amongst the present or ex-judges of the Supreme or High Courts. The tribunal submits its report to the Central Government, which on publication becomes binding on the parties concerned. A matter referable to a tribunal or a river board is not under the jurisdiction of any court.

In spite of the existence of such detailed provisions for resolution of disputes, several disputes concerning interstate rivers have remained pending for long.

Another mechanism envisaged by the Constitution for better intergovernmental coordination is the Interstate Council. Under article 263 of the Constitution, there is provision for the formation of an inter-State Council which may be appointed by the President, and may be charged with the duty of inquiring into and advising upon disputes between States, investigating and discussing subjects in which States or the Centre may be interested, and making recommendations upon any such subject, particularly, for better co-ordination of policy and its implementation.[151]

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143 *Ibid*

144 https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf

145 *Article 143 of the Indian Constitution*

146 *AIR 1958 SC 996*

147 *AIR 1963 SC 1760*

148 *Article 262 of the Indian Constitution*

149 http://www.mowr.gov.in/sites/default/files/A1956-49.pdf

150 https://www.indiacode.nic.in/bitstream/123456789/1664/3/A1956-33.pdf

151 *Article 263 of the Indian Constitution*

The provision is a general one and any number of such bodies having various functions in different areas may be appointed. The Council is designed to be an advisory body with no authority to give any binding decisions.[152]

Apart from these Constitutional provisions another body that was set up with the objective of better coordination of development activities amongst states was the National Development Council. The NDC was set up by a proposal of the cabinet secretariat of the Government of India in August 1952.[153] It was intended to be a coordinating mechanism for development with the goal to ensure uniformity of approach and unanimity in working. The Council was presided over by the Prime Minister of India and includes all Union Ministers, Chief Ministers of all the States, and Administrators of Union Territories, and Members of the Planning Commission. Ministers of State with independent charge were also invited to the deliberations of the Council.[154] Its functions included:

i.) prescribing guidelines for the formulation of the National Plan, including the assessment of resources for the Plan
ii.) Considering important questions of social and economic policy affecting national development
iii.) Reviewing the working of the Plan from time to time and recommending such measures as were necessary for achieving the aims and targets set out in the National Plan.

It was envisaged that the NDC would advise and make recommendations to the Central as well as state governments.

Source: https://img.jagranjosh.com/imported/images/E/Articles/national-development-council.jpg

3 Original jurisdiction of the Supreme Court: Article 131

Under Article 131, the Supreme Court has exclusive and original jurisdiction over legal issues originating between states and the union or between states. The article is based largely on its predecessor- section 204 of the Government of India Act, 1935.[155] The article itself was amended by the Constitution (7th Amendment) Act, 1956. In its present form it basically provides the Supreme Court, to the exclusion of any other court, original jurisdiction in any dispute between (a) the Government of India and one or more States, (b) the Government of India and any State or States on one side and one or more other States on the other; or (c) two or more States. The dispute itself should necessarily involve any question of law or fact on which the existence or extent of a legal right depends.[156]

152 *Ibid*

153 http://14.139.60.153/bitstream/123456789/4355/1/Summary%20Record%20of%20Discussions%20of%20the%20National%20Development%20%28NDC%29%20Meetings.%20Five%20Decades%20of%20National%20Building%20%28Fifty%20NDC%20Meetings%29.%20Vol-I%20%281st%20to%2014th%20Meetings%29.pdf

154 *Ibid*

155 https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf

156 *Article 131 of the Indian Constitution*

Further the said jurisdiction does not extend to a dispute arising out of any treaty, agreement, covenant, engagement, or other similar instrument which had either been entered into or executed before the commencement of the Constitution and continues in operation after such commencement, or which explicitly provides that the said jurisdiction shall not extend to a dispute arising out of it.[157]

Thus, for a dispute to qualify under Article 131, it has to necessarily involve central and/or state governments as parties and must involve a question of law or fact on which the existence of a legal right of the state or the Centre depends. Disputes which do not involve any questions of legal right, such as where the disputes have an exclusively political dimension, are not covered by article 131. However, if a right arising under the Constitution is at issue then article 131 can be invoked, even if the subject matter might have provoked political controversy.

The meaning of the expression "legal right" is often explained in terms of the views of Salmond.[158] According to him, a legal right is an interest recognised and protected by a rule of legal justice, the violation of which would be a legal wrong done to him whose interest it is, and respect for which is a legal duty.

There is an important 1939 judgment in connection to section 204 of the Government of India Act of 1935 which further elaborated the term legal right.[159] In the case, the plaintiff had brought a suit against the defendant for the recovery of certain sums of money, which, he alleged, were wrongfully credited to the Cantonment fund.

The defendant had pleaded that since no suit could be instituted by a Province against the Government of India under the law prevailing at the time, the dispute was one which was not justiciable before the Federal Court in its original jurisdiction. However, the Federal Court held that because the dispute involved a question on which the existence of a legal right depended, it was justiciable. The judgment had stated:

The term "legal right", used in section 204, obviously means a right recognised by law and capable of being enforced by the power of a State, but not necessarily in a court of law. It is a right of an authority recognised and protected by a rule of law, a violation of which would be a legal wrong to his interest and respect for which is a legal duty, even though no action may actually lie. The only ingredients seem to be a legal recognition and a legal protection. The mere fact that under the previous Act the Provincial Governments were subordinate administrations under the control of the Central Government and could only have made a representation to the Governor-General-in-Council or the Secretary of State, would not be sufficient, in itself, for holding that the former could not possibly possess any legal right, at all, against the Central Government, even in respect of rights conferred upon them by the provisions of the Act or the rules made there under.

At this stage it needs to be pointed out that the jurisdiction of the Supreme Court under article 131 is not confined to any specific or particular category of disputes. Subject to certain provisions of the Constitution, which explicitly excludes this jurisdiction, article 131 confers on the Supreme Court jurisdiction in any kind of dispute (between the federation and its units, or between the units themselves).[160] The jurisdiction is extremely wide, provided the dispute is a justiciable one. The intention of the Constitution-makers was that such disputes should not be subjected to several tiers of the judicial hierarchy, but should come, once and for all, before the highest court of the land. [161]

Over the decades, the Supreme Court of India has taken contradictory decisions on the applicability Article 131.

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157 *Ibid*

158 *John Salmond, 2010. On Jurisprudence 12th Ed, Universal Law Publishing.*

159 *United Provinces Vs. Governor General of India in Council, AIR 1939 FC 58.*

160 *https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf*

161 *Ibid*

162 *1977 AIR 1361*

163 *1978 AIR 68*

164 *Ibid*

165 *https://indiankanoon.org/doc/125662/*

In a 1977 case between State of Rajasthan and Union of India,[162] a peculiar situation had arisen, where one party was voted to power (through Parliamentary election) by an overwhelming majority. At the same time, in nine States, another party was already in power. The Central Government at the time was of the view, that in these States, the Government should seek a fresh mandate from the electorate.

A letter to that effect was addressed by the Home Minister to the Chief Ministers of the States. Apprehending that the letter would be followed by the issue of a Presidential Proclamation under article 356 of the Constitution, the States moved the Supreme Court, questioning the validity of such a Proclamation. The Supreme Court held that it had jurisdiction under Article 131 to entertain the proceeding. In the end, however, the court decided that the apprehended Proclamation would be valid.

