CHAPTER V

ADMINISTRATIVE RELATIONS BETWEEN CENTRE AND THE STATE OF KARNATAKA

Lord Acton is rightly accorded the pride of place for his words, "Power corrupts and absolute power corrupts absolutely", which are heard echoing throughout the history of mankind. In order to prevent such power-corruptions, there have been attempts during every period for division of power. And we have examined in the preceding chapter that this novel urge for division of power was also necessitated in the interest of better administration. Indeed, power, politics and conflict are eternal, intimate contemporaries. The division of authority is only a solution to keep such conflicts within limits. The possibility of friction and conflict can never be totally ruled out. Therefore, different solutions are sought at different times in order to ensure that both sets of government function harmoniously.

Union-State relations cover a very large field. It is equally true that the function of government is politics and administration is its daily business. The necessity of legislation was felt for the continuance of social life. And administration is the direct consequence of legislation. Without a machinery for implementing laws, the laws are of no significance and unless there are laws or decisions to be enforced, administration is unnecessary. In the words of Professor Goodnow, "There are then in all governmental systems two primary or ultimate functions of government, viz., the expression of the will of the state and the execution of that will. . . . . These functions are respectively politics and administration."1

In federal systems, powers of legislation or expression of the will of the state are distributed and as such allocation of executive powers between the
general government and the units is most important. Despite the several and varied intellectual debates on the nature of Indian federation, it is a truism that there is division of authority and that there are different units of government each with its own legislature and its executive.

The process of securing an objective other than federal set up in motion through the distribution of legislative power by adopting provisions borrowed from federal constitutions and Government of India Act, 1935 was taken a step further in the matter of distribution of administrative power. The hesitation, tactfulness and the rather indirect method resorted to in ensuring the supremacy of the centre in the overall exercise of legislative power despite distribution of legislative power to the constituent units was not there having laid bare their intentions through the distribution of legislative power, as it were, the founding fathers felt that instead of mincing matters better say directly in a straightforward manner what they intended the constituent units of India to be, the status they would enjoy in the constitutional set up vis-a-vis, the centre. Another reason as to why the intentions had to be stated directly and more explicitly in the matter of administrative relations between the centre and the states was the administrative relations depended upon legislative distribution of powers. Even before the articles in this regard were to be drafted B.N.Rau in his memorandum on the union Constitution dated 30\textsuperscript{th} May, 1947 observed: 'The Provisions with regard to Administrative Relations between union and units etc., will depend upon the distribution of legislative powers between the union and the units in part XI. [Distribution of legislative powers between Union and Units]. And specific provisions cannot be drafted until the provisions of part XI have been decided upon.'

Executive power is as a rule co-extensive with legislative power. Clement was right in observing that, "it may seem needless to enlarge further
upon what, under responsible government, would appear to be axiomatic namely, that legislative jurisdiction and executive power go hand in hand.\textsuperscript{3}

Articles 73 and 162 of our constitution dealing with the extent of the executive power of the union and the states, are aimed to achieve the same effect. Executive power has been broadly stated to be "the residue of governmental functions that remain after legislative and judicial functions are taken away".\textsuperscript{4} In general, the executive power is co-extensive with the legislative powers. The executive power of the centre extends primarily to matter with respect to which Parliament has power to make laws. Similarly the executive power of a state extends to matters with respect to which state legislature has power to make laws. In the concurrent legislative field, the executive power of a state is subject to the executive power expressly conferred on the union by the constitution or by any law made by Parliament. Therefore, in the concurrent field, as is true with respect to legislation, so long as the centre does not make a law, the executive power remains with the states. Even when the centre legislates, it can either leave the executive power with the states, or assume all executive power itself by an expressive provision in the relevant legislation or can create a concurrent area between itself and the states. It is an established fact that the success and strength of the federal policy depends upon maximum co-operation and co-ordination between the governments. In India, administration is primarily handled by state agencies. Unlike other federations where both the federal and state governments create their own agencies for the administration of their laws and the subjects allocated to them in the constitution, in India, even the laws of the union are left to be administered by the state authorities in order to avoid duplication of administrative machinery. The reasons for the peculiar situation in India are
basically historical. Until 1919, the central government had plenary powers over the provinces. No substantial changes were effected in the Act of 1935 or in the new constitution of India. As the executive and administration of central laws is done through state machineries there arises the necessity of central directions to the states.

Apart from the grave emergency, the fathers of the Indian Constitution have also provided for the failure of constitutional machinery in the states. The constitution, for the first time introduced Parliamentary government on the British model, not only at the level of the union but also of the states. India had no tradition of well defined parties, which could be called upon to form governments. Indeed, at the time when the constitution was being framed, the congress was the only party with stability in the country and it continued to be so many years after the advent of the constitution. It was uncertain how the constitutional machinery would work in the states and a remedy had to be found for constitutional deadlocks and unstable governments in the states. The constitution therefore provides that the President, if he is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution, may assume to himself such powers and functions of government as he may deem necessary or desirable. He may assume to himself all or some of the powers vested in the Governor or anybody or authority in the state other than the legislature of the state and he may also declare that the powers of the legislature shall be exercisable by or under the authority of the Parliament. It is noteworthy that it is the President, i.e., the union government, that has to be satisfied that the government of the state cannot be carried on in accordance with the constitution. The union government may reach this conclusion on receipt of a report from the Governor
of the state or otherwise howsoever. Events in several states after the coming of
the constitution, have justified the enactment of this provision in the
constitution. Proclamations under this provision had to be issued on a number
of occasions when the parties in the state legislatures were not able to form a
government or the governments which came in power were unstable and
changed repeatedly.

The Indian Constitution has thought of and provided for yet another
emergency which has been called the financial emergency.7 [Article 360] If the
President is satisfied that a situation has arisen whereby the financial stability
or credit of India or of any part of its territories is threatened, he may make, by
proclamation a declaration to that effect. Once the proclamation is made the
union government becomes entitled to give directions to any state to observe
such canons of financial propriety as may be specified in the directions. The
union government may also give such other directions as it may deem
necessary and adequate to meet the financial emergency. Happily though the
constitution has functioned for many years there has been no occasion to have
recourse to this provision.

This triple provision to meet emergencies is characteristic of the vision
and foresight of the founding fathers.

The scheme of the constitution is to make the executive powers of the
union and the state governments co-extensive with their legislative fields.
Which government then is to exercise the executive power in the field of
concurrent legislation? In that field the executive power of the union does not
extend in any state save as expressly provided by the constitution or by any law
made by Parliament. The states can exercise executive power in that field
subject to and limited by the executive power expressly conferred by the
constitution or by any law made by Parliament upon the union government or
its authorities. Putting it differently, though the union government has power to
legislate in respect of all matters in the concurrent list, the executive power in
respect of such matters is vested in the states unless the constitution or a
Parliamentary law, otherwise expressly provides.\textsuperscript{8} [Article 73 and 162]

A somewhat unusual feature of the constitution is the degree of reliance
that has to be placed by the union government on state agencies for the exercise
of union functions. It has been said that the union government is unduly
dependent on the states and that the union “is fundamentally lacking in
administrative authority”.\textsuperscript{9} The scheme of the constitution is to impose by
express provisions an obligation on the states in certain matters and to provide
for control of the union over states in certain cases. The states enjoyed to
exercise their executive power as to ensure compliance with the laws made by
Parliament and existing laws, and the union is entitled to give such directions to
a state as may appear to it necessary for ensuring such compliance.\textsuperscript{10} [Article
256]

A further obligation is laid on the states to see that their executive power
is so exercised as not to impede or prejudice the exercise of the executive
power of the union and the union is entitled to give all directions it deems
necessary to the states for this purpose.\textsuperscript{11} [Article 257]

Further, the union government is entitled with the consent of the state
government to entrust to the state government or its officers conditionally or
unconditionally functions in the performance of the executive power of the
union.\textsuperscript{12} [Article 258]
These provisions indicate the intention of the framers of the constitution to encourage co-operation between the union and its constituent units in the discharge of their functions. Instead of two parallel and independent executive agencies functioning in the region, what the constitution seems to aim at is the operation of one set of executive agencies functioning for the general as well as the regional government in certain matters in the administrative field.

UNION CONTROL OVER STATES:

The constitutional provisions make room for several methods of union control over the states in the realm of administrative relations. Such provisions were incorporated into the body of the constitution with the idea that these are most essential for the strength and survival of the union.

[i] Directions by the Union Government to State Governments:

The central government possesses the authority to control the state governments by virtue of the constitutional provision of giving directions to the state governments. These provisions operate both in normal and emergency situations.

The constitution expects the states to exercise their executive power in a manner in order to ensure compliance with the union laws and any existing laws applicable in that state. It also provides that the executive power of the union extends to the giving of such directions to a state as may appear to the government of India to be necessary for that purpose. The executive power of the states are not to impede or prejudice the exercise of the executive power of the union. In respect of constitution and maintenance of means of communication declared to be of national, or military importance and protection of railways, the union government have also the power of giving...
directions to the states. The Union is also empowered to direct state activities for the welfare of scheduled Tribes and the education of linguistic minorities.

IMPOSITION OF PRESIDENT’S RULE IN KARNATAKA:

A detailed survey of the imposition of the president’s rule in Karnataka reveals that, the president’s rule was imposed because of:

1. Defections
2. Political Instability
3. Incapacity to constitute the new government.

As far as Karnataka is concerned there comes two such cases prior to 1980.

1. Dismissal of Veerendra Patil Ministry -1971:

In the general election, which was held on March 5 and 7, 1967 to the Mysore legislative assembly the undivided congress party secured an absolute majority winning 126 seats out of a House of 216. The congress legislative party, having got an absolute majority, elected S.Nijalingappapp, as the leader and his ministry was sworn in on March 15, 1967.

On May 23, 1968, Mr. S. Nijalingappa became the President of the Indian National Congress. He submitted his resignation along with his cabinet to the state Governor.

Mr. Veerendra Patil, who was PWD and Electricity Minister in S.Nijalingappa’s cabinet, was elected leader of the Mysore Legislative Congress party. The entire new Mysore ministry headed by Mr. Veerendra Patil was sworn in on May 29, 1968.

Mr. B. D. Jatti, who was Food and Civil supplies minister in S.Nijalingappa’s ministry and his three supporters, Mr. R.M.Patil, Mr.Devaraj
Urs and Mr G. Narayana Gowda were dropped. Mr. Dayananda Sagar and Mr. Abdul Gaffar, Deputy Ministers in the out-going cabinet, who were supporters of Mr. Jatti were also dropped.

In 1970, differences between Mr. S. Nijalingappa and Mrs. Indira Gandhi cropped up which virtually led to the split of Indian National Congress into congress [o] and congress [R]. Mr. Veerendra Patil, Chief Minister of Mysore belonged to the former group.

In February 1971, mid-term elections were held to the Lok Sabha, in which the congress [R] headed by Mrs. Indira Gandhi secured an absolute majority. Its impact was on Mysore government also.

On March 15, 1971, the congress[R] stalled the Budget session of Mr. Veerendra Patil government. They raised an adjournment motion questioning the competency of the Veerendra Patil’s government to continue in office following the adverse vote in the Lok Sabha elections.

On March 27, 1971, Mr. Veerendra Patil resigned in the wake of massive defection from the party to the congress[R]. Though some defectors returned to the party. Providing it with strength of 117 in the 214 members House. A section of the congress[R] leadership in the state favoured the party staking claim to form an alternative ministry; the move was vetoed by the High Command, as there were doubts about the stability of a ministry forming with the support of defectors.

