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1 January 2011

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South Asian Journal of Socio-Political Studies **15 (2), 40-48**

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ABSTRACT

As the political and economic system of a nation changes over time, so do intergovernmental relations [IGR]. Since human interactions are at the core of IGR, certain institutional mechanisms are required to facilitate interactions among political incumbents. These are called "coordination mechanisms". The aim of these mechanisms is to achieve 'policy coordination' by facilitating interactions among the executives of the two orders of government. This paper reviews and critically analyzes intergovernmental coordination mechanisms in India.

INTRODUCTION

As the political and economic system of a nation changes over time, so do intergovernmental relations [IGR]. While the emphasis in the concept of federalism is on national-state relationships with occasional attention to interstate relations, IGR include not only national-state and interstate relations, but also national-local, state-local, national-state-local, and interlocal relations (Wright 1975). Thus, Professor Anderson defines IGR as "interactions occurring between governmental units of all types and levels" (Anderson 1960, 4).

Note that human interactions are at the core of IGR.[1] Therefore, certain institutional mechanisms are required to facilitate interactions among political incumbents. These are called "coordination mechanisms". The aim of these mechanisms is to achieve 'policy coordination' by facilitating interactions among the executives of the two orders of government. [2] In India we have two such major intergovernmental forums called National Development Council (section I) and Inter-State Council (section II). In addition, Inter-State water tribunals are established from time to time to settle disputes related to water sharing (section III). In this context we review important recommendations of the Sarkaria Commission (section IV), the National Commission to Review the working of the Constitution (section V), and the Punchhi Commission (section VI).

NATIONAL DEVELOPMENT COUNCIL [NDC]

The idea of a coordinating mechanism of an advisory nature was first mooted by the Planning Advisory Board set up in October 1946 under the chairmanship of K. C. Neogi. 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. Accordingly, Nehru set up the NDC as an extra-constitutional and non-statutory body by a cabinet resolution of 6 August 1952. It has been listed as an advisory body whose recommendations are not binding.

In the first meeting of the National Development Council held on 8-9 Nov. 1952, the Prime Minister Nehru observed that the NDC was essentially a forum for intimate cooperation between the State

Governments and the Central Government for all the tasks of national development [GOI]. The objectives of the NDC, as stated by Nehru himself, are as follows (GOI 2005):

a) To secure cooperation of states in the execution of the Plan;
b) to strengthen and mobilise the effort and resources in support of the Plan;
c) to promote common economic policies in all vital spheres;
d) to ensure the balanced and rapid development

Following functions were attributed to the NDC (GOI 2005)

a. to review the working of the National Plan from time to time;
b. to consider important questions of social and economic policy affecting national development;
c. to recommend measures for the achievement of the aims and targets set out in the National Plan.

The Administrative Reforms Commission [ARC], constituted by the Government of India on January 5, 1966, made a number of recommendations regarding organization and functions of the NDC, which were accepted by the Government of India on October 7, 1967 with some modifications.

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. Secretary of the Planning Commission acts as Secretary to the N.D.C.

On the basis of the recommendations of the ARC the functions of the NDC were redefined to include a few more functions. These were:

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.

CRITICAL EVALUATION

The NDC is an apex forum not only for the approval of the Five Year Plans but also for achieving policy coordination on the matters of national significance. However, the status of the NDC is largely a function of the politics of a particular period. For instance, during the "decentralized Congress System" of Nehru era, when the state leaders were allowed to influence the planning process, the recommendations of the NDC had the backing of the powerful chief ministers and were invariably accepted by the cabinet like policy directives (Brecher 1959; Patel 1959).

Thus, during the Nehru era, though the NDC was listed as an advisory body, yet it emerged as a body superior to the planning commission. Reflecting on the stature of NDC during the Nehru era, K. Santhanam observed, "The position of NDC has come to approximate to that of a supercabinet of the entire Indian federalism, a cabinet functioning for the government of India and the governments of all the States" (Santhanam 1960, 47). Similarly, H. M. Patel also stated, "It is indeed a policy-making body and

its recommendations may be regarded as policy decisions and not merely as advisory suggestions" (Patel 1959, 460). Michael Brecher observed that the NDC had relegated the PC to the status of research arm.

FROM SUPER-CABINET[3] TO RUBBER STAMP

From 1952-63, the NDC meetings were convened with a frequency of 1.66 per year. The redefined terms of reference of the NDC issued on 7 October 1967 stated that NDC should meet at least twice every year. However, the trend took a turn for the worse during Indira Gandhi's 15 years rule as the frequency of the NDC meeting got reduced to 0.80 per year.

Mrs Gandhi's tendency to restructure state legislative elite from above ensured that Chief Ministers of the Congress ruled states were too weak to do anything more than toeing the line of the Union government in NDC meetings. On the other hand, the opposition Chief Ministers began registering their concerns because everything was largely decided by the union government and the NDC's approval was secured as a matter of formality.

Thus, the NDC, which during the Nehru era had a high profile status came to be described during the Indira era as a mere 'rubber stamp'**.** It thus failed to do justice to its key task of periodical evaluation of the national planning. This trend further intensified during Rajiv Gandhi's rule as he increased the coercive control over his own party governments at the State level. The frequency of the NDC meetings was further reduced to 0.60 per year during his period.

The Sarkaria Commisssion [1988] lamented that the NDC had not been able to act as an effective instrument for developing consensus and commitment to national policies. As the NDC could never pick up as an instrument of intergovernmental collaboration, its ritualistic role as a rubber stamp seems to have become its default position, so much so that even after the breakdown of the Congress party's dominance and rise of minority/ coalition governments in the post 1989 period, there is no improvement in the quality [less politicized interactions] of the NDC meeting.