Another landmark case in this regard was the 1978 case between State of Karnataka v Union of India,[163] where the Central Government had issued a notification under the Commissions of Inquiry Act, 1952, to inquire into the conduct of certain Ministers of the State Government of Karnataka (including the Chief Minister). The State Government challenged the legality of this notification, mainly raising a constitutional issue connected with federalism.

The principal point raised was that the State Cabinet was collectively responsible to the State Legislative Assembly. The Constitution did not contemplate a parallel overseeing of the State Cabinet the Centre. In the end, the contention of the State Government failed. But the jurisdiction of the Supreme Court, under article 131, to go into the above question was upheld. In the judgment,[164] Justice P N Bhagwati had stated that for the Supreme Court to accept a suit under Article 131, the state need not show that its legal right is violated, but only that the dispute involves a legal question. But, article 131 cannot be used to settle political differences between state and central governments headed by different parties.

However, in contrary to the above judgments, in a recent 2011 case of State of Madhya Pradesh v Union of India,[165] the Court held that Central enactments could only be challenged as writ petitions under Article 32 and 262 of the Constitution and not under the original jurisdiction of the Court under Article 131. Thereafter, in a 2015 case of State of Bihar v Jharkhand,[166] the Court again disagreeing with the 2011 judgement stated that "We regret our inability to agree with the conclusion recorded in the case of State of Madhya Pradesh v. Union of India, that in an original suit under Article 131, the constitutionality of an enactment cannot be examined.

Since the above decision is rendered by a coordinate Bench of two judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the above-mentioned decision." As the Court did not have the requisite bench strength to overturn the prevision decision, it left the matter open for a larger bench to decide. Since this inconclusive situation has not been resolved, it allows both the judgements to be used as a precedent for future references.

The State of West Bengal v. Union of India[167] is a 1962 case that also dealt with the issue of State's rights to challenge Central Laws. While this case did not specifically deal with the question of state power to contest central laws under Article 131, its proceedings does have a bearing on the issue. The case involved the West Bengal Government challenging the Coal Bearing Areas (Acquisition and Development) Act, 1957, a Central law that allowed it the rights to acquire coal mining lands even though the land belonged to the State. The Supreme Court accepted the original suit filed by the State under Article 131, but upheld the constitutional validity of the law made by the Centre. While the court did not venture into the constitutional validity of the enactment under Article 131, its decision to hear State's challenge against Centre under the said Article indicates that the Constitution does provide scope for the State to contest Central laws.

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[166] https://main.sci.gov.in/jonew/ropor/rop/all/184010.pdf
[167] *1963 AIR 1241, 1964 SCR (1) 371*

Despite having Articles 32 and 226 for the States to challenge the validity of Central laws, going forward the Court must settle its position with regards to Article 131. In doing so, it will enhance the Supreme Court's exclusive jurisdiction to hear cases on a priority that deal with centre-state disputes and potentially violate the federal structure of the Constitution.

4 Inter-State river water disputes

Water is a major resource for sustaining life on earth. It contributes to the welfare of a nation in several ways such as in health, agriculture, industry, etc. This extraordinary demand for water in diverse fields makes it one of the most important resources. Moreover, availability of water is highly uneven across geographies as it is dependent upon varying seasons of rainfall and capacity of storage.

India's need for water is met by its 25 major river basins, with most rivers flowing across states.[168] As river basins are shared resources, there is a need for a coordinated approach between the states and the Centre, for the preservation, equitable distribution and utilisation of river water. However, because of the federal nature of the republic, and because the rivers cross state boundaries, numerous inter-state river-water disputes have erupted since independence. These disputes over the possession and control of river water have persisted with prolonged delays in resolution, and have for long been an important legal and Constitutional issue.[169] In recent years, increasing water scarcity and a rapid rise in urban and rural demands for freshwater have further exacerbated the problem.[170]

The complicated nature of inter-state water disputes in India needs to be understood through the history of water governance in the country. Before independence, India comprised of the British government with several semi-sovereign princely states. At the time governmental power was highly centralized with the Secretary of State being empowered under the purview of the Government of India Act, 1919 and the subsequent Government of India Act, 1935.[171] For any dispute between the provinces, the decision of the Secretary of State was final and binding. In the context of water, the provinces had little authority, with the exception of some autonomy regarding irrigation, under the 1919 Act.[172]

Source: https://factly.in/wp-content/uploads//2016/09/inter-state-water-disputes-in-india-featured-image.jpg

168 *Harish Salve, "Interstate River Water Disputes," in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of The Indian Constitution (New York: Oxford University Press, 2016).*

169 *Pyaralal Raghavan, "There has not been a final settlement on any interstate river water dispute since 1980," The Times of India, 7 September, 2016.*

170 *Ashok Swain, "Fight for the last drop: interstate river disputes in India," Contemporary South Asia, Vol. 7 (2) (1998), 167-180.*

171 *K.K. Lahiri, "Indian River and River Systems- The Genesis of Article 262 of the Constitution of India and the Interstate River Water Disputes Act, 1956- Developments till 1949"*

172 *Ibid*

In independent India, legislative powers concerning water were distributed between the Centre and the states. Schedule 7 of the Constitution distinguished between the use of water within a state and the purpose of regulating interstate waters. It gave the Union the power to formulate laws and mechanisms for regulating interstate, while the states retained autonomy regarding water utilisation for purposes such as water supply, irrigation, drainage, water storage and water power.[173] This approach towards constitutional mechanism regarding interstate water disputes resulted in an imprecise distribution of power between the Centre and the states.

Further, independence resulted in the fusion of 571 disjointed states.[174] Thereafter, states were carved out and federated to form the Union of India. While the states were initially organised on the basis of political and historical considerations, the States Reorganisation Act (1956) finally resulted in 14 states and six union territories.[175] Since then, the boundaries of Indian states have continued to evolve based on cultural and political factors, with little focus ecological factors of these regions.[176]

The changing borders have further complicated the existing resource-sharing agreements and have become sources of interstate river disputes. Forseeing the possibility of river disputes arising out of the state reorganization act, in the same year the Union government enacted two other important acts to create a framework for governing and managing interstate rivers: the Interstate (River) Water Disputes Act, 1956 (ISRWDA) and the River Boards Act, 1956.[177]

4.1 Constitutional and statutory provisions for dispute resolution

i.) Article 246:

Article 246 of the Indian Constitution deals with the allocation of legislative power between the Parliament and the State Legislatures.[178] As per this Article, the allocation of responsibilities between the Centre and the States with respect to laws to be made fall into three categories: the Union List (List I), the State List (List II) and the Concurrent List (List III). The subject of water is a matter of Entry 17 of List II, i.e. State List. This Entry is subject to the provisions of Entry 56 of List I, the Union List.