On March 27, 1971, the Mysore state was brought under the president’s rule keeping the legislative assembly in abeyance. Subsequently, on April 14, 1971, under a proclamation issued in New Delhi, the Mysore legislative assembly was dissolved and the state placed under president’s rule for the first time since independence.
Under Article 174[2] of the constitution the President signed the order of dissolution after a meeting of the cabinet.

The centre’s action was based on the report of the Governor Mr. Dharma Vira that the all efforts at forming popular ministry had failed. The Governor had held several rounds of talks with leaders of various groups and found that no party, by itself or in alliance with others, could form a stable government.23

The president’s rule that was supposed to lapse on November 24, 1971 was extended for another six months effective from November 25, 1971.

Mr. F.H.Mohsin, Deputy Minister for Home affairs, replying to the debate in the Lok Sabha, disagreed with the criticism by some members that any political party was exerting pressure on the Governor.24

He said, president’s rule in Mysore was not the centre’s choice. It was proclaimed after the fall of the Veerendra Patil ministry, when there was no other party to shoulder the responsibility.

As for delay in elections to the state assembly, he said the centre was eager to hold election but the delay was due to revision of electoral rolls in the state.

In the month of March 1971 elections were held to the Mysore legislative assembly in which the congress (R) got majority. A new ministry headed by Devaraj Urs was sworn in Bangalore on March 20, 1971, ending the 354 days president’s rule in the state.

2. Dismissal of Devaraj Urs Ministry, 1977:

In 1977, the then Governor of Karnataka Mr. Govind Narain dismissed the government of Mr. Devaraj Urs on the grounds that he ceased to command
the confidence of the assembly because of defections. This was done inspite of the fact that the assembly was to meet just after three days and Mr. Devaraj Urs was prepared to prove his majority in the Karnataka legislative assembly.25

The dismissal of Mr. Devaraj Urs ministry was challenged by Karnataka state, under Article 131, that case was Karnataka state v/s union of India (A.I.R. 1978 S.C.68).

This judgement of the supreme court under this Article clearly illustrates the nature of the Indian federation, which is like no other. The state of Karnataka had challenged the appointment of the Grover Commission to inquire into the charges of corruption against the Chief Minister, Mr. Devaraj Urs, and some other ministers, specially when the state itself had already appointed a commission to inquire into the same charges after these were levelled in the legislative assembly.

The state of Karnataka argued that the Commission of Inquiry Act, 1952 does not empower the central government to constitute a commission of Inquiry to inquire into matters falling exclusively within its legislative and executive spheres. If, for the sake of argument, it be assumed that it did, then the Act itself must be held to be ultra vires the constitution, because, in that case, it would violate the federal structure envisaged by the constitution. The state Chief Minister also asserted that the constitution was the source of all power for the various organs of the state and the centre and anything done by them must be subordinated to the allocation of powers, under the federal scheme, between the centre and the states. He further argued that the constitution allowed the centre to interfere into states affairs only in exceptional circumstances such as when emergency had been declared, but not
otherwise. There was also an argument that the cabinet system was a basic feature of the constitution. The state Chief Minister and other ministers could be called to account only by the state legislature to whom they are responsible. All control over ministerial actions vested exclusively in the state legislature and thus an inquisitorial role by the centre would destroy the basic structure of the constitution. And what the Parliament could not do by amending the constitution, surely it could not do through such an ordinary piece of legislation as the Commission of Inquiry act.

Next, we proceed to study about the Administrative relations between the centre and the state of Karnataka after 1980.

ADMINISTRATIVE RELATIONS BETWEEN THE CENTRE AND THE STATE OF KARNATAKA AFTER 1980:

3. Dismissal of Bommai Ministry, 1985:

In March 1985, following elections to the Karnataka Legislative Assembly, the Janata Party emerged as the majority party. Ramakrishna Hegde was elected as the leader of the Janata Legislature Party and was sworn in as the Chief Minister. In August 1988, Hegde resigned and S. R. Bommai was elected as the leader and sworn in as the Chief Minister on August 30, 1988. In September, the Janata Party and Lok Dal (B) merged resulting in the formation of Janata Dal.

On April 17, 1989, a legislator Kalyan Rao Molakery, defected from the party and presented a letter to the Governor, Mr. Venkatasubbaiya withdrawing his support to the Janata Dal government headed by S. R. Bommai. On the next day, he met the Governor and presented nineteen letters signed by seventeen Janata Dal legislators and one BJP legislator withdrawing
their support to the government. On April 19, 1989, the Governor sent a report to the President stating that the council of ministers headed by Bommai did not command a majority in the House and that, therefore, “It is not appropriate under the constitution to have the state administered by an executive consisting of council of ministers who did not command the majority in the House”. He opined that no other party is in a position to form the government and recommended action under Article 356[1].

On April 20, 1989 Seventeen Legislators, out of nineteen, in a letter to the Governor, complained that their signatures were obtained by misrepresentation and misleading to them and reaffirmed their support to the Bommai ministry. On the same day, the state cabinet met and decided to convene the Assembly on April 27, 1989 and the same was informed to the Governor. It was also brought to the Governor’s notice the recommendation of the Sarkaria Commission that the support and strength of the Chief Minister should be tested on the floor of the assembly. Bommai offered to prove his majority on the floor of the house. He even expressed his readiness to advance the assembly session if so desired by the Governor. Inspite of all this, the Governor sent another report to the President of India on April 20, 1989 referring to the letters of seven members withdrawing their earlier letters and alleged that the said letters were obtained by Bommai by pressuring these MLAs. He reported, that “horse-trading is going on and atmosphere is getting vitiated”. He reiterated that Bommai has lost the confidence of the majority in the state assembly and requested action being taken on his previous letter.

On April 21st, 1989, by a proclamation, the President dismissed the Government of Karnataka, dissolved the legislative assembly. The
Proclamation did not contain any reasons except barely citing the satisfaction of the President. The satisfaction is stated to have been formed on a consideration of the report of the Governor and other information received by him.

S.R.Bommai in the Karnataka High Court challenged the validity of the proclamation. The three judges Bench of the High Court dismissed the writ petition on the following grounds.

1. The proclamation under Article 356[1] is not immune from judicial scrutiny. The court can examine whether the satisfaction has been formed on wholly extraneous material or whether there is rational nexus between the material and the satisfaction.

2. In Article 356, the President means the Union Council of Ministers. The satisfaction referred to therein is subjective satisfaction. The satisfaction has no doubt to be formed on a consideration of all the facts and circumstances.

3. The two reports of the Governor conveyed to the President essential and relevant facts which were relevant for the purpose of Article 356. The facts stated in the Governor’s report cannot be stated to be irrelevant. They are perfectly relevant.

4. Where the Governor’s “personal bonafides” are not questioned his satisfaction that no other party is in a position to form the government has to be accepted as true and is based upon a reasonable assessment of all the relevant facts.

5. Recourse to floor test was neither compulsory nor obligatory. It was not a prerequisite to sending up a report recommending action under Article 356[1].
6. The introduction of X schedule to the constitution has not affected in any manner content of the power under Article 356.

7. Since the proclamation has to be issued on the satisfaction of the union council of ministers, the Governor's report cannot be faulted on the ground of legal *mala fides*.26

An appeal was made in the Supreme Court against the High Court judgement, which was heard by nine Judges. Finally, the Supreme Court struck down the proclamation by setting aside the High Court judgement. The Supreme Court judgement, which was delivered by Justice Jeevan Reddy, observed that, “The Governor’s report may not be conclusive but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such report. Governor is a very high constitutional functionary. He is supposed to act fairly and honestly consistent to his oath. He is actually reporting against his own government. It is for this reason that Article 356 places such implicit faith in his report. If however, in a given case, his report is vitiated by legal *mala fides*, it is bound to vitiate the President’s action as well.”

It further observed that, “The constitution does not hold an obligation that the political party forming the ministry should necessarily have a majority in the legislature. Minority governments are not unknown. What is necessary is that government should enjoy the confidence of the House. This aspect does not appear to have been kept in mind by the Governor.”

Secondly and more importantly, whether the council of ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying our constitution necessarily means that any
such question should be decided on the floor of the House. The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. However, exceptional and rare situation may arise where because of all pervading atmosphere of violence or other extra-ordinary reason; it may not be possible for the members of the assembly to express their opinion freely. But no such situation has arisen here. No one suggested that any such violent atmosphere was obtaining at the relevant time. Stressing on the importance of the Legislative Assembly, it observed, “if one keeps in mind the democratic principle underlying the constitution and the fact that it is the legislative assembly that represents the will of the people and not the Governor, the position would be clear beyond any doubt. In this case it may be remembered that the council of ministers not only decided on April 20, 1989 to convene the assembly on 27th of that very month i.e., within seven days but also offered to prepone the assembly if the Governor so desired. It pains us to note that the Governor did not choose to act upon the said offer. Indeed, it was his duty to summon the assembly and call upon the Chief Minister to establish that he enjoyed the confidence of the House. Not only did he not do it but also when the council of ministers offered the same, he demurred and chose instead to submit the report to the President. In the circumstances, it cannot be said that the Governor’s report contained or was based upon relevant material”.

Commenting on the satisfaction of the President, it observed though the proclamation recites that the President’s satisfaction was based also on other information received “but there was no other information before the President except the report of the Governor and that the words and other information
received by me” were put in the proclamation mechanically. The Governor’s reports and facts stated there in appear to be the only basis of dismissing the government and dissolving the assembly under Article 356[1].

The proclamation must, therefore, be held to be not warranted by Article 356. It is outside its purview. It cannot be said, in the circumstances, that the President [or union council of ministers] was satisfied that the government of the state could not be carried on in accordance with the provisions of the Constitution. The action was malafide and unconstitutional.27

2. Dismissal of Veerendra Patil Ministry, 1990:

In the general election, the congress party under the leadership of Veerendra Patil mustered 180 seats of 225 in the Karnataka Legislative Assembly. A mild stroke which suffered by Veerendra Patil provided an opportunity to ease him out. 140 dissident congress legislative party members presented a memorandum to the Governor Bhanu Pratap Singh, which stated that Veerendra Patil’s government had lost its majority in the House and it should be dismissed. The dissidents were called to form the government. Veerendra patil presented a list of 103 members and claimed that he continued to command the confidence of the House.

The Governor recommended the union government for president’s rule for a “short period” keeping the Assembly in suspended animation. The Union Cabinet considered the issue and decided to accept the Governor’s recommendation.

The then President R. Venkataraman was reluctant28 as there was nothing to show that a situation had arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution as
required by Article 356. There was a government under Patil and it had not been defeated in the House.

The then Prime Minister, V.P. Singh met the President and told him that the situation had become complicated as the Chief Minister himself had recommended the dissolution of the assembly. The President denied of having any information, the Prime Minister spoke to the Governor over telephone and asked him to fax a message confirming the Chief Minister’s advice for dissolution of the assembly.29

The Governor demurred saying that he did not want dissolution of the assembly. The Prime Minister clarified that he only wanted a record to prove the Chief Minister’s recommendation for dissolution of the assembly.30 The proclamation imposing president’s rule was issued at 3.30pm, on 10th October 1990.

On October 13, 150 congress members of Parliament marched from Parliament House to Rashtrapathi Bhavan shouting slogans against the Prime Minister for the murder of the democracy in Karnataka.