Though the frequency of meetings has registered a marginal increase as compared to the all time low frequency obtained during the Rajiv Gandhi era (from 0.6 per year during Rajiv Gandhi's rule to an average of 0.73 meetings per year during 1989-2012) yet the frequency remains lower than the *required rate* of 2 per year. The 57th Meeting took place on 27th Dec. 2012.

RECOMMENDATIONS BY THE COMMISSIONS

The first Administrative Reforms Commission, constituted on 5th January 1966, in its 13th Report recommended replacement of the NDC with an Inter-State Council which should be established under Article 263 [b] and [c] of the Constitution. However, the Sarkaria Commission (1983-87) recommended that the separate identity of the NDC should be maintained and it should be entrenched under article 263 and renamed as National Economic and Development Council.

INTER-STATE COUNCIL

The Constitution of India empowers the President of India to establish a constitutional body for inquiring into and advising upon inter-state disputes under Art 263 (a) and for achieving better coordination of policy and action, [4] under Articles 263 (b) and (c), regarding subjects of common interest to some or all of the States, or the Union and one or more of the States. This provision was borrowed from Section 135 of the Govt. of India Act, 1935. The article on Inter-State Council was adopted in the Constituent Assembly debate held on 13 June 1949 without any debate.

The Administrative Reforms Commission, 1968 in its 13th report recommended the setting up of Inter-State Council under article 263 (b) and (c) of the Constitution without invoking the provisions of article 263 (a) which intended to give quasi-judicial powers to the council, complementing the Supreme Court's jurisdiction under Article 131.

The Sarkaria Commission (1983-87) endorsed the view and further recommended that the ISC should be constitutionally entrenched as a permanent and independent national forum for consultation and renamed as Inter Governmental Council. Government accepted the recommendation *sans* change of the name and notified the establishment of the Inter-State Council as a recommendatory body vide Presidential Order dated 28.5.1990. The Inter-State Council Secretariat, headed by a Secretary to the Government of India, was set up in 1991.

Note that the Sarkaria Commission did not support the Administrative Reforms Commission's view that the Inter-State Council should be constituted as a single standing body to which all issues of national importance can be referred. Thus, the issues of inter-State and Centre-State coordination and cooperation continue to be discussed in the National Development Council and in a multitude of meetings on specific themes and sectors in an ad hoc and fragmented manner**.**

The Second Administrative Reform Commission (2005-09) recommended that the Inter-State Council must be given the power to resolve inter-State and Union-State conflicts. However, it also recommended that the Council need not exist in perpetuity. It should be constituted as and when the need arises.

The Commission on Centre-State Relations (2010) recommended functional independence and quasi-judicial status for the Council. It also recommended that ISC should be made a vibrant negotiating forum for policy development and conflict resolution. Once this outcome is achieved, the Government may consider the functions for the National Development also being transferred to the ISC.

The composition of the Council as per the Presidential Order dated 28.5.1990 is as follows:

1) Prime Minister as Chairman
2) Chief Ministers of all States
3) Chief Ministers of Union Territories having a Legislative Assembly and Administrators of UTs not having a Legislative Assembly.
4) Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister

In terms of clause 2(d) of the Inter-State Council Order of 28 May 1990, the Council has been reconstituted from time to time. The two major presidential orders which amended and expanded the composition of the council are as follows

1) The Presidential Order dated 19 July 1990 provided for Governor of a State under President's rule to attend the meeting of the Council.
2) The Presidential order dated 24 December 1996 provided for nomination of four[5] Ministers of Cabinet rank as permanent invitee by the Chairman.

There is no provision making it mandatory for the council to hold its meetings on a regular basis with a constitutionally specified frequency. Thus, the Inter-State Council has met for only ten times so far. The Commission on Centre-State Relations (2007-10) has recommended that ISC must meet at least thrice in a year on an agenda evolved after proper consultation with States.

Ten members including the Chairman form the quorum for a meeting of the Council. In these meetings the Council has taken final view on all the 247 recommendations made by Sarkaria Commission on center-state relations. All the recommendations except 65 have been accepted.

Meeting	Date	Important items of discussion
First	10.10.1990	Sarkaria Commission Report, CST, special courts for speedy trial of economic offences
Second	15.10.1996	Consideration of 179 recommendations of Sarkaria Commission
Third	17.07.1997	Alternative Scheme of Devolution , Article 356, Centre-State Financial Relations
Fourth	28.11.1997	Sarkaria Commission Report: Discussion on Chapters IV, X, XV, XVII
Fifth	22.01.1999	Emergency Provisions, Economic and Social Planning
Sixth	20.05.2000	Sarkaria Commission Report: Discussion on Chapters III, V, X, XII, XIV, XVI, XVIII
Seventh	16.11.2001	Sarkaria Commission Report: Discussion on Chapters II, IV, VIII, IX, XIII, XIX, XX
Eighth	27.08.2003	Administrative Relations, Emergency Provisions
Ninth	28.06.2005	Action Plan on Good Governance
Tenth	09.12.2006	The Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989

A Standing Committee of the Inter-State Council was set up on 5 December 1996. It comprises of Union Home Minister as Chairman, 5 Union Ministers of Cabinet Rank and 9 Chief Ministers of States as Members nominated by the Chairman of the Inter-State Council. The Standing Committee can be reconstituted with the approval of the Chairman of the Council. Though the objective of the standing committee was to ensure continuous consultation and processing of matters for consideration of the Council, this objective has not been achieved. The meetings of the committee so far have been few and far between other than the five meetings in the year 1995[6].