Entry 17 of List II includes water sources, irrigation and canals, drainage and oak, reservoir and hydropower. Most cross-border disputes over rivers are related to these issues. The State government has the right to adopt laws on these issues. However, this competence of the government is subject to the provisions of Entry 56 of List I. Entry 56 of List I gives the Parliament the right to adopt laws on the regulation and development of the river and valleys to the extent that these regulations and development are in the public interest. Since water resources are a national responsibility, Parliament has considerable legislative powers in this area.

ii.) Article 262:

Article 262 of the Constitution deals with the adjudication of water disputes.[179] The provisions in this regard are:

- Article 262(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." Thus, this Article provides that Parliament with the power to adopt legislation for the settlement of disputes or complaints concerning the use, distribution or control of transboundary waters in a river or river valley.

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173 *Harish Salve, "Interstate River Water Disputes," in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of The Indian Constitution," (New York: Oxford University Press, 2016).*

174 *L. Koshi, "Explainer: The reorganization of states in India and why it happened," The News Minute, November 2, 2016.*

175 *Ibid*

176 https://classic.iclrs.org/content/blurb/files/krishna%20belbase.pdf

177 *Harish Salve, "Interstate River Water Disputes," in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of The Indian Constitution," (New York: Oxford University Press, 2016).*

178 *Article 246 of the Indian Constitution*

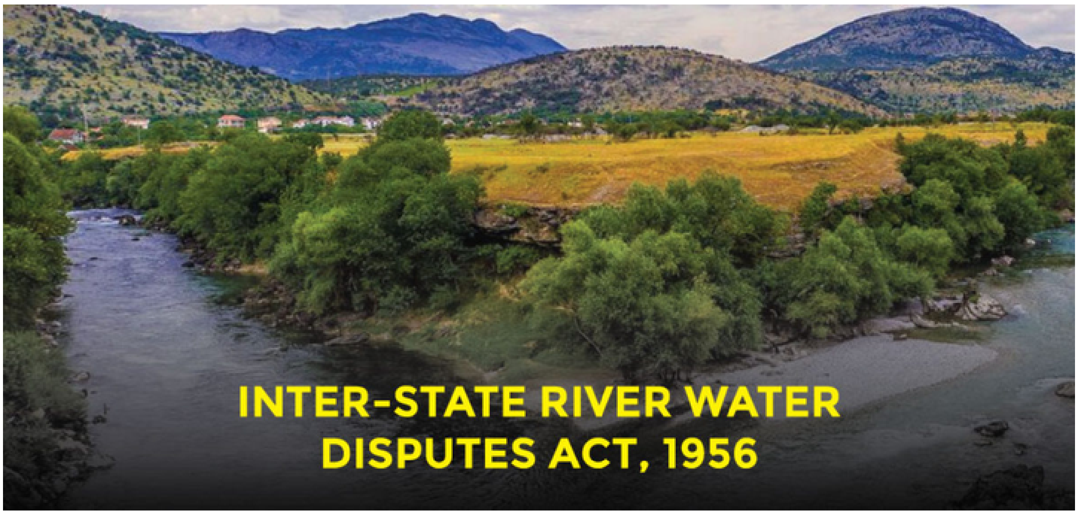
179 *Article 262 of the Indian Constitution*

- Article 262(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)." This Article allows the Parliament to adopt a law to restrict the jurisdiction of the Supreme Court or of any other court in relation to the dispute/appeal referred to in Article 262 (1). Article 262(2) begins with the phrase "Notwithstanding anything in this constitution …", which means that other provisions of the Constitution that violate Article 262(2) are not applicable.

For example, when examining Article 262(2), Article 131 does not apply, which provides for the primary jurisdiction of the Supreme Court in disputes between two or more States.[180] If the Parliament has not enacted any legislation under Article 262(2), it may refer to the Supreme Court or higher court. The term "may" used here means that the introduction of such a law depends on the Parliament's discretion.

iii.) Central Laws:

Four Acts, three under Entry 56 of List I namely, the "River Boards Act 1956",[181] "Betwa River Board Act 1976"[182] and "Brahmaputra Board Act 1980"[183] and the fourth one under Article 262, namely, the "Inter-State River Water Disputes Act, 1956"[184] are the legislations so far enacted by the Indian Parliament under the above Constitutional provisions.



Source: https://educratias.com/wp-content/uploads/2022/01/Inter-state-River-Water-Disputes-Act-1956-1200x565.jpg

a.) Inter State River Water Disputes Act, 1956:

This Act is to provide for the adjudication of disputes relating to waters of Inter-State Rivers and River Valleys.[185] The Act came into effect on 28 August 1956 and has been modified from time to time to achieve the objectives set forth. When any request is received from the state government in respect to any water dispute and the central government is of the opinion that the water dispute cannot be settled by negotiations, the central government is empowered to constitute a water disputes tribunal for the adjudication of the dispute by notifying in the official gazette. The tribunal thus set up then has to investigate the matters referred to it and forward a report setting out the facts and giving its decision on the same within a period of three years. The above Act has been used to set up several Tribunals to settle the Inter-State Water disputes.

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180 *Article 131 of the Indian Constitution*

181 http://www.mowr.gov.in/sites/default/files/A1956-49.pdf

182 https://legislative.gov.in/sites/default/files/A1976-63_0.pdf

183 https://legislative.gov.in/sites/default/files/A1980-46.pdf

184 https://www.indiacode.nic.in/bitstream/123456789/1664/3/A1956-33.pdf

185 *Ibid*

b.) River Boards Act, 1956:

This act made provisions for setting up of river boards or advisory bodies by the central government at the request of the interested parties.[186] These boards were to have two functions:

- They would help to bring about proper and optimum utilization of the water resources of inter- state rivers.
- They would promote and operate schemes for irrigation, water supply, drainage, development of hydroelectric power and flood control.

iv.) Agreements on Inter-State rivers:

Efforts are always made to resolve the dispute through mutual discussions and negotiations between the party States. Such a settlement is most preferred since it fosters a spirit of involvement for the party States concerned. As a result of such negotiations, a number of inter-State agreements have been reached so far[187] (A substantive number of these agreements reached before and after independence have been superseded by fresh agreements/decision of Tribunals).

4.2 Water Tribunals

Under the Inter-State River Water Disputes Act, the State or States can approach the Central Government for resolution of water disputes, who in turn, may refer the dispute to a "Water Disputes Tribunal."[188] The decision of this tribunal shall be final and binding,[189] and is beyond the purview of being reopened and reviewed.[190] However, if the State Government is of the opinion that anything contained in the Tribunal's decision requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, the State may, within three months from the date of the decision, again refer the matter to the Tribunal for further consideration.[191]

It is important to note that before the aforementioned reference is made to a tribunal by the Central Government, the Central Government may attempt to facilitate negotiations. However, if it is "of the opinion" that such a dispute cannot be settled through negotiation, it may refer the dispute to a tribunal.[192] But historically, the Centre has directly referred the disputes to the Tribunal with putting little effort for facilitating negotiations and attempting to amicably settle these disputes. Table 1 below shows the various water dispute tribunals since independence.