Meanwhile the congress legislature party of Karnataka elected Bangarappa as Leader and submitted to the Governor a list of supporters asking him to appoint Bangarappa as Chief Minister. The Union Government advised the President to revoke the proclamation on October 17, Bangarappa was sworn in as Chief Minister after president’s rule for about eleven days, the shortest in the memory of the President.31

If we examine the application of Article 356 in Karnataka we found that it has been used for political rather than constitutional ends.
The ground on which the Devaraj Urs ministry was dismissed is most unconvincing and justified. For example, apart from ceasing confidence of the assembly the other charges were, horse trading, bribery, inducement, undue pressure and intimidation which has vitiated the political atmosphere in the state.32

In all the cases, the Governors have declined the request of the ministries which had not been defeated on the floor of the House. Without giving the ministry an opportunity to demonstrate its majority support through the ‘floor test’, the Governor, acted solely on his subjective assessment that the ministry no longer commands the confidence of the assembly.

There was no justification for the Governor to read the political barometer. Once a government is formed, it must be allowed to remain in office unless it is outvoted by the legislative assembly. There is no other yardstick to measure the confidence of the people in the government other than testing its strength on the floor of the state assembly as pointed out by the Supreme Court in Bommai Case.

In the cases of Veerendra Patil, Devaraj Urs and Bommai, the Governors gave much importance to stability. In fact, the Governor should not attach importance to the stability and instability of the government because the application of Article 356 is an undemocratic step, whereas the formation of unstable government is a democratic process. As sir Ivor Jennings quotes, “a good government cannot be a substitute for a self government.”33

After the resignation of Veerendra Patil’s ministry an attempt was made to constitute a new government, failing which the state was taken under Article 356.34 It is not the business of the Governor to take note of the internecine disputes within the ruling party but leave it to them to fight it out.35
Despite bitter historical experiences, the Sarkaria Commission has not recommended, rightly in view of the present national context, deletion of Article 356. It has emphasized that Article 356 should be used very sparingly and as a measure of last resort in case of genuine breakdown of constitutional machinery in the state.

The commission recommended that there should be effective "Judicial Review" of the proclamation imposing president's rule in the state. Firstly, that the report of the Governor on the basis of which President's satisfaction as the facts inexistence or information received by the President and on which he can also act independently of the Governor's report must not be vague or wholly irrelevant.36

In brief, the material facts and grounds on which president's rule is imposed should be made an integral part of the Presidential proclamation.

DELEGATION OF FUNCTIONS:

Constitutionally, the union government can delegate its power to the states in two ways. According to Article 258 of the Indian Constitution, the President may, with the consent of a state government, entrust a central government's function to an officer of the state government. Whereas, according to Article 258 [A] of the Indian Constitution, the Governor of a state may, with the consent of the Government of India, entrust to the union government's officers certain function of the state government.

The differences between the two types of delegation is that, in the former, the union cannot act on its own without the consent of the states; whereas in the latter case, the union can act unilaterally by virtue of the authority given by Parliamentary legislation. The states might incur additional
expenditure for either carrying out the directions or performing duties given by the union government and there is no justification for imposing this additional burden on the state's exchequer. The Constitution provides that the union government will compensate the states for this purpose and in case there is any disagreement between the union and the state government concerned as to the amount of compensation payable, the matter will be referred to the Chief Justice of India to decide it by appointing an arbitrator. Arbitration will help in shielding from public eye, the internal conflicts between different governments thereby avoiding bitterness in their reciprocal relationship.

The original Constitution did not contain any provision enabling the state governments to delegate their executive functions to the union. The states faced practical difficulties in the face of absence of such a provision, with regard to certain developmental works.

It is also worth-mentioning here that in August 1988, the Karnataka state government published a 64 page pamphlet on its pending proposals with government of India. They cover projects pertaining to matters in the state and concurrent lists as well in the union lists relating to agriculture, horticulture, animal husbandry, fisheries, forestry, commerce, industries, irrigation, tourism, housing, social welfare, etc.  

In his address to the joint session of the Karnataka legislature in February 1989, Governor P. Venkatasubhaiah made an earnest appeal to the centre for the clearance of the Rs.1250 crore for Mangalore Oil Refinery and Petro Chemical complex.

It is a matter of great pity that in certain cases, the centre even after having received the amount from the World Bank for state projects, was
reluctant to release it. An interesting example of this is, Karnataka's Multi-state cashew project. Although New Delhi has already been reimbursed by the World Bank, the government of India did not release to the government of Karnataka an amount worth Rs.114.12 lakhs in the case of Multi-state cashew project. As a result, the project ended on September 30, 1987. Strangely enough even in those cases in which central finances and inter-state disputes were not involved, still the delay persisted.

Article 258-A was added under which the Governor of a state may with the consent of the government of India, entrust either conditionally or unconditionally to that government or to its officers functions in relation to any matter to which the executive power of the state extends.

THE GOVERNOR'S OFFICE:

The Governor's role, as described in the constitution, is more or less akin to that of the President of the union. The importance of the office lies in the fact that it provides an important link between the centre and the states regarding administrative matters. The Governor is required to submit a fortnightly report to the President of India wherein he is to make an assessment of various events happening in the state. On the whole he is to function as the eyes and ears of the President in the state. The arrangement envisaged in the constitution aims at harmonious functioning of the triangular structure-centre, Governor, & State Government. But the fact is that situation in the country has undergone many changes that the founding fathers of the constitution could hardly have foreseen.

Indeed the constitution left some room for subjective assessment both for the President and the Governor relating to the office of the latter the
President in case of making an assessment of the situation of the state. And the framers of the constitution perhaps suffered from shortsightedness in not being able to foresee the havoc created by these provisions might endanger.

The blatant misuse of this august office for the narrow ends of the party in power at the centre over the years has robbed its prestige and dignity to such an extent that today it enjoys scant respect in the eyes of even those who hold it.41 "The truth is that principles which ought to be immutable and universal have become variable. They can change 180 degree in a jiffy, depending on which side of the political divide one happens to be."42

The Governor has a discretion in appointing a ministry only when the situation is fluid and does not appear to be very clear. The situation becomes still worse when the possibility of constituting a coalition government is extremely dim and Governor is to invite the leader of the majority party to form the ministry. The constitution expects the Governor not to allow the growth of an impression that in a particular situation he has displayed a partisan attitude, "Any such suspicion breeds the poison of democratic government."43

In 1983 in Karnataka Governor Govind Narain asked Janata Ranga combine which had 95 seats in the assembly and also enjoyed support of 10 independent MLAs, 6 communist MLAs to substantiate their majority before he could invite them to form the ministry. Further, he asked them to first elect a leader. This stand of Governor was not justified and was dictated by purely political considerations. The proper action on his part would have been to ask the Janata Ranga combine to elect its legislative party leader within reasonable time, and after it had failed to form a ministry he could have invited the leader of the next largest party to form the government.
In April 1989, in Karnataka the Governor, Venkatasubbaiya dismissed S.R.Bommai ministry and dissolved the state assembly following withdrawal of support of 19 MLAs of the Janata Dal ministry. This action of the Governor was in contravention of the constitutional norms as well as the recommendations of the Sarkaria Commission which demands that Chief Minister should be given an opportunity to demonstrate his majority on the floor of the assembly through voting.

Recently i.e. in January 2006 such a situation arose in Karnataka state also.

The congress in Karnataka had been in trouble over months when it found its tie with the Janata Dal [S] creating new frictions everyday. On January 9, 2006, the Senior Leader of JD[S], Mr. H.D. Devegowda announced that his party's national executive would decide on February 8, 2006, whether to withdraw from the coalition government in the state. Mr. Gowda was peeved at the court attempts made by the congress to win over.

The JD[S] rebel and former deputy Chief Minister Mr.Siddharamaiah, Mr. Deve Gowda proposed, but his son Mr.H.D. Kumarswamy disposed. That was true in the political drama that was unfolding in Karnataka. On January 18, 2006 it looked the full of the nineteen month old Dhram Singh government in Karnataka, had become imminent when the dominant group of JD[S] informed the Governor, Mr.T.N.Chaturvedi about its decision to pull out of the coalition with the congress and to stake claim, along with the BJP, for forming an alternative government.

The JD[s] group comprising 44 members out of its total of 59, announced its decision to align itself with the BJP, the largest group in the 224
The changing political equation in the state compelled the Governor on January 19, 2006, to ask the Chief Minister Mr. Dharam Singh to seek a vote of confidence in the Assembly on or before January 27, 2006. A third consecutive day of political commotion in Karnataka on January 20, 2006 saw the Kumarswamy group of the JD[S] and the BJP spiriting away their MLAs to havens inside and outside the state to prevent any poaching during the run up of the scheduled voting in the Assembly by January 27, 2006. In between there were meetings between Mr. H.D. Devegowda and his son when the father tried to wean away his son from the BJP tie up, but without success.

Mr. Dharam Singh resigned on January 28, 2006 and Mr. Kumarswamy became the leader of the JD[S] state legislature party.

Janata Dal[S] leader Mr. Kumarswamy and the BJP leader Mr. B.S. Yadiyurappa were sworn in on February 3, 2006 as Chief Minister and Deputy Chief Minister of Karnataka respectively by the Governor T.N. Chaturvedi, ending the fortnight long political uncertainty in the state. The coalition partners have agreed to share power for the remaining forty months of the 12th assembly, on the Jammu and Kashmir model. They will hold the office of Chief Minister [Twenty months each]. The Janata Dal [secular] and Bharatiya Janata Party led coalition government won a vote of confidence in the assembly on February 8, 2006.

In such a critical political condition the Governor of Karnataka T.N. Chaturvedi used his discretionary powers and found the way for the
possibility of constituting a new coalition government which emerged out of the coalition government. This shows the intelligent role played by the Governor of Karnataka to avoid the political friction/conflicts in the state, and to maintain peace and order in the state along with avoiding the possibility for mid-term elections. In the above case the role of Governor was commendable.

The Governor of Karnataka T.N.Chaturvedi in this case has not played any party politics. Governor, T.N.Chaturvedi without playing party politics has acted in a rational manner. He acted according to the constitutional provisions, his decision to invite H.D. Kumarswamy for the formation of a coalition government is a welcoming step and quiet appreciative.

Another major issue pertaining to the centre state relations is the role of the Governor under Article 356 of the constitution. There are many instances to demonstrate that the advices of the Governors in this regard have not always been proper. Consequently the implementation of this article has become an important cause of confrontation between the centre and states. And we have already been examined the situation when different parties are at the helm of affairs at the centre and in the state of Karnataka & the imposition of president’s rule also. Thus, the Governor much against the expectations of the constitution, becomes a party to factional politics in the state and the accepted maxims and practices of Parliamentary government are openly flouted to favour a particular political party. “The Governor should always keep in mind that he is an impartial umpire whose duty under the terms of the Indian Constitution is to protect the rules of the game and safeguard the basic scheme of government in the state.”

“Insipite of much deliberations on the constitutional provisions relating to the state Governors, the makers could not remove all possibilities of
controversy. That they could not, was mainly due to their obsession with the Government of India Act, 1935. The concept of discretionary powers of the Governor was taken almost verbatim from the 1935 Act. The result was that while the constitutional scheme envisaged for the states was essentially the cabinet system of government, some traces of the Presidential system could at the same time be discerned".45

These various aspects of the Governor's role have been taken for critical examination. Several recommendations have been made. But what matters most is the type of the person.46

The Governor's oath of office obliges him to "preserve, protect and defend the constitution and the law" and to devote himself "to the service and well being of the people" of the state concerned. In practice, however, thanks to the proliferation of Governors, the holder of the office has begun to appear as a political tool of the central leadership.47

Governors have a tendency of leaning towards the centre because it is the centre which appoints them and can remove them. But it is a matter of great regret that transplantation of ministerial failures into Raj Bhavans once aptly nicknamed as 'gilded cages' by one of the frustrated occupants has been a time honoured practice.