ROLE AND SIGNIFICANCE

The Inter-State Council is a permanent constitutional body created for inter-State coordination. It is the only constitutional body to deal with federal disputes in a comprehensive manner. It has a high potential to strengthen vertical and horizontal cooperation in Indian Federalism. However, this potential remains untapped. The significance of the ISC as a platform for inter-governmental coordination and its potential for pro-activism in fostering collaborative federalism has increased in the context of coalition era.
The key function of the Council is to investigate and discuss the subjects of common interest between the Union and State(s) or among the States. However, the following issues may not be brought up before the Council:

- Any issue which can be resolved at the official/Ministerial level.
- Any issue which has to be dealt with by the National Development Council, the National Integration Council , the Finance Commission, and the Planning Commission.
- Any issue which is sub-judice or is under consideration in either House of Parliament.
- Any other issue the discussion of which may, in the opinion of the Chairman, create discord between the States or otherwise be against the public interest or against the interests of the sovereignty or integrity of India, the security of the State, friendly relations with foreign State or Public Order.

INTER-STATE RIVER TRIBUNALS

India has 14 major 9 medium inter-State rivers. The inter-state water disputes involve legal and constitutional questions involving:

a. allocation of waters between different states
b. apportionment of construction costs of projects developed jointly by more than one states
c. compensation to the states affected by the implementation of a project by a state[7]
d. settlement of disputes regarding inter-state agreements.

Constitutional provisions

- *Entry 17* in the State List makes water a state subject. However, it is subject to the provisions of the Entry 56 in the Union List.
- *Entry 56* empowers Union regarding the regulation and development of inter-state rivers and river valleys to the extent to which such control of the Union is declared by parliament by law to be expedient in the public interest.
- *Article 262* explicitly grants right to legislate to parliament over the matters in Entry 56, and also gives it primacy over the Supreme Court. [8]

LEGISLATIONS ENACTED BY THE PARLIAMENT

1) River Boards Act 1956: This Act was enacted as a part of the States Reorganization Act, to empower the Central Government to set up river boards at the request of the interested or affected State Governments. [9] River boards are advisory bodies created to advise the states on the integrated development of inter-State basins, to manage project proposals and to prescribe procedure for arbitration. The Board shall consist of a Chairman and such other members as the Central Government thinks fit to appoint.

The National commission to Review the Working of the constitution recommended that appropriate Parliamentary legislation should be made for repealing the River Boards Act, 1956 and replacing it by another comprehensive enactment under Entry 56 of List I.

2) Inter-State Water Disputes (ISWD)Act 1956

This Act was enacted by the Parliament of India under Article 262 of Constitution of India to resolve interstate water disputes.

The Sarkaria Commission in its report at chapter XVII on Inter-State River Water Disputes recommended that The Inter-State Water Disputes Act, 1956 should be amended to make it mandatory for the Union Government to constitute a Tribunal within one year from the date of receipt of the application of any disputant State (Para 17.4.11); to empower the Union Government to appoint a Tribunal, suo-moto, if necessary, when it is satisfied that such a dispute exists in fact.(Para 17.4.14); to ensure that the award of a Tribunal should becomes effective within five years from the date of constitution of a Tribunal (Para 17.4.17); to ensure that a Tribunal's award has the same force and sanction behind it as an order of the Supreme Court. (Para 17.4.19). The Commission also recommended that there should be a Data Bank and information system at the national level and the Tribunal may be vested with powers of a Court to seek necessary data from the states (Para 17.4.15 & 17.4.16).

ISWD Amendment Act, 2002

In order to remedy the deficiencies in the functioning of dispute resolution mechanism, the ISWD Act was amended in 2002. The amendments were based on the recommendations of the Sarkaria Commission. The amendments are as follows:

Section 4 of the Act was amended to empower the Government of India to establish a Tribunal within one year on a request by a State Government. *Section 5* of the Act was amended to ensure that the Tribunal to give its Report within a period of three years (Government of India may extend the period by another two years). *Section 6* of the Act was amended to ensure that the decision of the Tribunal, after its publication in the Official Gazette, shall have the same force as an order or decree of the Supreme Court.

The National Commission to Review the Working of the Constitution (NCRWC) recommended that the Inter-State Water Disputes Act (ISWD Act) be repealed. It also recommended that river water disputes should be brought within the original and exclusive jurisdiction of the Supreme Court.

So far, eight inter-State river water disputes tribunals have been set up by the GOI under the Inter State River Water Disputes (ISRWD) Act, 1956.

Table: Inter-State river water disputes tribunals in India

Tribunal	**Date of Constitution**	**Chairman**	**Date of Award**	**Affected States**
Narmada Water Disputes Tribunal	6 Oct, 1969	Justice V. Ramaswami	7 Dec. 1979	Gujarat, Madhya Pradesh, Maharashtra and Rajasthan
Godavari Water Disputes Tribunal	April 1969	Justice Bachawat	July, 1980	Maharashtra, Andhra Pradesh, Orissa, Madhya

				Pradesh and Karnataka
First Krishna River Water Dispute Tribunal	1969	Justice R. S. Bachawat	1973	Maharashtra, Karnataka and Andhra Pradesh
Cauvery Water Disputes Tribunal	2 June 1990	Justice N P Singh (Now Vacant)	5 Feb. 2007	Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry
Second Krishna River Water Dispute Tribunal	2 April 2004	Justice Brijesh Kumar	30 Dec. 2010	Maharashtra, Karnataka and Andhra Pradesh
Ravi and Beas Waters Tribunal	April 1986	V Balakrishna Eradi (Now Vacant)	30.1.1987	Punjab, Haryana and Rajasthan
Vansadhara Water Dispute Tribunal	24th February 2010	Justice Mukundakam Sharma	---	Orissa and Andhra Pradesh
Mahadayi Water Disputes Tribunal	6th November 2010	Justice J.M. Panchal.	---	Goa, Karnataka and Maharashtra

BOX 1: Inter-State Water Disputes Act 1956 (as amended in 2002): Important Provisions regarding Interstate Water Tribunals