Source: https://images.indianexpress.com/2016/08/mahadayi-759.jpg

186 http://www.mowr.gov.in/sites/default/files/A1956-49.pdf
187 http://www.cwc.gov.in/sites/default/files/legalinst-Vol-III(Part1).pdf
188 *The Inter-State River Water Disputes Act, 1956, Sec. 4*
189 *Ibid, Sec. 6*
190 *Ibid, Sec. 4*
191 *Ibid, Sec. 5(3)*
192 *Ibid, Sec. 4*

It is possible for the States to challenge the decisions of a tribunal in the Supreme Court under Article 136 of the Indian Constitution which grants discretionary power to the court to hear such appeals.[193] It is also possible for any private persons to approach the Supreme Court under Article 32 and link the water dispute issues and/or tribunal's decision with violation of fundamental rights.[194]

Table 1: Water Tribunals

Tribunal	States Concerned	Date of Constitution	Current Status
Godavari Water Disputes Tribunal	Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh, Orissa	April 1969	Report and decision given in July 1980.
Krishna WaterDisputes Tribunal – I	Maharashtra,Andhra Pradesh, Karnataka,	April 1969	Report and decision given in May 1976.
Narmada Water Disputes Tribunal	Rajasthan, Madhya Pradesh, Gujarat, Maharashtra	October 1969	Report and decision given in December 1979. Narmada Control Authority (NCA) was constituted to implement the decision.
Ravi & BeasWater Tribunal	Punjab, Haryana, Rajasthan	April1986	Report and decision given in April1987. Further Report is pending.
Cauvery Water Disputes Tribunal	Kerala, Karnataka, Tamil Nadu, Puducherry	June 1990	Report and Decision given on 5 February 2007. Supreme Court modified the decision on 16 February 2018. The Cauvery Water Management Authority (CWMA) and Cauvery Water Regulation Committee (CWRC) were constituted to implement the modified decision.
Krishna Water Disputes Tribunal -II	Karnataka, Andhra Pradesh, Maharashtra, Telangana	April 2004	Report and decision given on 30 December 2010. SLPs filed pending in the Court. The term of the Tribunal has been extended after the bifurcation of Andhra Pradesh. The matter is under adjudication in the Tribunal.
Vansadhara Water DisputesTribunal	Andhra Pradesh, Odisha	February 2010	Report and decision submitted on 13 September 2017. Further Report is pending.
Mahadayi Water DisputesTribunal	Goa, Karnataka, Maharashtra	November 2010	Report and decision submitted on 14 August 2018. Further Report is pending.
Mahanadi WaterDisputes Tribunal	Chhattisgarh, Odisha	March 2018	Under adjudication by the Tribunal. Report and decision are awaited.

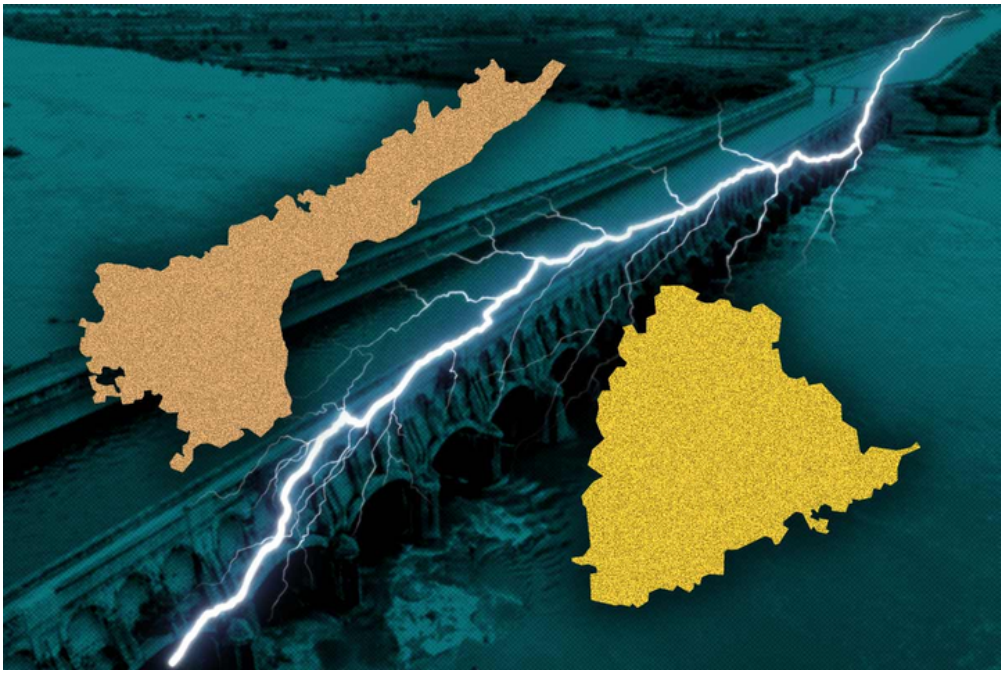
Source: Central Water Commission

193 *Article 136 of the Indian Constitution*
194 *Article 32 of the Indian Constitution*

4.3 Some major water disputes

a.) Krishna-Godavari Water Dispute

In the early 1950s, the Indian government adopted the First Five Year Plan, which outlined a path for economic development. At the time the Planning Commission of India wanted to include some major schemes for irrigation and hydroelectric power on the rivers Krishna and Godavari.[195] The commission had asked the states of Bombay, Hyderabad, Madras and Mysore to suggest certain viable projects. In 1951, an inter-state conference was convened to discuss the allocation and utilization of water in the rivers, and to assess the merits of the various projects suggested which led to an agreement. However, Karnataka (then Mysore) did not ratify the agreement relating to the Krishna waters. Thereafter in 1956, the states were reorganized on a linguistic basis. Hence the 1951 agreement needed to be revised. However, prolonged negotiations did not lead to a new agreement.[196]



Source: https://www.thenewsminute.com/sites/default/files/Telangana_AndhraPradesh_KrishnaRiver_28062021_1200_1.jpg

The main issue in the Krishna-Godavari dispute was the validity of the inter-state agreement of 1951. It was also questioned whether Maharashtra could divert the water westward for generating cheap hydroelectric power on the slopes of the Western Ghats.[197] After prolonged negotiations a tribunal was formed in 1969. The tribunal reached its decision in 1973, and the award was published in 1976. The tribunal relied on the principle of equitable apportionment for the actual allocation of the water.[198] Based on the annual availability of 2,060 TMC (thousand million cubic feet) of water in the basin, the Tribunal allocated this water to the States of Andhra Pradesh, Karnataka and Maharashtra.

The Tribunal further allocated the surplus to the State of Andhra Pradesh, but the state did not acquire a permanent (vested) right to those waters. On the issue of the agreement the Tribunal concluded that projects, which were in operation or under consideration before September 1960 should be preferred to any contemplated use except by special consent of the parties.[199]

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195 *Shah, R.B, Inter-state River Water Disputes: A Historical Review, 175-189, (1994)*
196 *Ibid*
197 *Ibid*
198 *http://117.252.14.242/rbis/India_information/Krishna%20Water%20Dispute%20Tribunal.html*
199 *Ibid*

On the issue of water use, the tribunal ruled that the use of water for irrigation was to be preferred over the production of hydroelectric power giving the following two reasons:[200] a. Water is the only source of irrigation whereas coal, oil and other natural resources can be used for generating power, and b. the socio-economic needs of the population and their dependence on the Krishna water for irrigation. Lastly, the Tribunal allowed the States to re-open the issue of water allocations after May, 2000.