But as a matter of fact thoughtful Governors, with pleasing the central leadership or with being popular with the ruling party or parties in the state concerned, would be in a position to play a constructive role in the interests of the state’s people and consequently of the nation itself. Certainly the Governor can play a useful role if he has the personal stature and is not sought to be made use of by either the central government or the state government living in a
political situation like the present one, it is high time that the wrong doers must realize that the accumulated wrongs need to be corrected. And the Governor must work for the materialization of the hopes and aspirations of framers of our constitution by performing his functions in a manner to lubricate the machinery of government, to see that all the wheels are going well by reason not of his interference, but of his friendly intervention.\^{48}

MINIMISATION OF UNION – STATE DISCARD:

Division of power necessarily postulates the possibility of friction and conflict. Despite the preference for exhaustiveness the framers of our constitution were fully aware of the fact that in a federation conflicts between the union and the states cannot be ruled out altogether. While considering such a delicate issue they were guided by the age old proverb, to spare the rod is to spoil the child. They provided certain remedies that they thought would not eat the clan vital of the constitution. This is normally done by mutual discussions, consultations and negotiations of conferences of Governors, Chief Ministers, officials of the central government and the state governments, Planning Commission, National Development Council, National Integration Council, etc., Indeed federalism works well when it has as its basis in the general realization that though the division of powers is the essence of federalism, both centre and the states govern the same people, hence, great is the need for intergovernmental co-operation.

[A] DISPUTE SETTLEMENT MACHINERY IN RESPECT OF RIVER WATER DISPUTES:

It is quite natural that rivers in India do not flow within the limits of political boundaries of states. Hence, there is great scope for inter-state discord
on the points of sharing of waters of these inter-state rivers and the various River-valley projects. Article 131 of the Indian Constitution provides for the judicial determination of disputes between states by conferring exclusive jurisdiction upon the Supreme Court. But Article 262 provides for the adjudication of a special category of disputes by an extra judicial tribunal. It empowers the Parliament to exclude the adjudication of any dispute with respect to the waters of any inter-state river valley from the jurisdiction of the courts and provides for the adjudication of such disputes in any matter provided by Parliament.

Although an act of Parliament authorized the creation of a tribunal to handle disputes between the states concerning inter-state waterways, the central government has relied on negotiation. The Inter-State Water Disputes Act, 1956, Section 4[1] provided that when any request under section 3 is received from any state government in respect of any dispute and the central government is of the opinion that the 'Water dispute cannot be settled by negotiation', the central government shall, by notification in the official gazette, constitute a water dispute tribunal for the adjudication of the water dispute.

Inter-state water disputes go back to pre-independence days and even today many of them have not been settled to the satisfaction of the parties concerned. “Possibly, the central government’s continued reliance on negotiation is harmful to inter-state harmony. Such disputes, if allowed to drift, may accentuate regionalism and prove inimical to national interests. Sharing of waters and estimation of the needs of the various areas are primarily technical issues; with expert help, an impartial tribunal should be able to give an award which is fair and conclusive even if it does not satisfy all concerned. Hence, the use of machinery established by the Inter-State Water Disputes Act, 1956 would be desirable.”49
CONSTITUTIONAL PROVISIONS RELATING TO INTER-STATE RIVERS:

The constitution of India has classified Irrigation as a state subject, inter-state rivers as an union subject and electricity as a concurrent subject.\(^{50}\)

This wrong classification has caused complication to a great extent. Article 263 provides: If at any time it appears to the President that the public interests would be served by the establishment of a council charged with the duty of:

1. Inquiring into and advising upon disputes which may have arisen between states;
2. 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
3. Making recommendations upon any such subjects and in particular recommendations for the better co-ordination of 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 organization and procedure.

The framers of the Indian Constitution thought that the establishment of an inter-state council would bring about better co-ordination between the states. But, no such council has been established so far.

LAWS OF THE UNION GOVERNMENT:

Article 262[1] reads: 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:

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Two important laws are passed by Parliament under Article 262[1], read with entry 56 of list – I, relating to inter-state rivers viz., The Inter-State Water Disputes Act, 1956 and the River Boards Act.

INTER-STATE WATER DISPUTES ACT – 1956:

The Inter-State Water Disputes Act, 1956, enables a state to request the central government to refer to a Water Dispute Tribunal, any dispute with another state government with regard to the use, distribution or control of the waters of any inter-state river or river valley or any dispute regarding the interpretation of an inter-state agreement. On receipt of such a request, the central government shall, if it comes to the conclusion that matters cannot be settled between the parties by negotiations, constitute a tribunal for the adjudication of such dispute. The tribunal shall consist of three Judges drawn from the Supreme Court or the High Courts.

The Irrigation Commission of India, 1972, has pointed out that "Water disputes should be referred to the tribunal only in the last resort and judicial decisions in the case of inter-state water disputes tend to become starting points for fresh litigation. This is so because issues in inter-state river disputes are seldom so clear cut as to admit of unequivocal decisions. Where the situation is fluid and subject to change, as in rapidly developing river basin, any judicial opinion at a given point of time is bound to become out dated." The commission has further observed that judicial decisions, notwithstanding their legal force, cannot carry the same conviction nor give the same psychological satisfaction as agreements or compacts arising out of negotiation.
RIVER BOARDS ACT:

The River Board Act authorizes the union government to "establish a River Board for advising the governments interested in relation to such matters concerning the regulation or development of inter-state river or river valley or any specific part thereof and for performing such other functions as may be specified in the notification."

Thus, the River Boards Act created a machinery for investigating the water potential of river basin for collecting relevant data and advising the state governments concerned on the best means to develop their water resources of a basin. They are expected to present a comprehensive picture of the river basin which will enable the states concerned to take decisions as assessed facts and in consonance with the water needs of the basin as an entity. Their function is, therefore, to secure agreements among the states concerned to the schemes which they propose. The boards are empowered to apportion the cost of development and to monitor the progress of work.

Whatever may be the reason, so far no steps have been taken to set up any river board. So, both the Acts, i.e., Inter-State Water Disputes Act and River Boards Act, suffer from not only legal lacunae, but also lack the capacity to enthuse confidence in the minds of the states in resolving their conflicts.

Now, let me give some instances of the water disputes tribunals related to the state of Karnataka, Which have played an important role in the administrative relations, between Centre and the State of Karnataka.

1. CAUVARY WATER DISPUTE:

To the natural turbulence in flowing waters, and the ever-recurring floods and droughts and even with regard to border and etc., in one part of the country or another has added a new problem of rapidly increasing dimensions.
Considerable confusion prevails in respect of the rights and wrongs of what should, or should not, be done in respect of inter-state disputes by the central government or by the governments of different states.

THE CAUVERY RIVER:

The Cauvery river referred to in the South as the Dakshina Ganga is the fourth longest of the east flowing rivers in India. It is one of the few rivers whose potential has been tapped. About 90 to 95 percent of the water of the river being used to irrigate nearly a million hectares of land. It has a drainage area of about 80,300sq.k.mtrs. In Tamil Nadu, it covers a length of 321 km and drains an area of 46,390k.m. The river contributes in a big way to the industrial and agricultural prosperity of Tamil Nadu [which formed part of Madras Presidency during British times and up to reorganization of states in 1956] and of present day Karnataka [of which the former princely state of Mysore was a part until 1956]. In the whole of the South, the Grand Anicut across the cauvery was the most notable of the ancient river training works. The first structure, a weir built of stone and clay, was believed to have been laid in the second century A.D. During successive centuries additions and alterations were made. This solid mass of stone masonary, about 330 meters long; 12 to 18 meters wide and 4.6 to 5.5 meters high, has served irrigation and withstood the annual Cauvery floods for over 700 years.

CAUVERY IN KARNATAKA:

The river Cauvery takes its birth at Talakaveri in Brahmagiri range of hills in the Western Ghats near Mercara in Coorg district of the state of Karnataka at an elevation of 1,341M, above mean Sea level. This is an inter-state river traversing through Karnataka, Kerala, Tamil Nadu and Pondicherry.
The total length of the river is about 802 kms. It flows for a length of 381kms in Karnataka before reaching Karnataka and Tamil Nadu border. The river forms a boundary between the two states for about 64kms. It traverses a further distance of about 357 kms, in Tamil Nadu before joining Bay of Bengal at Kaveripattanam. The river Cauvery is a life line not only for southern Karnataka, but also for South India.

During its long journey the river passes through picturesque scenery through Western Ghats surrounded by thick jungle and coffee estates in the districts of Coorg and Hassan. The river Cauvery is joined by the river Kannika at Sangam at Bhagamandala.

The first tributary Harangi river joins the river Cauvery at the border of Coorg and Mysore district near Kudige. In addition smaller tributaries like Kakkabe, the kadmur and the kummahole also joins the river Cauvery in this district. The river then enters the Mysore district. Two important tributaries namely, the Hemavathy on the left Bank and the Lakshmana theertha on the right bank joins the river Cauvery in the expanse of Krishnarajasagara reservoir.

The Cauvery river at Srirangapatna splits into two arms and flows around this island town. The two arms of the river rejoins at Sangam downstream of Srirangapatna. Lokapavani river joins the river Cauvery immediately after Srirangapatna. Another major tributary river Kabini which takes birth in the western ghats in Kerala state joins the river Cauvery at Tirumakudalu Narasipur.

Another tributary Suvarnavathy joins the river Cauvery downstream of Tirumakudalu Narasipur and Gundal river joins the same river upstream of
Dhanagere anicut. The Cauvery river then takes a north-easterly direction and is joined by Shimsha on the left bank below Shivanasamudram. It is here that river starts cutting through the eastern ghats and from a width of one km the river narrows down considerably and flows in cascades through deep gorge. At Shivanasamudram, which is an island, the river divides into two branches and falls through a height of 91m in a series of falls and rapids. Gaganchukki and Bharachukki, the two famous water falls are located in this region. The fall at Gaganchukki has been utilized for establishing the first power station in Asia to generate hydro-electric power. The two branches of the river joins after the falls where another tributary Arkavathy joins the river Cauvery just before it reaches Mekedatu before entering Tamil Nadu state. After flowing through its deep gorge, the river Cauvery continues its eastward journey and forms the boundary between Karnataka and Tamil Nadu states for a distance of about 64kms. Another stream Uduthorehalla joins the river Cauvery on the right Bank.

**CAUVERY IN TAMIL NADU:**

In Tamil Nadu, the Cauvery continues to flow eastwards and forms the boundary between the selam and Coimbatore districts. At Hogenkal falls, the river takes a Southernly course and enters the Mettur Reservoir which was constructed in 1934. The river emerges from the eastern ghats below the Mettur reservoir and continues southwards. The Bhavani river joins it on the right bank about 45kms. [28 miles] below the Mettur reservoir and thereafter, the river takes a more easterly course to enter the plains of Tamil Nadu, where it is joined on the right by two more tributaries, the Noyil and Amaravathi, before entering the Thiruchirapalli district. Here, the river widens with a sandy bed and flows in an easterly direction. Because of its vastness, the river is known by name Akhanda Cauvery.
Immediately below Thiruchirapalli, the river splits into two branches, the northern branch being called the Coleron and the southern branch retaining the name of the parent river. The upper anicut was constructed in 1836 at this point to facilitate diversion of the supplies of the river into the Cauvery delta. Some 16kms [10miles] below the two river join again, thus forming the Srirangam island. Below the Grand Anicut the Southern Cauvery branch further splits into two, one being called the Cauvery and the other Vennar. The branch which retains the name of the Cauvery throughout its course enters the Bay of Bengal, as an insignificant stream at Kaveripatnam about 13kms. [8miles] north of Tranquebar. On the northern branch i.e., river Coleroon, the lower Coleroon Anicut was constructed in 1836. The Coleroon River enters the sea near Chidambaram.