Section 3.Complaints by State Governments as to water disputes

If it appears to the Government of any State that a water dispute with the Government of another State has arisen or is likely to arise by reason of the fact that the interests of the State, or of any of the inhabitants thereof, in the waters of an inter-State river or river valley have been, or are likely to be, affected prejudicially by-
(a) any executive action or legislation taken or passed, or proposed to be taken or passed, by the other State; or
(b) the failure of the other State or any authority therein to exercise any of their powers with respect to the use, distribution or control of such waters; or
(c) the failure of the other State to implement the terms of any agreement relating to the use, distribution or control of such waters; the State Government may, in such form and manner as may be prescribed, request the Central Government to refer the water dispute to a Tribunal for adjudication

Section 4. Constitution of Tribunal

1. When any request under section 3 is received from any State Government in respect of any water dispute and the Central Government is of opinion that the water dispute cannot be settled by negotiations, the Central Government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute: Provided that any dispute settled by a Tribunal before the commencement of Inter-State Water Disputes (Amendment) Act, 2002 shall not be re-opened"
2. The Tribunal shall consist of a Chairman and two other members nominated in this behalf by the Chief Justice of India from among persons who at the time of such nomination are Judges of the Supreme Court or of a High Court.
3. The Central Government may, in consultation with the Tribunal, appoint two or more persons as assessors to advise the Tribunal in the proceedings before it".

Section 5. Adjudication of water disputes
When a Tribunal has been constituted under section 4, the Central Government shall, subject to the prohibition contained in section 8, refer the water dispute and any matter appearing to be connected with, or relevant to, the water dispute to the Tribunal for adjudication.

The Tribunal shall investigate the matters referred to it and forward to the Central Government a report setting out the facts as found by it and giving its decision on the matters referred to it within a period of three years.

Provided that if the decision cannot be given for unavoidable reason, within a period of three years, the Central Government may extend the period for a further period not exceeding two years.

If, upon consideration of the decision of the Tribunal, the Central Government or any State Government is of opinion that anything therein contained requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, the Central Government or the State Government, as the case may be, within three months from the date of the decision, again refer the matter to the Tribunal for further consideration, and on such reference, the Tribunal may forward to the Central Government a further report within one year from the date of such reference giving such explanation or guidance as it deems fit and in such a case, the decision of the Tribunal shall be deemed to be modified accordingly:
Provided that the period of one year within which the Tribunal may forward its report to the Central Government may be extended by the Central Government, for such further period as it considers necessary".

If the members of the Tribunal differ in opinion on any point, the point shall be decided according to the opinion of the majority**.**

Section 6. Publication of decisions of Tribunal

The Central Government shall publish the decision of the Tribunal in the Official Gazette and the decision shall be final and binding on the parties to the dispute and shall be given effect to by them.
The decision of the Tribunal, after its publication in the Official Gazette by the Central Government under sub-section (1) , shall have the same force as an order or decree of the Supreme Court

Section 8. Bar of reference of certain disputes to Tribunal
Notwithstanding anything in section 3 or section 5, no reference shall be made to a Tribunal of any dispute that may arise regarding any matter which may be referred to arbitration under the River Boards Act, 1956**.**

Section 9 Powers of Tribunal
(*1*) The Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (1 of 1908), in respect of the following matters, namely:— (*a*) summoning the discovery and production of documents and material objects; (*b*) requiring the discovery and production of documents and material objects; (*c*) issuing commissions for the examination of witness or for local investigation; (*d*) any other matter which may be prescribed**.**

(*2*) The Tribunal may require any State Government to carry out, or permit to be carried out, such surveys and investigation as may be

THE SARKARIA COMMISSSION REPORT

E. M. S. Namboodiripad was the first Non Congress Chief Minister to demand a redefinition of Centre-State financial relations. In 1967, the United Left Government of Kerala submitted a memorandum for review of Centre-State financial relations to the NDC. In fact, in the aftermath of the 1967 election debacle, there was a sudden rise in the demands by the opposition ruled states for reorganization of the Centre-State financial relations.

A Study team under the Chairmanship of M C Setalvad was appointed by the Administrative Reforms Commission in 1968 to review Centre-State relationship in India. The study team submitted its reporting June 1969. The Study Team found that the Seventh Schedule was heavily weighted in favour of the Centre and several Articles such as 249, 252, 200 and 201 encroached on the autonomy of the States. The recommendations of the Study Team were ignored.

The very first systematic attempt by a State Government to review Centre-State relations was made by the first Non-Congress government of Tamil Nadu: i.e. the Dravid Munetra Kazgham. The State government appointed a Centre-State Inquiry Committee in 1970 under the chairmanship of PV Rajamannar. It was called the Rajamannar Committee. The committee demanded greater autonomy for State governments.

The West Bengal Government prepared a resolution for rationalization of Centre-State financial relations in 1977. Similarly, the Madhya Pradesh Government demanded recasting of the Centre-State relations in 1978. However, the Anandpur Sahib resolution drafted by Shiromani Akali Dal in 1973, gained much publicity in 1982 when the major opposition parties in Punjab made the Anandpur Sahib Resolution their key reference for making a joint demand for more autonomy and substantial decentralization. In 1983 the Telugu Desam Party of Andhra Pradesh, in its election manifesto made the same demand as contained in the Anandpur Sahib Resolution.

In the view of growing demands made by the opposition ruled states, the Government constituted Sarkaria Commission in June 1983 to review existing arrangements between centre and states. The Commission was headed by Justice Rajinder Singh Sarkaria. The other two members of the committee were Shri B Sivaraman and Dr S. R. Sen.