The subsequent round of adjudication was re-opened in 2004 with the formation of a second Krishna River Tribunal and its decision was given in 2010. The Krishna II Tribunal increased the amount of annual allocable water to 2,578 TMC, but made those additional allocations less dependable than the base allocations in 1976.[201] The second Tribunal also called for the creation of a Krishna Water Decision Implementation Board to administer its findings.[202]

Finally, the Tribunal said the States could re-open this order after May 31, 2050. Since then, two of the States, Karnataka and Andhra Pradesh, have filed petitions in the Supreme Court, challenging the award of the tribunal.[203]

b.) Cauvery River Dispute

The Cauvery River is essentially an inter-State basin that has its origins in Karnataka and flows through Tamil Nadu and Puducherry. This dispute is rooted in an agreement which was signed in 1924, which gave Tamil Nadu and Puducherry seventy-five per cent of the surplus water share from the Cauvery River, while Karnataka got twenty-three per cent, and the remaining went to Kerala.[204] The agreement placed no restrictions on how much land could be irrigated.

Source: https://img.etimg.com/thumb/msid-70721923,width-640,height-480,imgsize-619265,resizemode-4/the-bitter-feud.jpg

200 *Ibid*
201 https://irrigationap.cgg.gov.in/img/tribunaryDisputes/KWDT-II%20Report.pdf
202 *Ibid*
203 https://www.downtoearth.org.in/news/andhra-to-challenge-krishna-tribunal-award-in-supreme-court-42903
204 *Guhan, S., The CauveryDispute:Towards Conciliation,(Madras:Kasturi & Sons,1993)*

In 1970, the Cauvery Fact-Finding Committee found that the irrigated lands in Tamil Nadu had grown while Karnataka's lands showed little to no growth.[205] Consequently, Tamil Nadu had made a proposal for an increased need for water supply which was rejected by Karnataka. Thereafter, Tamil Nadu made a request for setting up of a tribunal which was finally formed in 1990, after almost twenty years.

As per the Tribunal's final decision in 2007, which was in concurrence to multiple advices by the Supreme Court, Karnataka was ordered to release water from Cauvery.[206] However, Karnataka did not comply contending that they did not have sufficient water to cater to its own needs. This water dispute still remains sub-judice in the Supreme Court.[207] It is important to note that the centre has made no effort in facilitating negotiations between the States.

c.) Sutlej Yamuna Link Dispute

Source: https://i.filecdn.in/2empr/punjab-full-1597837494363.png

The Sutlej Yamuna Link (SYL) Canal is a project proposed to connect the Sutlej River in Punjab with Yamuna Canal in Haryana. In 1966, after the Indus Waters Treaty 1960, India received the unrestricted right to three rivers: Ravi, Beas, and Sutlej.[208] They were shared among Punjab, Delhi and Jammu & Kashmir. In 1966, Haryana was created from Punjab's territory. Post bifurcation water rights became one of the dispute points as Haryana, being a successor State, had the water rights to Punjab's Sutlej River.

Thereafter, in 1976, the then Prime Minister Indira Gandhi divided the water between Punjab, Haryana and Rajasthan.[209] But this division was not complied by the Punjab Government. This non-compliance led to the formation of a tribunal in 1986, which passed an order in 1987 dividing Sutlej River's water between Punjab and Haryana.[210] However, the Punjab Government challenged this order and contended that Sutlej River's capacity has been overestimated.

In the midst of this, SYL Canal's foundation stones were laid in 1980s but its construction had to be halted for multiple reasons, including militancy in Punjab.[211] In 2002, the Supreme Court ordered the Punjab Government to complete the construction of the SYL Canal within 12 months.[212] Then, in 2004, Punjab passed the Punjab Termination of Agreement Act, 2004 which scrapped all the water sharing agreements signed with other States and required the Punjab Government to restore the land to the farmers free of cost.[213]

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205 *Ibid*

206 http://jalshakti-dowr.gov.in/sites/default/files/Volume-I1920752696.pdf

207 *(2018) 4 SCC 1.*

208 https://www.worldbank.org/en/region/sar/brief/fact-sheet-the-indus-waters-treaty-1960-and-the-world-bank

209 https://sandrp.in/2016/11/18/sutlej-yamuna-link-row-chronology-of-events/

210 http://www.cwc.gov.in/sites/default/files/Ravi-%20Beas%20Waters%20Tribunal%20Report%201987.pdf

However, this was declared as unconstitutional by the Supreme Court.[214] It also directed both the Governments of Punjab and Haryana to maintain status quo i.e. complete the construction of the SYL Canal.[215] It is important to note that only after years of constant tussle, the Centre agreed to mediate between Punjab and Haryana on 18th August 2020.[216] This delayed cognizance has proven to be detrimental as years of litigation not only led to resource drainage but also affected farmers' irrigation needs and the creation of hydro electric projects.

i.) Key issues with water tribunals

Interstate water disputes in India often prolong over long periods and tend to recur. The Cauvery dispute tribunal was constituted in 1990 and the final award was given in 2007, after 17 years. The 2nd Krishna water dispute tribunal, constituted in 2004, gave its final award in December 2010. These long delays are partly due to elaborate judicial proceedings and deliberations, but there are a number of other issues which affect water tribunals and lead to these prolonged delays. Some of the key issues are listed below:

- Protracted proceedings and extreme delays in dispute resolution.[217] This is primarily because of procedural complexities involving multiple stakeholders across governments and agencies.
- Opacity in the institutional framework and guidelines that define the proceedings of the tribunal. [218]
- The composition of tribunals is not multidisciplinary. It consists of persons only from the judiciary.[219]
- The lack of authoritative water data makes it difficult to even set up a baseline for adjudication.[220]
- The growing nexus between water and politics have transformed the disputes into turfs of vote bank politics. This politicization has also led to an increasing defiance by states, extended litigations and subversion of resolution mechanisms.[221]

Current Indian water-dispute settlement mechanisms are ambiguous and opaque. The Centre has also failed to provide an effective way to facilitate mediation and negotiations to deal with these disputes. Consequently, delayed agreements over water have prompted ineffective, non- cooperative investments in dams, irrigation, agriculture and industry, as well as inefficient use of water.

The problem is further compounded by the entanglement of inter-state water disputes with other Center-State conflicts. Considering the fact that multiple inter-State water disputes have resulted in heavy loss of resources, the need to consensually reach a common, harmonious ground becomes inevitable to avoid any future repercussions. Centre facilitated mediation between states offers the best chance at reconciliation and needs to be encouraged.