MYSSORE-MADRAS PRESIDENCY ACCORD:

Right from the beginning, development of irrigation in Karnataka was through tanks and anicuts only. No special activity worth mentioning could be noticed during the days of British administration. A separate Irrigation department was formed in 1872 to deal with tanks. In 1886, minor tanks were handed over to revenue department to enable proper maintenance of these irrigation tanks. In 1911, the Princely state of Mysore passed a regulation called “Tank Panchayat Regulation”.

Only after the “high dam technology” came into use, the irrigation activities in Karnataka picked up with the first storage structure in the form of Krishnarajasagara was started in 1911, for which the foundation stone was laid during November 1911. The work was stopped till 1924 on account of objection raised by Madras. This project was to store 44.8 TMC of water to irrigate 50,607ha. And also to supply water to Shivansamudram Hydro power station.
The progress of irrigation works was impeded time and again by the attitude of Tamil Nadu by insisting on the fulfillment of conditions imposed through alleged agreements of 19th century. Consequently the development of irrigation in the state suffered and the area in Mysore could increase from 3.15 lakh acres in 1924 to 6.6 lakh acres in 1972. In contrast to this slow development, Tamil Nadu which was contributing only 31.9% of the waters of the Cauvery basin had increased its irrigation from 14.5 lakh acres as on 1924 to 22.00 lakh acres with cropped area of 28.0 lakh acres as on 1972.

The utilization of water in Tamil Nadu was about 489TMC against 177 TMC in Karnataka as on 1972, as reflected by studies carried out by Sri C.C.Patel, additional secretary, Government of India during 1974.

Thus, though Karnataka contributes over 50 percent of the basin water yield, the utilization as on 1972 was only 20 percent, where as Tamil Nadu was claiming over 70 percent of the basin flows inspite of large quantities going to waste and much undeveloped ground water not being harnessed. Tamil Nadu wants this situation to be perpetuated.

Prior to 1892, only 87,131 acres in the former princely state of Mysore were under irrigation in the Cauvery basin. That year, the state sought a working arrangement with the former Madras presidency. An agreement was reached, specifying the scope of utilization of the Cauvery waters. It prohibited Mysore state from taking up any new project on the river without the consent of the Government of Madras Presidency. This resulted in the classification of the Cauvery and its tributaries as scheduled and non-scheduled for the use of their waters. The water of the rivers classified as the schedule could be used by Mysore state, according to the agreement, with the consent of Madras Presidency. The water of the rivers specified as non-scheduled could be used freely without such consent.
Mysore state was to obtain the prior consent of Madras Presidency for constructing new irrigation reservoirs across any part of the following main rivers in the Cauvery basin in the Princely state. Cauvery Honhole or Suvarnavathi, Hemavathi, yagachi upto Belur Bridge; Lakshmanthirtha and Kabini, Mysore state was also not to be build any new anicuts across the Honhole, the Yagachi upto Belur Bridge, the Cauvery below the Ramaswami Anicut and the Kabini below the Rampur Anicut, without the prior consent of Madras Presidency. If Mysore state were to ask for consent for construction of any new irrigation reservoirs or any new anicut in the reaches specified above, the Madras government was not to decline consent except on grounds of protection of prescriptive right already aquired and actually existing. If there was any difference of opinion the final decision would be given either by arbitrators appointed by both governments or by the government of India.

KRISHNARAJ SAGAR RESERVOIR:

In 1910, the chief engineer of Mysore state, who later became dewan of Mysore, Sir. M. Vishaweshwarayya, prepared plans for the Kannambadi reservoir, known as Krishnarajsagar reservoir, across the Cauvery near Mysore city. The scheme was envisaged in two parts. The first was to provide for storage of 11,000m.c.fi. of water urgently needed for generation of additional power at Sivasamudram to meet the increased demand of the Kolar Gold fields. The second part provides for a total storage of 41,500 m.c.fi. of water to irrigate 125,000 acres of scorched land in Mandhya and Mysore districts.

MADRAS GOVERNMENT'S OBJECTIONS:

The Madras Government consented to the first part but did not agree to the second part of the plan on the ground that it would adversely affect its
prescriptive rights in respect of development of irrigated areas under anicut channels and the extensive delta area.

**GRIFFIN AWARD:**

Mysore state referred the dispute to the Government of India which appointed a judge of Allahabad High Court, H.D. Griffin as the arbitrator. In his award on May 12, 1914 he held that the construction of the Krishnarajsagar reservoir did not conflict with the prescriptive rights of Madras. He said the varying depth of water in the river measured at upper anicut, the headworks of the delta system, was adequate. The award mentioned that the depth of 6.4 feet at this point was adequate and represented a full measure of satisfaction of the prescriptive rights of Madras. Griffin suggested that Madras consent to the plans of Mysore state.

The Madras government, which felt aggrieved, asserted that a depth of 7.5ft at the upper Anicut level was essential and claimed full control over the regulation of water flow at Kannambadi. But the government of India ratified the award and Mysore went ahead with the project according to the original design.

**FRESH NEGOTIATIONS:**

Madras then appealed to the secretary of state for India who allowed to appeal and asked Mysore state to initiate fresh negotiations with Madras or seek recourse to fresh arbitration. Mysore agreed to enter negotiations which began on April 12, 1920. The Government of India was the mediator on the precondition that there would be no record of the proceedings and neither side should quote the views of the mediator in any subsequent correspondence.
NEW AGREEMENT:

Madras withdrew its objection when Mysore agreed to its construction of the Mettur reservoir and extension of irrigation to 3,01,000 acres. Madras then wanted the right to construct reservoirs across the Bhawani, Amaravathi and Noyll. An agreement signed on February 18, 1924 provided that the storage capacity of the Mettur reservoir was to be no higher than 112ft, above the sill of the under sluices or 124ft, above the bed of the river. It stipulated that the “limitations and agreements provided therein; shall at the expiry of 50 years be opened for reconsideration. Thus, the agreement expired in 1974 and was to be reviewed.

The agreement did not affect Mysore’s right to construct new irrigation works on the Cauvery’s tributaries not included in the agreement schedule of 1892. Should Madras construct new irrigation works on the tributaries on its side, Mysore would be at liberty to construct a storage reservoir on one of the tributaries of the Cauvery in the state of a capacity not exceeding 60 percent of the new reservoir in Madras. The agreement also provided that in the event of a dispute between the two governments over the interpretation, operation or carrying out of the agreement, the matter was to be referred for settlement to arbitration, or of the governments so chose, to the government of India. Technically, Mysore was at its liberty to take up any project involving the Cauvery and its tributaries without however hampering the assured flow of waters to Tamil Nadu.

The agreement provided for the following modifications in the 1892 Agreement.
• The Krishnaraj Sagar dam would have an effective capacity to irrigate 1,25,000 acres. Certain flows, known as limit flows would always be available to the Cauvery delta, even after the dam was in operation.

• The Madras government would limit the new area of irrigation in the Cauvery Mettur project to 3,101,000 acres and the Mettur reservoir would have an effective capacity limited to 93.5 TMC feet.

• Mysore could build on the Cauvery and its tributaries aggregate capacity of 45 TMC feet of water to irrigate 1,10,000 acres. The impounding in the reservoirs should, however, be so regulated as not to make any material diminution in the supplies to Madras.

• Mysore would continue to have the right to construct new irrigation works on the tributaries of the Cauvery in the state not mentioned in the 1892 agreement.

The Krishnaraj Sagar reservoir was completed following the agreement. Mysore later complained that the Government of India had permitted Madras to build the Mettur High Level canal, Kattlal regulator, the Pullambadi canal and the Coleroon Anicut and that Madras would appropriate the surplus waters of the Cauvery that would be available for diversion in 1974. Mysore also objected to the proposals of the Madras government to improve and remodel the Cauvery delta canal system to provide irrigation to additional areas. It held that the lower Bhavani and Amravati reservoirs had been built without assessing their effects on the supplies due to Mysore. Madras on its part, complained about the construction of the Hemavathi reservoir and the reservoir on the Harangi, Kabini and Suvarnavathi by Mysore.
KERALA JOINS THE COMPLAINT:

Kerala also joined in complaining about the Kabini project. It said the requirement of the area transferred to the state on the reorganization of states in 1956, had to be taken into account and that the modified Kabini project would submerge about 250 acres in Kerala. Mysore contended that the areas transferred to Kerala were parts of former Madras Presidency at the time of the 1924 agreement and Tamil Nadu had not made any proposal to use the Kabini waters in the areas. Kerala, therefore had no claim now. If it had any it could be discussed only when the 1924 agreement was revised.

DISCUSSIONS BETWEEN STATES:

Various issues were discussed first at official level meetings among the governments of Kerala, Karnataka and Tamil Nadu on January 28 and 29, 1970. They were discussed at the ministerial level on February 9, 1970. The state ministers agreed that the centre should formulate proposals in the light of the discussions.

The then Union Irrigation minister Dr. K.L. Rao told, the Lok Sabha later that he had on February 11, 1970, forwarded certain proposals were considered at a meeting in Madras on May 16, 1970, presided over by Dr. Rao. The three chief ministers agreed that engineers of the three states should work out the data for an agreement on the dispute. However, 25 such meetings were held without much success.

1924 ACCORD EXPIRES IN 1974:

The 1924 agreement expired in 1974. While Tamil Nadu wanted renegotiations for an agreement on the basis of the earlier one. Karnataka argued that the 1924 agreement was ‘One sided’. Karnataka argued that the agreement between the princely state of Mysore and the former Madras Presidency
would not be binding on the re-organised state of Karnataka. Pondicherry claimed the water as the river flows through it before merging into the sea, while Kerala also stated a claim since the Kabini river, one of the tributaries of the Cauvery, originates in Kerala.

The Karnataka government unilaterally proceeded with the construction of three reservoirs – Hemavathi, Kabini and Harangi in violation of the provisions of the 1892 and 1924 agreements. Tamil Nadu requested the centre in 1970 to constitute a tribunal to settle the dispute. When it did not come, Tamil Nadu filed a suit in 1971 in the Supreme Court seeking a direction to the centre to constitute a tribunal. The suit was later withdrawn.

The Chief Ministers of Tamil Nadu, Karnataka and Kerala agreed in New Delhi on November 29, 1974 to set up a ‘Cauvery Valley Authority’. The meeting was held under the Chairmanship of the then irrigation minister Jagjivan Ram. The proposal did not work out for want of ratification.

Mr. Jagjivan Ram said on August 27, 1976, that Tamil Nadu, Karnataka and Kerala had “ended” their dispute on the sharing of Cauvery waters. As per an agreement a committee of representatives of the three states and the central government “shall be constituted immediately to work out the manner of sharing the available waters in lean years”. The understanding was not respected by Tamil Nadu when the government led by Mr. M.G. Ramachandran returned to power in the state. Afterwards there had been a series of meetings without any accord being reached between Tamil Nadu and Karnataka. The last meeting was in June 1986.