Emboldened by the gesture, the opposition ruled states became more vocal with the intention of influencing the Commission's opinion. An opposition conclave was held at Srinagar from October 5-7, 1983 to resolve Centre-State Financial confrontation. The representatives of 15 State based political parties attended the meeting. In July 1984, the non-Congress (I) Chief ministers of Andhra Pradesh, Karnataka, Tripura, and West Bengal took their battle against the Center to the National Development Council. They said in a joint statement that the structure of national morality was shattered by the Union Government.

The Commission submitted its final 1600-page report in January 1988. The final report contained 247 specific recommendations spreading over the following 19 Chapters.

RECOMMENDATIONS OF THE COMMISSION

The Sarkaria Commission observed that Federalism is not a static institutional concept but rather a functional arrangement for cooperative action. It is a dynamic process of cooperation and shared action between two or more levels of government.

The Sarkaria Commission offered several recommendations to improve the working of the arrangements between the centre and the states. It proposed that the Rajya Sabha should change the rules of business of the House to empower itself to play a stronger role as a federal second chamber. However, the Commission did not find any merit in the idea of giving equal representation to the states in the Rajya Sabha.

The Commission argued that a more generous use of Article 258 (power of the Union to confer powers etc on states in certain cases) can bring about progressive decentralization and cooperative federalism in the working of the centre state arrangements in India.

It observed, "Decentralisation of real power to local institutions[10] would help defuse the threat of centrifugal forces, increase popular involvement all along the line, broaden the base of our democratic polity, promote administrative efficiency and improve the health and stability of inter-governmental relations" (Volume I, p.543).

Regarding the legislative relations the Commission recommended that the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and details for state action.

However, to ensure uniformity consultations may be carried out with the state governments individually and collectively at the forum of the proposed Inter-Governmental Council. It was not recommended that the consultation be a constitutional obligation.

It also recommended that the residuary powers of legislation in regard to taxation matters should remain exclusively in the competence of Parliament while the residuary field other than that of taxation should be placed on the concurrent list.

On Article 356, it was recommended that it be used "very sparingly, in extreme cases, as a measure of last resort, when all other alternatives fail to prevent or rectify a breakdown of constitutional machinery in the state.

The Commission suggested certain improvements in the criteria for the selection of a Governor. It recommended that it is desirable that a politician from the ruling party at the Union is not appointed as Governor of a state which is being run by some other party or a combination of other parties. The Commission also laid down guidelines for the governors in formation of the government in case of a hung assembly and in recommendation to the centre for dismissal of a state government and dissolution of an assembly. These guidelines were based largely on democratic notion of the floor test in the House.

Regarding fiscal arrangements, the Commission recommended a constitutional amendment for the sharing of the corporation tax and other consignment taxes on advertising and broadcasting. The Commission suggested setting up of an expert committee to recommend reforms in the fiscal federal structure.

In order to restructure the institutional framework, the Commission recommended establishment of an Inter-State Council. The Commission also recommended that the National Development Council and the Planning Commission shall be entrenched as constitutional bodies and the Finance Commission shall be made a permanent constitutional agency.

NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

The National Commission to Review the Working of the Constitution (NCRWC) was set up by the NDA government vide Government resolution dated 22 February, 2000 for suggesting possible amendments to the Constitution of India. The 11 member Commission was headed by Retired Chief Justice of India Justice M.N. Venkatachaliah. The Commission submitted its report in two volumes to the Government on 31st March, 2002.

The terms of reference stated that the Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features.

KEY AREAS OF CONCERN

The Commission noted that the 73rd and 74th Amendments are the major political achievements because they have led to a great push towards non centralization. On the other hand rising corruption and criminalization of politics are they key political failures. On economic front, India has failed to alleviate poverty with 260 million people living below poverty line.

The Commission noted certain key areas of concern which included a general neglect of the common man, inability to cope with the global forces of change, rising fiscal deficits, criminal-politician-bureaucrat nexus, rising threats to national integrity and security, misuse of the electoral process, opportunistic politics and unprincipled defections, administrative inefficiency, failure of the criminal justice system, communal riots, disturbingly inadequate social infrastructure and poor indicators of socio-economic and human development.

RECOMMENDATIONS OF THE COMMISSION

(Regarding Intergovernmental Relations)

The Commission made 249 recommendations. Of them 58 involve constitutional amendments, 86 involve legislative measures, 105 could be accomplished through executive action. The Commission made following observations and recommendations regarding intergovernmental relations:
The Commission felt that there is no dichotomy between a strong Union and strong States. Both are needed. However, the Commission expressed the concern that there was no formal institutional structure

that requires mandatory consultation between the Union and the States in the area of legislation under the Concurrent List which covers several items of crucial importance to national economy and security.

The Commission recommended that individual and collective consultation with the States should be undertaken through the Inter-State Council and that the subjects that should form part of consultation in the Inter-State Council may be clearly specified in 4(b) of the Inter-State Council Order, 1990. Management of Disasters and Emergencies, Natural or Man-made should be included in the Concurrent List.

The Commission noted that fiscal imbalances are the product of the shortcomings of the transfer system. For example, the 'gap-filling' approach adopted by the Finance Commission and the soft budget constraints have provided perverse incentives. The Commission made the point that these deficiencies can be corrected without any change in the Constitution.

The Commission felt it desirable to associate the States more actively in deciding the additional terms of reference, preferably by having the National Development Council (comprising the Prime Minister and the Chief Ministers of States) to endorse the additional terms of reference.

The Commission wanted the public policy to move decisively in the direction of doing away with the surcharges as part of the Union's fiscal armoury. The Commission argued that free flow of trade is sine-qua-non for economic prosperity and removal of such barriers is a part of social evolution. Therefore, an arrangement must be devised which will ensure free flow of trade, encourage fair competition and simultaneously remain capable of discouraging and regulating unfair trade practices. To achieve this goal the Commission recommended setting up of "Interstate Trade and Commerce Commission" under article 307 read with Entry 42 of List-I.