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211 https://sandrp.in/2016/11/18/sutlej-yamuna-link-row-chronology-of-events/

212 *Ibid*

213 https://www.indiacode.nic.in/bitstream/123456789/7749/1/punjab_termination_of_agreement.pdf

214 *2016 SCC OnLine SC 1252*

215 *Ibid*

216 *Mallika Goel and Shreyashi Roy, 23rd August 2020, The Sutlej-Yamuna Link: State Skirmish or National Security Issue? The Quint*

217 https://cess.ac.in/wp-content/uploads/2019/10/CESS-Working-Paper-No.108.pdf

218 https://www.livemint.com/Opinion/JDRZ3dpZdFPes9qiULWUgO/Addressing-Indias-water-dispute-problem.html

219 *Inter-State River Water Disputes Act, 1956*

220 https://www.livemint.com/Opinion/JDRZ3dpZdFPes9qiULWUgO/Addressing-Indias-water-dispute-problem.html

221 https://cess.ac.in/wp-content/uploads/2019/10/CESS-Working-Paper-No.108.pdf

5 Inter-State Council

Article 263 of the Constitution empowers the President of India to establish a constitutional body, namely the Inter State Council (ISC), for inquiring into and advising upon inter-state disputes, and for better coordination of policy and action. This provision was borrowed from Section 135 of the Govt. of India Act, 1935,[222] and the article was adopted by the Constituent Assembly on 13 June 1949 unanimously. Article 263 reads as under:[223]

"263. Provisions with respect to an inter-State Council.

If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of –

a.) inquiring into and advising upon disputes which may have arisen between States ;
b.) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest or
c.) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination or policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council and to define the nature of the duties to be performed by it and its organisation and procedure".

Thus, the Inter State Council is primarily an advisory and consensus-seeking body with the powers to investigate, deliberate and recommend on "subjects in which some or all of the States or the Centre and one or more of the States have common interest".[224] The Presidential order for establishing the ISC can specify the scope of such a council as well as lay down its organization and procedure.[225]

The composition of the Council includes (a) the Prime Minister as the Chairperson; (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; and (d) Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister.[226] In addition, other Ministers having independent charge in the Central Government can be included as permanent invitees by the nomination of the Chairperson or for a meeting, as and when any item relating to a subject under their charge is to be discussed.[227] Therefore, this is a body which provides full representation to each State, Union Territory and the Centre.

The Administrative Reforms Commission of 1968 in its 13th report had first recommended the setting up of an Inter State Council under article 263 (b) and (c) of the Constitution.[228] It did not recommend invoking the provisions of article 263 (a) which intended to give quasi-judicial powers to the council, which would complement the Supreme Court's jurisdiction under Article 131. The Sarkaria Commission also endorsed this view in 1987, and further recommended that the ISC should be constitutionally entrenched as a permanent and independent national forum for consultation.[229]

The Commission felt that the issues of Centre-State cooperation were being discussed in a number of different channels in an 'ad hoc and fragmented manner', and hence there was a need for a single high-level body that could make authoritative pronouncements on issues of national concern.[230] The Commission had observed that "there is no high-level coordinating forum other than the Inter-State Council envisaged in Article 263 of the Constitution",[231] and gave recommendations regarding the setting up of such a body, along with the composition and procedures to be adopted by it.

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222 *Sec. 135, The Government of India Act, 1935*
223 *Article 263 of the Indian Constitution*
224 *Commission on Centre State Relations, Chapter IX (January, 1988)*
225 *Article 263 of the Indian Constitution*
226 *Clauses 2 and 3, Inter-State Council Order, dated 28 May 1990.*
227 *Clause 2, Inter-State Council Order, dated 28 May 1990; Inter-State Council (Amendment) Order, dated 24 December 1996.*
228 *http://interstatecouncil.nic.in/first-administrative-reforms-commission/*
229 *http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERIX.pdf*

Following the recommendations of the Commission, the ISC was ultimately established via a Presidential order dated 28th May 1990. It should be noted that the ISC was not constituted as a single standing body to which all issues of national importance can be referred. It was also not assigned the function envisaged in clause (a) of Article 263 of the Constitution.[232]

The scope of the ISC is broad and generic: as long as States have a common interest, it can be discussed in the ISC and recommendations can be made. In addition, the ISC has framed 'Guidelines for Identifying and Selecting Issues' to be brought up before it to refine its scope.[233] This excludes certain topics from discussion, such as topics which fall under the mandate of the NDC, the erstwhile Planning Commission, the Finance Commission etc.

It also excludes from discussion topics which relate to 'the discharge of any duty or special responsibility of the Union under the provisions of the Constitution or any law of Parliament' unless a majority of members, with the approval of the Chairman, feel it is important to include it.[234] Thus, the ISC has itself narrowed the scope of its deliberations considerably, which is at odds with the broad mandate it received under the Presidential Order.

Over the years different Commissions have recommended broadening the scope of the ISC. The Second Administrative Reform Commission (2005-09) had recommended that the Inter-State Council must be given the power to resolve inter-State and Union-State conflicts.[235] It also recommended that the Council need not exist in perpetuity. It should be constituted as and when the need arises. Thereafter, the Punchhi Commission on Centre-State Relations (2010), recommended functional independence and quasi judicial status for the Council.[236] It also recommended that the ISC should be made a vibrant negotiating forum for policy development and conflict resolution. Once this outcome was achieved, the Government could consider transferring the functions of the National Development Council to the ISC.

As per the ISC order, it is mandated to meet three times a year.[237] However, in practice, it has only met thirteen times since its inception in 1990. The meetings of the ISC are held in-camera and its proceedings are not made public.[238] The agenda of these meetings indicate that the chief topic of discussion in a majority of the meetings has been the recommendations of the Sarkaria Commission.[239] Over the years the Council has taken a view on all the 247 recommendations made by Commission, and all except 65 recommendations have been accepted. In addition, tax matters have also been discussed from time to time.[240]

Source: https://st.adda247.com/https://wpassets.adda247.com/wp-content/uploads/multisite/sites/2/2022/08/30150510/Inter-State-Council-01.png

230 http://interstatecouncil.nic.in/formations.html#subnav1_2
231 *Commission on Centre-State Relations at Chapter IX (January, 1988)*

232 *Report of the Commission of Centre-State Relations, Vol. II (March 2010)*
233 http://interstatecouncil.nic.in/guideline_identify_issues.htm
234 *Ibid*
235 http://interstatecouncil.nic.in/sarc/
236 http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume2.pdf
237 *Clause 5, Inter-State Council Order, dated 28 May 1990.*

Table 2: Meetings of the Inter State Council

Meeting	Date	Major Items of Discssion	Prime Minister
First	10th October, 1990	Sarkaria Commission Report, CST, special courts for speedy trial of economic offences	V.P. Singh
Second	15th October, 1996	Consideration of 179 recommendations of Sarkaria Commission	H.D. Deve Gowda
Third	17th July, 1997	Alternative Scheme of Devolution , Article 356, Centre-State Financial Relations	Inder Kumar Gujral
Fourth	28th November, 1997	Sarkaria Commission Report: Discussion on Chapters IV, X, XV, XVII	
Fifth	22nd January, 1999	Emergency Provisions, Economic and Social Planning	Atal Bihari Vajpayee
Sixth	20th May, 2000	Sarkaria Commission Report: Discussion on Chapters III, V, X, XII, XIV, XVI, XVIII	
Seventh	16th November, 2001	Sarkaria Commission Report: Discussion on Chapters II, IV, VIII, IX, XIII, XIX, XX	
Eighth	27th-28th March, 2003	Administrative Relations, Emergency Provisions	
Ninth	28th June, 2005	Action Plan on Good Governance	Manmohan Singh
Tenth	12th December, 2006	The Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989	
Eleventh	16th July, 2016	Consideration of the Recommendations of the Punchhi Commission on Centre-State Relations, Use of Aadhar and DBT for subsidies, Improving Quality of School Education, Internal Security and Intelligence Sharing	Narendra Modi
Twelfth	25th November, 2017	Recommendations contained in Volumes III, IV and V of the Punchhi Commission's Report relating to Centre-State Financial Relations, Local Self-Governments and Internal Security, Criminal Justice and Centre-State Relations.	
Thirteenth	25th May, 2018	Recommendations contained in Volumes VI and VII of the Punchhi Commission's Report relating to Environment, Natural Resources & Infrastructure and Socio-Economic Development, Pubic Policy & Good Governance.	