CAUVERY TRIBUNAL:

With the passage of time Cauvery water has come to be utilized almost fully, rendering the sharing more complex. Since prolonged negotiations-26
trilateral and bilateral meetings at the ministerial level between 1968 and 1990 failed, the dispute had to be referred to adjudication by the Cauvery Water Disputes Tribunal set-up under the Inter-State Disputes Act, 1956. This vital move came in 1990, when the National Front Government led by V.P. Singh was in shaky power at the centre and the DMK government led by M. Karunanidhi was in place in Tamil Nadu.

Emotions have been running high in both the states since the tribunal was constituted and the dispute has entered its most sensitive stage. Competitive chauvinism has made an already knotty problem seem, at times virtually intractable. The urgency and importance of exploring modalities for an amicable settlement of the dispute need no under scoring in a national context where unwanted problems that divide the people abound.

DISTRESS CONDITIONS:

What should be done during deficit or distress conditions? The tribunal itself, in its clarificatory order of April 3, 1992, provides the answer. “If in future a situation of distress is caused by diminution in the supply of the water for meeting the demands ordered, the method of pro rata sharing of the distress can always be adopted. However, Karnataka does not seem to have been very efficient or vigilant about approaching the tribunal even under conditions which it claims amount to distress.”

INTERIM ORDER:

In its interim order of June 25, 1991, the tribunal said: “At the present stage, we would be guided by consideration of balance of convenience and maintenance of existing utilization, so that the rights of the parties may be preserved till the final adjudication”. For this purpose, the tribunal pointed out that the average of the annual flow of Cauvery water into the Mettur Dam reservoir in Tamil Nadu could serve as a “reasonable basis”.

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Making it clear that it was only formalizing the annual water release to Tamil Nadu from Karnataka, the tribunal said that if it was of the “View that there ought to be the release of waters by Karnataka which is to be fixed by having regard to the realization made over a span of years in the proximate past after excluding abnormally good and abnormally bad years”.

The tribunal made it clear that the interim orders “do not amount to final adjudication of the rights and contentions of the parties in regard to the dispute referred to this tribunal”. The tribunal noted that its Prime Consideration was to preserve “as” far as possible, pending final adjudication, the rights of the parties and also to ensure that by unilateral action of one party the other is not prejudiced from getting appropriate relief at the time of passing of final orders? It added: “We ought to also endeavour to prevent the commission of any act by the parties which might impede the tribunal from making final orders in conformity with the principles of fair and equitable distribution of the waters of this inter-state river.”

Accordingly, the tribunal ruled that it was directing the state of Karnataka not to increase its area under irrigation by the waters of the river Cauvery beyond the existing 11.2 lakh acres. This order, it said would remain operative till final adjudication of the dispute. Maintaining that the three states, Karnataka, Kerala, and, Tamil Nadu and the union territory of Pondicherry being riparian to the Cauvery river were entitled to the release of the waters of the river in a “reasonable and beneficial manner,” the tribunal however, said that at this stage it would be neither “feasible nor reasonable” to determine how to satisfy the needs of each state to the greatest extent possible with a minimum of detriment to others.
PRESENT STATUS ON CAUVERY WATER ISSUE; CONSTITUTION OF TRIBUNAL:

The Cauvery Water Disputes Tribunal was constituted under notification dated 2nd June 1990, Ministry of Water Resources with justice Chittatosh Mookerjee as Chairman and Justice S.D. Aggarwal and Justice N.S.Rao as members.

COMPLAINT OF STATE OF TAMIL NADU:

The complaint of the state of Tamil Nadu of July 1986 under section 3 of the Inter-State Water-Dispute Act was referred to Tribunal in No.21/1/90 WD dated 2/6/90 of ministry of Water Resources Government of India.

PLEADINGS:

The states filed their statements of case counters and rejoinders at different points of time from September 1990 to October 1991.

ISSUES BEFORE THE TRIBUNAL:

Based on the contentions raised by the disputed states in their pleadings filed before the Tribunal, the Cauvery Water Disputes Tribunal framed 50 issues on 7/1/1992. The issues can be broadly classified into the following sub-groups:

<table>
<thead>
<tr>
<th>Sl.No</th>
<th>Sub-Groups</th>
<th>Issue Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agreement</td>
<td>1 to 16, 19, 40, 41 and 45</td>
</tr>
<tr>
<td>2</td>
<td>Availability of water resources</td>
<td>17, 18, 20 to 23, 25, 31, 46 and 47</td>
</tr>
<tr>
<td>3</td>
<td>Agricultural Aspects</td>
<td>24, 33, 34, 37, 42 and 43.</td>
</tr>
<tr>
<td>4</td>
<td>Extra basin diversion</td>
<td>27 to 29 and 35</td>
</tr>
<tr>
<td>5</td>
<td>Drought aspects</td>
<td>26</td>
</tr>
<tr>
<td>6</td>
<td>Water Supply and Power Aspects</td>
<td>27 to 30, 32, 35 and 36</td>
</tr>
<tr>
<td>7</td>
<td>Equitable Apportionment of Water</td>
<td>23, 26, 31, 34, 38, 44.</td>
</tr>
</tbody>
</table>
DEVELOPMENTS BEFORE THE TRIBUNAL:

Apart from the completion of filing of pleadings and documents before the Tribunal, other important developments in the matter are -

a. Tribunal passed an interim order on 25.6.1991 on the application of Tamil Nadu seeking injunction on Karnataka's Projects and seeking regulated releases at Mettur. The tribunal directed Karnataka.

i. To release water from its reservoirs so as to ensure 205 TMC of water at Mettur in a year from June to May.

ii. Not to exceed its area under irrigation beyond its existing 11.20 lakh acres.

iii. The tribunal had directed that regulation of flow shall be on a monthly schedule to be given in four weekly equal installments. Deficiency in any week to be made good in the subsequent week.

The state of Karnataka sincerely felt that the order of the tribunal had lacunae both legally and technically.

LEGAL LACUNAE:

- The order rendered without justification.

- The order passed without deciding relevant and crucial legal issues touching maintainability.

- The order is not one contemplated under the Act.

- The interim relief granted without prima facie assessing the yield, utilization, basin needs and other relevant matters is arbitrary.
• Arbitrary since it operates irrespective of availability of waters in Karnataka.

• Impracticable, arbitrary and unworkable schedule for the release of waters.

• Balance of convenience not properly weighed between the parties.

• Order passed even before pleadings are complete and without proper investigation.

• Order alters status quo in relation to Karnataka.

TECHNICAL LACUNAE:

a. Releases based on 10 years inflows to Mettur is unjust status quo cannot be maintained by taking average of earlier years.

b. Releases indicated are not tied up with inflow. The order wants Karnataka to ensure 205 TMC whether available or not.

c. The quantity of 205 TMC had never reached Mettur in the six proceeding years as can be seen below.

<table>
<thead>
<tr>
<th>Year</th>
<th>TMC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985–86</td>
<td>158.28 TMC</td>
</tr>
<tr>
<td>1986–87</td>
<td>187.36 TMC</td>
</tr>
<tr>
<td>1987–88</td>
<td>103.90 TMC</td>
</tr>
<tr>
<td>1988–89</td>
<td>181.37 TMC</td>
</tr>
<tr>
<td>1989–90</td>
<td>175.64 TMC</td>
</tr>
<tr>
<td>1990–91</td>
<td>140.00 TMC</td>
</tr>
</tbody>
</table>

d. No Protection to Karnataka in the years-upper catchment has to take the full burden by ensuring 205 TMC even in a bad year.
e. Monthly releases impracticable releases not linked with monthly availability when inflow is not available in any month can it be given from the storage of previous months.

f. No provision to adjust surpluses whereas, deficit is to be made good. There is no terminal reservoir in Karnataka to adjust release, whereas Tamil Nadu having a large Mettur reservoir which absorbs such surpluses which can be later accounted.

g. No consideration given to surpluses and wastages below Mettur. There are situations when catchments above Mettur fails, but lower catchment is in advantageous position regarding monsoons.

h. Restriction on areas in Karnataka ignores development of drought areas and commitments restriction is placed at 11.2 lakh acres as on 1990. Far more areas are committed especially with the completion of works such as reservoirs long tunnel such as Bagur Navile Tunnel, Kanive Aqueduct etc, and the full committed areas should have been regarded.

i. Order does not conform to the very principles laid down by the Tribunal- especially it fails to maintain status quo and balance of convenience.

j. Order rendered without prima facie determination of Yield, utilization and requirements.

IMPLICATIONS:

1. Releases are impracticable to implement as it is not linked to the actual inflow.

2. Releases cause serious reduction in existing irrigation in Karnataka.

3. Ensuring 205 TMC at Mettur means,
Table-5.2

<table>
<thead>
<tr>
<th>To Tamil Nadu</th>
<th>To Karnataka and Kerala</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to Mettur</td>
<td>250 TMC</td>
</tr>
<tr>
<td>Below Mettur</td>
<td>258 TMC</td>
</tr>
<tr>
<td>Ground Water</td>
<td>150TMC</td>
</tr>
<tr>
<td>From rain fall</td>
<td>50TMC</td>
</tr>
<tr>
<td>in Delta</td>
<td></td>
</tr>
<tr>
<td>Approx Total</td>
<td>663 TMC</td>
</tr>
</tbody>
</table>

4. Restriction on increase of irrigation area in Karnataka is detrimental and cause serious repercussions.
5. Prevents developments in Karnataka till final disposal of the case.
6. Causes serious repercussions to farming community.

The popular feeling of the people of Karnataka is reflected in the following unanimous resolutions adopted by both the Houses of the State Legislature on 6th of July 1991.

"This House unanimously urges the government to reject the interim order dated 25/6/1991 of the Cauvery Water Disputes Tribunal as it adversely affects the interests of the state and outside the jurisdiction of the tribunal and does not meet the legal, factual and practical aspects."

"In this background, until a National Water policy is formulated and an appropriate amendment is brought to the Inter-State Water Disputes Act, 1956 and the Tribunal is given clear guidelines, this House unanimously urges the central government to stay all further proceedings concerning the Cauvery Water Disputes before the Tribunal."
THE KARNATAKA CAUVERY BASIN IRRIGATION PROTECTION ORDINANCE 1991:

The legislature's competence to promulgate the ordinance flowed from several circumstances. The equitable shares of waters to which the disputing states are entitled had not been adjudicated and there was no central law operating in the particular field to restrict legislative powers. The state of Karnataka further has the right for its own share of the waters, which could be protected and enjoyed through both legislative and executive action, which in the terms of Article 162 of the constitution are co-extensive.

Under these circumstances the Governor of Karnataka promulgated an ordinance on 25th July, 1991 known as, the Karnataka Cauvery Basin Irrigation Protection Ordinance 1991. The purpose of the ordinance was to provide for the protection and preservation of irrigation in the irrigable areas of Cauvery River and its tributaries. It provided protection and preservation of irrigation in the irrigable areas of Cauvery river and its tributaries. It provided protection for 8.49, 700hec. under the command of various projects which are either completed or under construction subsequently, during September, October 1991, the ordinance has been replaced by an Act called- The Karnataka Cauvery Basin Irrigation Protection Act, 1991.

However, after a detailed comprehensive study of the prolonged Cauvery water dispute which presently has become a burning issue in the centre-state relations during [cultivation] rainy periods, it has become a headache to the centre.