The Commission was critical of the inordinate delay in constituting the River Water Tribunals, passing awards, framing of schemes and judicial review by the Supreme Court. Such delays were perceived as a hindrance to the proper utilization of water resources. The Commission suggested that the River Board Act, 1956 and Interstate Water Disputes Act, 1956 be repealed and river water disputes be heard by a bench of not less than three Judges and if necessary, a bench of five Judges of the Supreme Court for the final disposal of the suit.

The Commission emphasized the desirability of prior consultation by the Union Government with the inter-State Council before signing any treaty vitally affecting the interests of the States regarding matters in the State List.

The Commission did not agree to dilute the powers of the President in the matter of selection and appointment of Governors. However, it recommended that the appointment should be made after consultation with the Chief Minister of that State. Normally the five year term should be adhered to and removal or transfer of the Governor should be by following a similar procedure as for appointment. The Governor should take a decision to reserve a Bill within 6 months. In case the Bill is reserved, the President should take a decision within 3 months. The Commission found that in a large number of cases where article 356 had been used, the situation could be handled under article 355 i.e. without imposing President's rule under article 356. The Commission felt it most unfortunate that article 355 had hardly been used. The State Assembly should not be dissolved before the proclamation under Art. 356 has been laid before Parliament. The Commission recommended that the question whether the Ministry in a State has lost the confidence of the Legislative Assembly or not, should be decided only on the floor of the

Assembly and nowhere else. The Governor should not be allowed to dismiss the Ministry, so long as it enjoys the confidence of the House.

The 11th and 12th Schedules of the Constitution should be restructured to create separate fiscal domain for panchayats and municipalities. The concept of a distinct and separate tax domain for municipalities should be recognized.

OTHER IMPORTANT RECOMMENDATIONS

i. Any person charged with any offence punishable with imprisonment for a maximum term of five years should be disqualified for being a member of Parliament or state legislature.
ii. Any person convicted of any heinous crime should be permanently debarred from contesting for any political office.
iii. A National Judicial Commission under the Constitution should be established to recommend the appointment of judges of the Supreme Court.
iv. Article 105 may be amended to clarify that immunity enjoyed by members under parliamentary privileges does not cover corrupt acts committed by them.
v. A comprehensive law regulating the registration and functioning of political parties or alliances of parties should be made.

PUNCHHI COMMISSION ON CENTRE-STATE RELATIONS

The Sarkaria Commission was the first comprehensive review of Centre-State Relations. However, it could not achieve much in terms of removing the irritants in Centre-State relations. Furthermore, Indian polity and economy underwent profound changes after 1989, posing new challenges for government at all levels. This called for a fresh look at the relative roles and responsibilities of each level and their inter-relations.

Thus, the main question posed to the Punchhi Commission was: 'Are the existing arrangements governing Centre-State (Province) relations – legislative, executive and financial – envisaged in the Constitution as they have evolved over the years, working in a manner that can meet the aspirations of the Indian society as also the requirements of an increasingly globalising world? If not, what are the impediments and how can they be remedied without violating the basic structure of the Constitution?

The Punchhi Commission, appointed in April 2007, presented its report to the Government of India on 19 April 2010. The report is the second landmark report on the federal relations in India. The Punchhi Commission was headed by Justice M. M. Punchhi. The other four full time members were Dhirendra Singh, V K Duggal, Dr N R Madhava Menon and Vijay Shankar.

Keeping in mind the changed social, political, economic and internal security scenario in the country, the government assigned the commission much wider range of terms of reference.

The terms of reference required the Commission to examine and review of working of existing arrangements between union and states, various prouncement of courts regarding powers, functions and responsibilities in legislative, administrative, financial relations, economic and social planning,

Panchayati Raj, sharing of resources including inter-state river water disputes. The Commission was also required to address the growing challenges of ensuring good governance and sustained and rapid economic growth in the context of recent social and economic developments.

The Terms of Reference of the Punchhi Commission are as follows:

(i) The Commission will examine and review the working of the existing arrangements between the Union and States, the healthy precedents, various pronouncements of the Courts in regard to powers, functions and responsibilities in all spheres of federal relations (legislative, administrative, financial, sharing of resources, and Panchayati Raj) and recommend appropriate measures.
(ii) The Commission will keep in view the recent social and economic developments and address the growing challenges of ensuring good governance whilst strengthening the unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth.
(iii) While examining and making its recommendations on the above, the Commission shall have particular regard, but not limit its mandate to the following:-

i. The role, responsibility and jurisdiction of the Center vis-a-vis States:
   a) during caste/communal violence or any other social conflict.
   b) in the planning and implementation of the mega projects .
   c) in promoting Panchayati Raj Institutions and Local Bodies including the Autonomous Bodies under the 6th Schedule.
   d) in promoting the concept and practice of independent planning and budgeting at the District level.
   e) in linking Central assistance with the performance of the States.

ii. The role, responsibility and jurisdiction of the Center in adopting approaches and policies based on positive discrimination in favour of backward States.
iii. The impact of the recommendations made by the 8th to 12th Finance Commissions on dependence of the States on the Centre.
iv. The need and relevance of separate taxes on the production and on the sales of goods and services subsequent to the introduction of Value Added Tax regime
v. The need establishing a unified and integrated domestic market in the context of the reluctance of State Governments to adopt the relevant Sarkaria Commission's recommendation in chapter XVIII of its report.
vi. The need for setting up a Central Law Enforcement Agency empowered to take up investigation of crimes having inter-State and/or international ramifications with serious implications on national security.
vii. The feasibility of a supporting legislation under Article 355 for the purpose of deployment of Central forces in the States if and when the situation so demands.