Source: http://interstatecouncil.nic.in/isc-meetings/

5.1 Key issues

i.) Non permanent body:

The ISC is not a permanent constitutional body; it only comes in to existence through a Presidential Order. The Order determines its composition, the number of times it is supposed to meet, and its procedure. It is therefore subject to unilateral alteration by the Central Government. To address this issue, the Second Commission of Centre-State Relations (Punchhi Commission) suggested that the ISC should be given either constitutional or statutory status, giving its actions greater authority and respect.[241] This would ensure that the ISC "is endowed with sufficient resources to carry out its functions effectively" [242]

ii.) Advisory in nature:

The language of clauses (b) and (c) of Article 263, which lay down the scope of the role of the ISC, envisage a recommendatory role for this body, using language such as "investigating and discussing subjects…" and "making recommendations upon any such subjects".[243] Further, while suggesting that the ISC should be formed, the Sarkaria Commission categorically stated that it should be a recommendatory and advisory body.[244]

While the recommendations of the ISC should not be made binding, it is important to ensure a positive duty is imposed upon the Centre and States to give due consideration to any recommendations. In this regard, the Punchhi Commission recommended strengthening consensus-building and voluntary settlement of disputes.[245]

iii.) Lack of technical expertise:

Currently, the ISC lacks expertise on technical matters. For the ISC to make relevant suggestions on complex matters such as grant-making, its policy research and investigation capacity must be significantly strengthened. This has been a longstanding suggestion by various commissions: for example the Sarkaria Commission suggested that the ISC and its standing committee should be given the power to set up ad hoc Sub-Committees to investigate special matters.[246]

The Punchhi Commission also recommended that the ISC should have expert advisory bodies or administrative tribunals with quasi-judicial authority to give recommendations to the ISC as and when needed.[247]

iv.) Infrequent meetings:

As per the ISC order it is supposed to meet three times a year. However, the Council has only held 13 meetings since its inception in 1990.[248] Further, there was a gap of ten years between the 10th meeting held in 2006 and the 11th meeting in 2016. The infrequent nature of meetings suggests a lack of seriousness on part of the Governments in focusing on issues intergovernmental cooperation.

Giving constitutional or statutory status to the ISC would ensure greater importance is given to the ISC by the Centre and State Governments. This may ensure that the ISC meets regularly and is given sufficient resources.[249] The meetings of the ISC need to be conducted more frequently with detailed preparation of the agenda by the Secretariat in consultation with the parties.[250] Further, such agenda papers should be circulated prior to the meeting to ensure adequate preparation and understanding of the different viewpoints and to promote consensus building in the meetings.[251]

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238 *http://interstatecouncil.nic.in/meetings.html#subnav1_5*
239 *Ibid*
240 *Ibid*
241 *Report of the Commission of Centre-State Relations, Vol. II.*
242 *Ibid*
243 *Article 263 of the Indian Constitution*

6 National Development Council

Source: Image

The National Development Council (NDC) is the apex body for deliberations on development matters in India. The idea of NDC as a coordinating mechanism was first mooted by the Planning Advisory Board set up in October 1946 under the chairmanship of K. C. Neogi.[251] The Planning Commission, established by a cabinet resolution of 15 March 1950, also stressed the need for a coordinating body for periodical evaluation of planning.[253] Accordingly, PM Nehru set up the NDC as an extra-constitutional and non statutory body by a cabinet resolution on 6 August 1952.[254]

The functions of the National Development Council (NDC) as laid down in the Government of India resolution are as follows:[255]

i. to review the working of the national plan from time to time;

ii. to consider important questions of social and economic policy affecting national development; and

iii. to recommend measures for the achievement of the aims and targets set out in the national plan, including measures to secure the active participation and cooperation of the people, improve the efficiency of the administrative services, ensure the fullest development of the less advanced regions and sections of the community and, through sacrifice borne equally by all citizens, build up resources for national development

The First Administrative Reforms Commission constituted by the Government of India in January 1966 made a number of recommendations regarding the organization and functions of the NDC which were then accepted by the Government with some modifications.[256] The NDC, as reconstituted in 1967, is composed of the Prime Minister as Chairman, all Union Cabinet Ministers, Chief Ministers of all States, Chief Ministers/administrators of all Union Territories and the Members of the Planning Commission.[257]

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244 *Commission on Centre-State Relations at Chapter IX.*
245 *Report of the Commission of Centre-State Relations, Vol. II.*
246 *Commission on Centre-State Relations at Chapter IX.*
247 *Report of the Commission of Centre-State Relations, Vol. II.*
248 *http://interstatecouncil.nic.in/isc-meetings-2/*
249 *Report of the Commission of Centre-State Relations, Vol. II.*
250 *Ibid*
251 *Ibid*
252 *Saxena R. 2002. "Strengthening Federal Dialogue: Role of NDC & ISC". Contemporary India 1(3)*
253 *Ibid*
254 *https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/50NDCs/vol1_1to14.pdf*
255 *Saxena R. 2002. "Strengthening Federal Dialogue: Role of NDC & ISC". Contemporary India 1(3)*
256 *https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/50NDCs/vol1_1to14.pdf*
257 *Ibid*

The Secretary of the Planning Commission acts as the Secretary to the NDC. On the basis of the recommendations of the ARC the functions of the NDC were redefined to include a few more functions. These were:[258]

a.) to prescribe guidelines for the formulation of the national plan;
b.) to consider the national plans as formulated by the Planning Commission;
c.) to assess resources required for implementing the plan and to suggest ways and means for raising them.

The functions assigned to the NDC are fairly general in nature. The NDC can take up almost any issue related to national development. In the past, the NDC has deliberated and decided on a number of diverse issues like regional disparities, panchayati raj, prohibition, as well as agrarian cooperation.[259] The NDC is required to meet at least twice a year though it has sometimes met more often.