Why has the Cauvery dispute become so difficult?
THERE ARE THREE REASONS:

1. This is not a case of trying to reach an agreement on sharing a river that is as yet largely unused, but a case of re-sharing a heavily used river, involving difficult adjustments. Tamil Nadu as the lower riparian fears a disruption of patterns of irrigation and a related way of life that have a long history. Karnataka as the upper riparian feels that it should not be prevented from using the waters that flow through the state for the purposes of development merely because the lower riparian has a history of irrigated agriculture.

2. The issue has become enmeshed in electoral party politics in both states, making mutual accommodation and adjustment [essential for the settlement of any dispute] very difficult.

3. Cauvery is a fabled river with strong historical, cultural and religious associations in both Tamil Nadu and Karnataka and a dispute regarding such a river tends to arouse strong emotions that make rationality difficult.

Looked at dispassionately, and shorn of politics, the water sharing dispute is not a particularly difficult one. Without trying to anticipate the final award of the Tribunal, let us look at the basics. The availability of flows in the Cauvery was determined by the Central Fact Finding Committee in the seventies as 671 TMC. Perhaps that figure needs to be redetermined, but let us assume for the moment that the availability has not significantly changed. After earmarking reasonable allocations for Kerala and Karaikal. [Say 40TMC or so for Kerala and approximately 10TMC for Karaikal]. Some 600 to 620TMC will have to be shared by Karnataka and Tamil Nadu. The possibilities of allocation
are not infinite the range of possible sharing is fairly limited 320:300 or 380:240 or 400:220 or 415:205 or 420:200 or some such distribution, depending on various factors. [All these are purely hypothetical figures]. Looked at this way, the problem does not seem inseparable.\(^{52}\)

The allocation [as may be agreed upon or adjudicated] may seem inadequate to both states, but they will have to manage their needs within the allocated quantities. This should not be unduly difficult. There are places in the world where people are managing quite satisfactorily with a much lower natural endowment.[for instance, Israel].

Earlier, the Ganga water dispute between India and Bangladesh seemed intractable and almost impossible to resolve. However, it was resolved through the Ganga Treaty of 1996, and the treaty has been operating fairly successfully for the last 11 years.

An even more remarkable example is the Indus Treaty of 1960 between India and Pakistan. Despite the extremely difficult political relationship between the two countries the treaty has been working reasonably well and was not abrogated even during periods of war.

If India and Bangladesh and India and Pakistan could successfully resolve their disputes over river waters, there is no reason why a dispute between states within the Indian Union cannot be settled amicably.\(^{53}\)

There has been much discussion of the 1892 and 1924 Agreements. There is a view that these were unfair to the princely state of Mysore and were imposed on that state by the Madras Presidency which was part of British India and was more powerful. There is a widespread sense of grievance over the past in Karnataka. On the other hand, the view in Tamil Nadu is that the agreements
were based on long and hard negotiations: that there is no basis for saying that the 1924 Agreement was ‘imposed’ on Mysore that the agreement was welcomed by the then dewan of Mysore and that in any case, the old grievance even if valid is no longer relevant as Karnataka has built several reservoirs and acquired control, and the aggrieved party today is Tamil Nadu. There is the further point whether the 1924 Agreement has lapsed or still subsists. On this also there are two views, and this is in fact one of the issues in dispute. For historical and academic purposes the old agreements must certainly be studied, but at the same time they are not going to be of much help in resolving the current dispute over the sharing of the available waters by Kerala, Karnataka, Tamil Nadu Pondicherry [Karaikal].54

It must be noted that in Indian or International law, there is no ownership right over flowing waters. Neither Karnataka nor Tamil Nadu [nor Kerala nor Pondicherry] owns the Cauvery. They all have use rights. There is no hierarchy of rights; neither the upper riparian nor the lower riparian has primacy. There is an equality of rights, but of course not an entitlement to equal shares.

THE WAY OUT:

What is the way out of the present impasse? Agreement is always better than adjudication, but the adjudication process is already on, after many years, is in the closing stages. What is in operation is a constitutionally mandated conflict resolution process. Article 262 and the Inter-State Water Disputes Act-1956 are important components of Indian federalism. The process has been badly delayed in the present case for several reasons, including a change of chairmanship at one stage and more recently the induction of a new member because of the death of a member. Nevertheless, the Final order of the tribunal
on 5th of February, 2007 has not brought any cheer to Karnataka. The Cauvery Water Disputes Tribunal (CWDT) ordered the Karnataka State to ‘make available’ 192 thousand million cubic feet of water annually to Tamil Nadu. Moverover, the tribunal has also lifted the 11.2 lack hectares ceiling imposed on Karnataka which means that the state is now free to make judicious use of the excess water when the monsoon is good. It has also given the green signal for taking up hydro-electric projects in the ‘common reach boundary’ provided the specified water released are ensured. Tamil Nadu will be happy with the order for constituting a regulatory authority to monitor the monthly releases. But, Karnataka has already expressed its displeasure with the award of the tribunal and made clear its intention to go in for an appeal. The history of river disputes in India shows that they have never been resolved satisfactorily through judicial process and in this context, Tamil Nadu Chief Minister M. Karunanidhi’s declaration to hold a dialogue with his Karnataka counterpart, is to be welcomed. The political leaders of Karnataka, in the meantime should ensure that peace is maintained at any cost and elements which may try to rouse emotions are firmly dealt with.

However, the violent protests in Karnataka as a result of the tribunal’s final award is perhaps a prelude to the three governments other than Tamil Nadu filing their review petitions before the tribunal. This clearly demonstrates the failure of the centre and the concerned states to prepare the political ground during these seventeen years to prepare the people to accept an impartial verdict.

Leaders in Tamil Nadu showed their political immaturity in hailing the decision as their victory. An inexperienced central water resources minister almost indicating the centre’s interest in implementing the decision
complicated the situation. Perhaps he was unwisely keen to please DMK, a strong coalition partner of the UPA government. The compulsions of electoral and coalition politics dominated by regional parties have also robbed the national parties like the Congress and the BJP of their statesmanship.  

On the whole, it is the central leadership that carries greater responsibility for the imbroglio surrounding the Cauvery. When they had the opportunities, they have tended to seek quick-fix political solutions. For example in 1998, the BJP led NDA found itself between the cylla of AIADMK and charibdis of DMK. The BJP had tied up with the former for parliamentary support and Chennai upped the ante on the dispute. Karnataka was then under Janata Dal rule. A meeting held in the Prime Minister's residence decided to set up the Cauvery water authority. Any such authority should have been an impartial one without any conflict of interest so that its opinion and decision were invested with expertise and moral authority. But it was composed of the political leaders of the states and the Prime Minister assisted by the state officials. Had the politicians worked taking Prime Minister and all the political parties into confidence for cooling the political temperatures and for creating a favourable environment to work out a reasonable water sharing formula, then the Cauvery water dispute would have been turned into a great opportunity for the benefit of the people.  

Shortly, a final decision on the state’s stand and its next step of action would be taken at an all party meeting. As former Irrigation Minister H. N. Nanje Gowda has rightly suggested the state government three tips to fight the ‘injustice’ meted out to it by Cauvery tribunal. They are that the state government can file special leave petition before the Supreme Court challenging the verdict under Article 136 of the constitution. Secondly the state
can file an original suit before the Supreme Court citing anomalies in verdict. The third suggestion was to reject the award and force Tamil Nadu to come to the negotiation table. Let us wait and see as to what an all party meeting will chalk out the future strategy of the state. And let's hope for a fair justice to Karnataka State.

**THE KRISHNA WATER DISPUTE:**

The river Krishna emerging from Mahabaleshwar in the state of Maharashtra flows through the state of Karnataka and culminates in the state of Andhra Pradesh after reaching Vijayawada, flowing down into the Bay of Bengal. A dispute had arisen amongst the three states relating to utilization of water of river Krishna which was ultimately referred by the central government for adjudication under section 3 of the Indian Water Disputes Act, 1956. The Tribunal gave its award in 1973 and the Final Award in 1976, known as Bachawat Award. This dispute involved the states of Maharashtra, Karnataka, Andhra Pradesh. After seven years the tribunal delivered its final decision which was published in the Gazette of India on May 31, 1976. The resolution of the conflict over the Krishna waters by the decision of the Tribunal would clear the way for many projects for irrigating about 1.2 million hectares in the three states of Maharashtra, Karnataka and Andhra Pradesh.

When the three Chief Ministers of Karnataka, Maharashtra and Andhra Pradesh, failed to arrive at any agreement on the sharing of the water of Krishna river, the Krishna Water Disputes Tribunal was set up by the central government in 1969 under the Inter state River Water Disputes Act, 1956. The members of the Tribunal were nominated by the Chief Justice of India. Apart from Mr. Justice Bachawat, the tribunal consisted of Mr. Justice Luntanwalla
of the Punjab High Court and Mr. Justice Mathur of the Allahabad High Court. They submitted their report in December 1973 to the union government. After elaborately considering the questions involved, the Bachawat Award fixed the dependable flow of water in river Krishna at 2060 T.M.C, annually without return flow. Scheme ‘A’ as per the Award was to take effect immediately, according to which, the state of Maharashtra was not to utilize more than 565 T.M.C. in any water year, and the state of Karnataka not more than 695 T.M.C. The state of Andhra Pradesh was allocated 800 T.M.C.

In 1978 an agreement has been arrived at between the states of Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh for construction of an open channel to supply the Krishna waters to Madras city for the drinking water requirements of the city.  

Thus, the inter-state disputes relating to river waters will continually arise as the demand for water increases with the economic and social development in the states. To meet all the demands, it is necessary to create regional institutions like River Boards and River Valley Authorities consisting of representatives of all the basin states and the Union of India. This will foster a co-operative action for optimum development of inter state rivers.

**BORDER DISPUTE:**

It is common knowledge that the partition of India into several states effected in 1956 was based on the States Re-Organisation Commission’s Report. When that Commission was formed in 1953, no doubt the underlying theme was the formation of states on linguistic basis. But the terms of references given to them gave minor importance to language and culture but
laid greater stress on other considerations such as unity and security of India and on financial, economical and administrative considerations. The commission therefore took all these factors into consideration and made certain proposals for the re-organisation of the states.

Of all the states thus formed, Maharashtra was the state which expressed dissatisfaction and fought against the proposals of the commission. Their first effort was to get the inclusion into their state of the Vidharba Districts which were proposed to form a separate state. They next managed to see that Bombay city was not carved into a separate city state. Then, even after the re-organisation, they succeeded in pushing out Gujarat from the bilingual state. There still remain two more ambitions to be achieved. One is the claim against Mysore and the other is merger of Goa into Maharashtra. To secure each of these objectives, they have a distinct type of claim to make. This article will be confined to the nature of their claim against Mysore, the modern Karnataka.

From the beginning of the century till 1956 when states reorganisation took place on the basis of the recommendations of the States Reorganisation Commission, several Commissions and Committees were appointed at the request of Maharashtra to look into the question whether Belgaum should be a part of Karnataka or go to Maharashtra and all these Commissions and Committees including Dhar Commission, JVP Commission [Jawaharlal Nehru, VallabhaBhai Patel, Pattabhi Seetharamaiah Commission], invariably gave an award in favour of Karnataka. Inspite of the opposition of Karnataka Government, again at the insistence of Maharashtra, Mahajan Commission was appointed to look into the border dispute between Karnataka and Maharashtra, and Karnataka and Kerala. This commission also has categorically held that Belgaum should remain in Karnataka. At the time of the appointment of the Mahajan Commission which was done on the basis of a recommendation made...
to the union government by the Congress Working Committee, it was specifically agreed that the award of the commission will be binding on all parties including the union government.