The Punchhi Commission Report covers all important themes in centre-state relations in seven volumes:

1. The first volume deals with evolution of Centre-state relations.
2. The second volume goes into the constitutional scheme of things, covering recommendations regarding Article 19, Article 355 and 356 and Article 263.
3. The third volume deals with economic and financial relations, and recommendations include upgrading of the planning model to remove regional imbalances.

4. The fourth volume gives recommendations regarding 73rd and 74th amendments and the Sixth Schedule
5. The fifth volume deals with internal security, covering issues like terror, Naxalism, insurgency and communal violence.
6. The sixth volume discusses environment issues and resource-sharing, particularly of rivers and minerals
7. The seventh volume deals with social development and good governance.

THE RECOMMENDATIONS

The major recommendations of the Commission are as follows

There should be an amendment in Articles 355 and 356 to enable the Centre to bring specific trouble-torn areas under its rule for a limited period. The commission has proposed "localising emergency provisions" under Articles 355 and 356, contending that localised areas — either a district or parts of a district — be brought under Governor's rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.

The Commission criticized the amendment in the Representation of People Act, 1951 through Representation of People (Amendment) Act 40 of 2003 abolishing the domiciliary requirement for Rajya Sabha members in the states from which they are elected. [11] The Commission has recommended equal representation to states in the Rajya Sabha to bring about a federal balance in favour of smaller states.

The Commission has recommended "federalization" and "parliamentarization" of the treaty-making power of the union executive because in view of the Commission the "exercise of this power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers."

The Commission has laid down clear guidelines for the appointment of chief ministers. Upholding the view that a pre-poll alliance should be treated as one political party, it specifies the order of precedence that ought to be followed by the governor in case of a hung house: a) Call the group with the largest pre-poll alliance commanding the largest number; b) the single largest party with support of others; c) the post-electoral coalition with all parties joining the government; and last d) the post electoral alliance with some parties joining the government and remaining including Independents supporting from outside.

The Punchhi panel observes that Governors should have the right to sanction prosecution of a minister against the advice of the council of ministers. However, it recommends that the convention of making them chancellors of universities be done away with. As for qualifications for a governor, the Punchhi commission suggests that the nominee shall not have participated in active politics at even local level for at least a couple of years before his appointment. The Commission also criticises arbitrary dismissal of governors, saying, "the practice of treating governors as political football must stop". It has also recommended that the state chief minister have a say in the appointment of governor.

Unlike the Sarkaria Report, the Punchhi Commission has recommended fixed five year tenure for Governors and their removal only through impeachment by the state Assembly along the same lines as that of President by the Parliament [12]. The Punchhi Commission report also recommends that a constitutional amendment be brought about to limit the scope of discretionary powers of the Governor under Article 163 (2). Governors should not sit on decisions and must decide matters within a four-month

period. The Commission recommended that the appointment of governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and chief minister of the concerned state. The Vice- President can also be involved in the process. Earlier, this suggestion was rejected by the NCRWC.

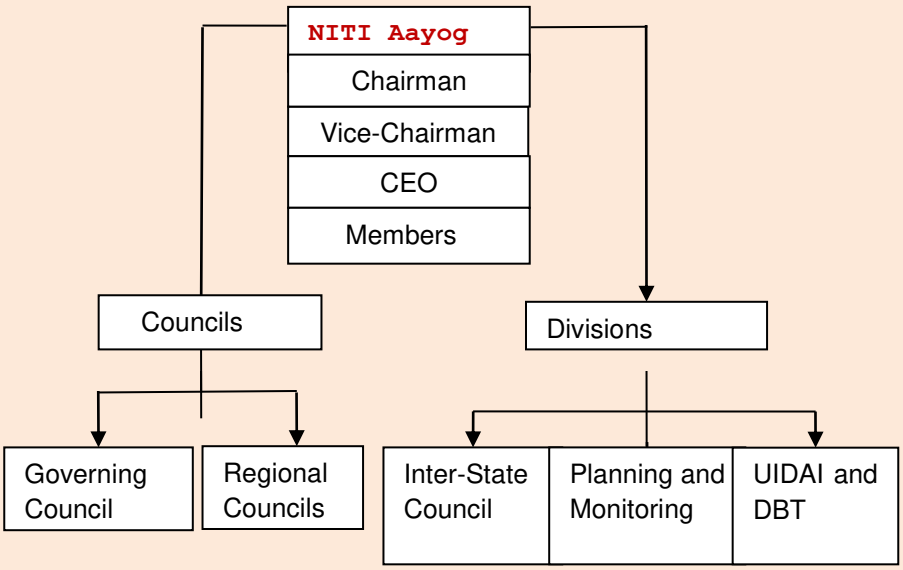
For the National Integration Council (NIC), the commission has proposed that it should be given more powers and should meet at least once a year. The commission, however, rejects a suggestion that the NIC be accorded constitutional status. The Commission has recommended an amendment in the communal violence Bill to allow deployment of Central forces without the state's consent for a short period. However, such deployment should only be for a week and post-facto consent should be taken from the state.

The Commission is in favour of creation of an overriding structure to maintain internal security along the lines of the US Homeland Security department. It has recommended the establishment of a National Counter Terrorism Centre (NCTC) in the union ministry of Home Affairs subsuming existing intelligence and investigative agencies including the newly established National Investigative Agency (NIA) to deal with all kinds of crimes including terrorist violence.

CENTRE-STATE COORDINATION AND POST NITI AAYOG SCENARIO: TOWARDS COLLABORATIVE FEDERALISM?