The agenda for these meetings have generally included the approach paper to the Five Year Plan.[260] Other matters have formed a part of the agenda if raised by the Central or State governments. Though the NDC is an advisory body making recommendations to the central and state governments, the stature of the Council has ensured that these recommendations have had the prestige of directives which have usually been followed.[261]

Over the years the NDC has played a significant role in enhancing federalism by enabling policy coordination amongst states. However, the status of the NDC has largely been a function of the political currents of the time. Starting with the Nehruvian era, the NDC had a deeply federal character and the state leaders were allowed to influence the planning process.[262] At the time, the recommendations of the NDC had the backing of the chief ministers and were invariably accepted by the cabinet like policy directives.[263]

During this era the NDC emerged as a body which superceded the planning commission. Reflecting on the stature of NDC H. M. Patel had stated, “It is indeed a policy-making body and its recommendations may be regarded as policy decisions and not merely as advisory suggestions”.[264] Post the Nehruvian era when Indira Gandhi came to power there was a tendency towards centralization which also affected the functioning of the NDC. During her 15 year rule the frequency of NDC meetings had reduced and the centre started having a greater impact on the policy directions given by it.[265] Consequently, the federal character of planning also got affected.

This trend continued during the Rajiv Gandhi era, as well as the post 90s period, in the era of coalition governments.[266] In its 1988 report, the Sarkaria Commission had lamented that the NDC had not been able to act as an effective instrument for developing consensus and commitment to national policies.[267] However, over the first 60 years, while the NDC did suffer from issues of excessive centralization which attracted criticism from opposition state governments, the general federal character of the Council remained intact. The state governments continued to have a voice and the ability to register differing opinions on policy.

The post 2014 era has seen a drastic shift on the position of the NDC. Having already abolished the Planning Commission, the Modi regime has moved to abolish the NDC, which has been defunct since 2014.[268] The government had announced that the governing council of the Niti Aayog, which had replaced the Planning Commission, will take the place of the National Development Council.[269] While this governing council also includes state chief ministers, it may not be expected to play the same role as the National Development Council, just as the Niti Aayog did not take over the functions of the planning commission.[270]

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[258] *Ibid*
[259] *Saxena R. 2002. “Strengthening Federal Dialogue: Role of NDC & ISC”. Contemporary India 1(3)*
[260] *Ibid*
[261] *Santhanam K. 1960. Union-State Relations in India. Bombay: Asia Publishing House.*
[262] *Brecher M. 1959. Nehru : A Political Biography. New York: Oxford University Press.*
[263] *Ibid*
[264] *Patel HM. 1959. Indian Journal of Public Administration (October-Decenber).*
[265] *Saxena R. 2002. “Strengthening Federal Dialogue: Role of NDC & ISC”. Contemporary India 1(3)*
[266] *Ibid*

The Planning Commission was entrusted with the task of national planning. It not only discussed state plans with the chief ministers but also was a conduit through which resources flowed from the Centre to the states as plan finance. The Niti Aayog in contrast is merely an advisory body, which has no role in any transfer of resources from the centre to the states. Its governing council may also become a mere advisory body.[271] This move to abolish the NDC, thus, signifies the end of a platform where states had a chance to influence issues of development policy, which deeply affects the federal character of the planning process in India.

7 Conclusion

This paper has discussed the various constitutional and statutory mechanisms for inter-state cooperation and dispute resolution in India. While article 131 has provided for the judicial determination of disputes, article 262 has provided for the adjudication of inter-state water disputes by extrajudicial tribunals. Similarly various Inter-Governmental Agencies like the National Development Council and Inter-State Council have been created to promote mutual cooperation. However, issues such as complex and protracted procedures, a lack of seriousness on part of the Central Governments, as well as growing politicization have reduced the effectiveness of these provisions.

Further, a lack of effort by the central government in facilitating negotiations has resulted in prolonging many of the inter state disputes. Thus, going forward, there is a need to further strengthen these provisions to ensure effective implementation. A working centre-state and state-state relationship is the cornerstone for the successful implementation of many government schemes, and these provisions can go a long way in making this happen. If the policy makers are able to make best use of these mechanisms they can become a significant part of the newly emerging cooperative federalism in the country.

8 References

Ashok Swain, “Fight for the last drop: interstate river disputes in India,” Contemporary South Asia, Vol. 7 (2) (1998).

Brecher M. 1959. Nehru : A Political Biography. New York: Oxford University Press.

Central Water Commission, October 2015. Legal Instruments on Rivers in India: Agreements on Inter-State Rivers, GoI: New Delhi.

Chokkakula, S. January 2012. Disputes, (de)Politicization and Democracy: Interstate Water Disputes in India, RULNR Working Paper No. 13, CESS: Hyderabad.

Guhan, S., The CauveryDispute:Towards Conciliation,(Madras:Kasturi & Sons,1993).

Harish Salve, “Interstate River Water Disputes,” in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of The Indian Constitution (New York: Oxford University Press, 2016).

Inter-State Council Order, dated 28 May 1990

Inter-State Council (Amendment) Order, dated 24 December 1996.

John Salmond, 2010. On Jurisprudence 12th Ed, Universal Law Publishing.

[267] *Report of the Commission on Centre-State Relations (January, 1988).*

[268] *https://www.thehindu.com/news/national/NDC-to-be-scrapped-NITI-Aayog-council-likely-to-get-its- powers/article13975094.ece*

[269] *Ibid*

[270] *https://www.macroscan.org/cur/jan16/pdf/NDC.pdf*

[271] *Ibid*

K.K. Lahiri, “Indian River and River Systems- The Genesis of Article 262 of the Constitution of India and the Interstate River Water Disputes Act, 1956- Developments till 1949”.

L. Koshi, “Explainer: The reorganization of states in India and why it happened,” The News Minute, November 2, 2016.

Mallika Goel and Shreyashi Roy, 23rd August 2020, The Sutlej-Yamuna Link: State Skirmish or National Security Issue? The Quint.

Mehra, P. January 1, 2016. ‘NDC to be scrapped, NITI Aayog council likely to get its powers,’ The Hindu, New Delhi.

Mint Editorial. December 27, 2016. ‘Addressing India’s water dispute problem,’ Live Mint, New Delhi.

NCRWC 2001, “Constitutional Mechanisms for Settlement of Inter-State Dispute”, GoI: New Delhi.

Patel HM. 1959. Indian Journal of Public Administration (October-Decenber).

Patnaik, P. January 10, 2016. ‘NDC to be scrapped, NITI Aayog council likely to get its powers,’ People’s Democracy, Vol. XL No. 02, New Delhi.

Planning Commission, October 2005. “ Summary Record of Discussions of the National Development Council (NDC) Meetings”. GoI, New Delhi.

Pyaralal Raghavan, “There has not been a final settlement on any interstate river water dispute since 1980,” The Times of India, 7 September, 2016.

Report of the Cauvery Water Disputes Tribunal: Vol. I (2007).

Report of the Commission on Centre-State Relations (January, 1988).

Report of the Commission on Centre-State Relations, Vol. II (March 2010)

Report of the Krishna Water Disputes Tribunal: Vol. I (2010).

Report of the Ravi and Beas Water Disputes Tribunal (1987).

Santhanam K. 1960. Union-State Relations in India. Bombay: Asia Publishing House.

Saxena R. 2002. “Strengthening Federal Dialogue: Role of NDC & ISC”. Contemporary India Vol. 1(3).

Suchitra, M. December 5, 2013. ‘Andhra to challenge Krishna tribunal award in Supreme Court,’ Down to Earth.

Shah, R.B, Inter-state River Water Disputes: A Historical Review, 175-189, (1994).

The Inter-State River Water Disputes Act, 1956.

The River Boards Act, 1956.

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