With the creation of NITI [National Institution for Transforming India (Figure 1)], in place of the Planning Commission, it is "hoped" that there will be a genuine and continuing partnership between the centre and the states and among the states. Participation of the states will make planning more inclusive. As per the policy statement of the government, NITI will create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and partners. It will offer a platform for resolution of inter-sectoral and inter-departmental issues in order to accelerate the implementation of the development agenda. In addition to being the incubator of ideas for development, the NITI Aayog will provide a critical directional and strategic input into the development process. It will develop mechanisms to formulate credible plans at the village levels.

Figure 1: Structure, Composition & Functions of NITI Aayog that replaced Planning Commission



Explanatory Notes:

- PM is the Chairman; Vice-Chairman is appointed by PM; CEO is an officer of secretary rank.
- **Members** include : (a) 4-5 domain experts to assist VC (b) 2 part-time members from institutes/universities, appointed on rotational basis (c) 4 council ministers (ex-officio) nominated by PM.
- **Governing council** comprising all state CMs and lieutenant governors of UTs (Headed by the PM) to ensure genuine and continuing partnership of all states in policy making.
- **Regional councils** to address specific issues within a specific time frame.
- **Inter-state council** will carry the development agenda of the states forward to finance and other central ministries (Headed by a Secretary). It will move from home ministry to Yojana Bhawan to oversee development works of the states. Thus, the states will have a greater role in planning.
- **The Planning and monitoring division** will work on a long term plan for the government and evaluate the flagship social sector schemes (Headed by a Secretary).
- **Unique Identification Authority of India (UIDAI) and Direct Benefit Transfer (DBT)**

Sharma (2010, 2015a) makes a strong case for collaborative federalism. The author puts across the justification for establishing a collaborative federal architecture in India, but also adds that this outcome can be realized only in the context of a balanced, transparent and distortion free system of intergovernmental fiscal relations. The Fourteenth Finance Commission has indeed taken a few steps in this direction. It has taken into account *both Plan and non-plan revenue expenditure requirements* of the states in its assessment of state-wise share of the divisible pool. This move has subsumed the block transfers given by the erstwhile Planning Commission.[1] For the same reason, the states have been given 42% devolution instead of 32%.

[1] With the abolition of the Planning Commission the Gadgil formula grants, Special Central Assistance, Special Plan Assistance and additional central assistance given for various purposes have been delinked from assistance. However, the central sector and centrally sponsored schemes (provided under Additional Central Assistance) have been retained.

As a consequence, the Centre will lose out Rs 50,000 crores to states in 2015-16 as compared to this year. In fact, if we include the transfers to Local Bodies and Art 275 grants to post devolution revenue deficit states the total transfers add up to about 50% of the Centre's divisible pool of taxes (Interview with a senior government official GO1).

In order to leave enough fiscal space with the central government to boost public spending, the FFC has recommended restructuring of the central assistance to state and UT plans. The government plans to retain the overall transfers to the states at around 63% by reducing the discretionary transfers and grants to the states (Interview with a senior government official GO2). Indeed, the budget proposes 8 centrally sponsored schemes (CSS) to be de-linked from the support of the centre and 13 to be run in a sharing pattern between the centre and states. Further the roll out of goods and services tax (GST) is also expected to boost finances of the central government.

The experts' opinion survey conducted by the author (see Sharma 2015 a and b for more details) shows that there is an overwhelming consensus that the Finance Commission and the Inter-State Council are the two 'constitutional' bodies which have the potential to strengthen federalism in India. There is also a near consensus on the need to install and improve mechanisms for dissemination of Information about service delivery and development of a Database and a Research Cell to assist intergovernmental interactions. However, there is an ongoing debate on many other issues related to the role of NDC and the Governing Council of the NITI, and their interaction with the Inter-State Council.

NOTES

1. Anderson assists us in making this point by stating that "the concept of intergovernmental relations necessarily has to be formulated largely in terms of human relations and human behavior . . ." (Anderson 1960: 4).
2. This method of conducting interactions among the executive heads of the two levels of government has been called "executive federalism" (Watts 2008).
3. The epitaph, 'Super-Cabinet' was originally coined by John Mathai to describe the Planning Commission.
4. Article 263 is the only article of the sub-chapter *'Co-ordination between States'* of Chapter II -Administrative Relations of Part XI of the Constitution.
5. There were six Union Ministers in the Council as reconstituted on 7th December 2012.
6. The first five meetings were held in the year 1995, sixth meeting in 1998, seventh and eighth in 2000, ninth in 2003 and tenth meeting in the year 2005.
7. If an Inter-State project is planned, and funded through the State's internal resources, then the union government cannot interfere. In that case the affected state(s) can seek judicial intervention to stop the project.
8. Article 262 of the Constitution states that: (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

9. Under this Act even non-riparian and non-basin states can also participate in the activities of board and share in benefits from development of a river valley project. This makes it different from the Interstate River Water Disputes Act, 1956, where only the states that are party to the dispute can invoke the Act.

10. The Constitution was amended in 1992 (73rd and 74th Constitution Amendment Acts) to introduce a third tier system of governance at the level of Panchayats and Municipalities.

11. In Kuldip Nayar vs Union Of India & Ors on 22 August, 2006, the Supreme Court reasoned that residence was not a constitutional condition for representation. However, Kuldip Nayar held the view that by deletion of the word 'domicile' or ' by not reading the word 'domicile' or 'residence' in Article 80(4), the basic requirement of the representative federal body stands destroyed.

12. In a PIL, B.P. Singhal v. Union of India, the Supreme Court on 7th may 2010, ruled that the governors cannot be removed arbitrarily by the party in power at the centre on grounds such as "lack of confidence" or "conflict of political and ideological opinions." Thus, the Supreme Court has placed checks on the arbitrary removal of Governors. The Constitution Bench headed by the Chief Justice of India K.G. Balakrishnan observed, "the doctrine of pleasure [under Article 156 of the Constitution] is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the Authority, but can only be for valid reasons."

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