Soon after the re-organised states came into being the Maharashtra government laid a claim to certain areas from the state of Mysore. They demand the transfer of 814 villages including the two district towns of Belgaum and Karwar and also the important trading centre, Nippani. This involves an area of 2806 Sq. miles and a population of 6,70,000. According to Maharashtra Government, 260 villages, with population of 3,25,000 and covering an area of 1,180 Sq. miles, now within the Maharashtra state, are admittedly Kannada speaking and therefore Maharashtra Government agrees that they should legitimately go to Mysore state. As against this, the government of Mysore urge that the boundaries fixed by the State Re-organisation Act are final and ought not to be meddled with. It is not on a mercenary consideration, that the losses would be more than the gains, that Mysore decided to take such a stand. But it is because in making these fresh claims, the Maharashtra Government seeks to introduce a new principle for the division of the states, which if once allowed would unsettle the settled boundaries of all the states, formed by the States Re-organisation Act. Hence the real point of dispute is not the quantum of the area or of the population but the principle on which allocation of areas should be based.

The principles on which the claim of Maharashtra is now based are simple and \textit{prima facie} catching. According to them, the main objective in the formation of the states should be linguistic homogeneity. This according to Maharashtra could only be secured by taking village as a unit. Every village having a simple majority of Marathi speaking people should go to Maharashtra,
provided it is not non-contiguous. They say that their claims against Mysore are based on these principles and worked out with reference to 1951 census figures. The logic of this reasoning sounds fair and reasonable.

The contention of the government of Mysore is that all the states in India have been formed by the uniform application of certain principles adopted by the state reorganisation. These same principles were duly applied in fixing the boundaries between Maharashtra and Mysore, in the same way as they were applied while carving out all other states. Maharashtra was not measured by any different yard stick. Hence according to Mysore, there is no justification for introducing a new principle and for making a new claim to areas which have been allocated on the principles followed by the States Reorganisation commission and approved by the Parliament. As admitted by the Maharashtra Government, that state has, within its boundaries very big slices of Kannada areas. Similarly many other Kannada areas have gone to an area now within the boundaries of other neighbouring states such as Andhra Pradesh, Madras and Kerala. It is inevitable that in every state some areas speaking a language different from that of the state are bound to lie. Merely because there are such Kannada areas outside the Mysore state, it would not be right for Mysore to lay claim to them by setting up some other convenient principles. However reasonable the new principles may appear to be at the first sight, they cannot be applied only to help one state merely because that state raises a hue and cry.

No doubt one of the objects of re-organisation was the formation of states on linguistic basis. As already referred to, linguistic homogeneity ought not to be pressed to the last point.
Hence, the crux of the problem between the two states is whether the principles adopted by the States Reorganisation Commission and approved by the Parliament should still hold good in respect of the claims made by Maharashtra or whether they should be given a go bye and a new set of principles called the Pataskar Formula should be applied. This was precisely the question that was before the Chief Ministers of two states.

If a One-man Commission has to be appointed as proposed by the Congress working committee, the Terms of Reference must be given to him. He has to be told which of the two sets of principles should be applied while deciding the dispute. Setting the Terms of Reference is primarily the duty of the central government which is ultimately to appoint the Commission. Incidentally, it is a matter on which the congress working committee which recommended such an appointment has to decide upon so that its recommendations may be complete. It is essentially a question of policy, and not a question of law, for taking legal opinion. It is for the politicians to settle and to include in the Terms of Reference.

In this connection it would be worthwhile to note that the principles adopted by the State Reorganisation Commission were ultimately accepted by the Parliament except where changes were made by consent of both parties concerned. When the Bill was before the Parliament amendments were moved urging the adoption of the formula of ‘Village as unit’ for the settlement of boundaries. It is significant to note that these amendments were thrown out by the Parliament. Inspite of it, Maharashtra is again pressing the back door what was closed to it by the front door.

Eventhough Mahajan Commission recommended that Belgaum should be a part of Karnataka. Instead of that Maharashtra government again pressing the centre against these recommendations.
On 29th August 2006, the centre made a statement that the Karnataka and Maharashtra government should settle this dispute through negotiations. The central government refused to interfere in this issue on 30th August 2006.

A special session of Karnataka government held at Belgaum from 25th September 2006 to 29th September 2006, in which Belgaum was declared as the second capital of Karnataka. A Mini Vidhan Soudha will be constructed at Belgaum in order to conduct the special sessions regularly. The Congress working committee suggested that the award of the Mahajan Commission will be binding on all parties including the union government.

It is on the part of these two states/politicians to settle the issue of Border dispute through negotiations either to accept the recommendations of Mahajan commission and to avoid more frictions in the centre-state relations.

INTER-STATE COUNCIL:

It is a well known fact that the *sine quo non* of the federalism is the division of power between the centre and the states. As such the differences and conflicts between either the centre and the state or between one state and another are bound to manifest on various issues. Hence, there is greater need for inter-governmental co-operation in order to avoid them. Article 263 of the constitution was designed particularly to foster national unity, facilitate harmonization of thinking, resolve centre state and inter state disagreement and generally to impart a non-partisan direction to issues of national concern.

Article 263 says: “If at any time it appears to the President that the public interests would served by the establishment of a council charged with the duty of:
1. Inquiring into and advising upon disputes which may have arisen between states.

2. 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 interests, or

3. Making recommendations upon any such subject.”

The President’s order will define the nature of the duties to be performed by the council and its organization and procedure.

It is important to note that Article 263 is based on section 135 of the Government of India Act, 1935. So obvious was its necessity that the constituent Assembly adopted it without debate on June 13, 1949. On the attainment of independence, the Governor General’s order adopting the Act as the interim constitution retained section 135.

It is also held that the discussion in the constituent Assembly on the Inter-state council were not very illuminating as the potential importance of this machinery was neither understood nor appreciated.59

In fact, the institution which the framers of the constitution devised to serve as a platform for deliberations on various national and inter-state issues has remained neglected for the last several years. This led Mr. A.G. Noorani to remark: “When Article 263 says that the council can be set up if at any time it appears to the President that the public interests would be served’, thereby it gives the centre merely a margin of discretion as to the timing most certainly not a licence to ignore Article 263 as if it did not exist. The deliberation preceding the adoption of this provision make that amply clear.”60

No doubt it is true that the provisions of Article 263 have been used to appoint six Inter-state councils, i.e., the central council of Health set up in August 1962; The central council of Health deals with all the questions of
health suggests co-ordinated nation wide campaign for eradication of malaria, polio and other diseases prevalent throughout the country. It also recommends the distribution of grants in aid for health purposes.

The central council for Local Self Government set up in 1954, considers broad outlines of policy in all matters relating to the institution of self-government. The programme of community development has been the major contribution of the council towards the development of self government at the grassroot level throughout the country.

The four regional sales tax councils for the North, East, South and West Zones set up in February 1968. These councils discuss and co-ordinate all matters relating to the levy of sales tax. Specifically they will deal with complaints of multiple taxes by adjoining states. However, they were only for limited purposes.\(^\text{61}\) As the study group of the Administrative Reforms Commission indicated: "Those Councils work within a narrow ambit of activity."\(^\text{62}\)

One of the reasons for the neglect of the Inter-state council was that during the first two decades after independence of our country the actual functioning of our federation was very much different as the congress party was the only mass based and dominant political party throughout the country and all governments of the states owed their allegiance to it. Thanks to the strong leadership at the apex, centre state issues tended to be settled at the political level. Hence, the need for developing institutions, which would have enable defective centre-state dialogue and meaningful discussions to be carried out in a spirit of compromise and co-operative partnership to arrive at solutions based on consensus, was never felt. But in 1967 general elections some of the important states were captured by the opposition parties which started challenging the central authority. Consequently, the differences and
dissensions between the centre and the states cropped up. Under these changed circumstances, the need for the Inter-State council was seriously felt.

### Table – 5.3

**Percentage of State Assembly Seats Controlled by the Congress Party**  
**After The 1960-64 And The 1967 State Assembly Elections**

<table>
<thead>
<tr>
<th>State</th>
<th>Years 1960-64</th>
<th>Year 1967</th>
<th>Percentage Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>59</td>
<td>57.49</td>
<td>-1.5</td>
</tr>
<tr>
<td>Assam</td>
<td>75.24</td>
<td>58.4</td>
<td>-16.84</td>
</tr>
<tr>
<td>Bihar</td>
<td>58.18</td>
<td>40.25</td>
<td>-17.93</td>
</tr>
<tr>
<td>Gujarat</td>
<td>73.38</td>
<td>55.36</td>
<td>-18.02</td>
</tr>
<tr>
<td>Haryana</td>
<td>N/A</td>
<td>59.26</td>
<td>N/A</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>66.67</td>
<td>56.67</td>
<td>-10</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>0</td>
<td>81.33</td>
<td>+81.33</td>
</tr>
<tr>
<td>Karnataka</td>
<td>66.35</td>
<td>58.33</td>
<td>-8.02</td>
</tr>
<tr>
<td>Kerala</td>
<td>50</td>
<td>6.77</td>
<td>-43.23</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>49.31</td>
<td>56.42</td>
<td>+7.1</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>81.44</td>
<td>75.19</td>
<td>-6.25</td>
</tr>
<tr>
<td>Manipur</td>
<td>N/A</td>
<td>53.33</td>
<td>N/A</td>
</tr>
<tr>
<td>Nagaland</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Orissa</td>
<td>58.57</td>
<td>22.14</td>
<td>-36.43</td>
</tr>
<tr>
<td>Punjab</td>
<td>59.09</td>
<td>46.15</td>
<td>-12.94</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>50</td>
<td>48.37</td>
<td>-1.63</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>67.48</td>
<td>21.37</td>
<td>-46.11</td>
</tr>
<tr>
<td>Tripura</td>
<td>N/A</td>
<td>90</td>
<td>N/A</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>57.91</td>
<td>46.82</td>
<td>-11.9</td>
</tr>
<tr>
<td>West Bengal</td>
<td>62.31</td>
<td>45.36</td>
<td>-16.95</td>
</tr>
</tbody>
</table>

Analysis of the Table-

In this Table, Jammu & Kashmir, where People's Democratic party, the regional, could able to get more seats, than the congress. The same thing happened in the cases of Tamil Nadu, Kerala, West Bengal where the regional parties like AIADMK, DMK and Communist party could able to emerge as to formulate the government in the respective states parties than the Congress party respectively. Even in Assam, Bihar and Gujarat, there is simply a minute change in comparison to each other and whereas the Maharashtra, Karnataka states witnessed very less percentage change, whereas Tripura, Nagaland witnessed 0 percentage in change.

As the Administrative Reforms Commission reported in June 1969, "almost all the persons including those from the opposition parties who appeared before us, stated that in the altered political scene after 1967 General Elections, an Inter-State Council was necessary to discuss problems relating to centre – state relationships".

Accordingly, the Administrative Reforms Commission recommended the establishment of an Inter-State Council. It says that "We Recommended";

1. An Inter-State council should be constituted under Article 263 of the constitution.
2. It may consist of:
   a. The Prime-Minister – Chairman
   b. The Finance Minister
   c. The Home Minister
   d. The leader of the opposition in the Lok Sabha [When one is not available] a representative should be elected by the opposition parties by single transferable vote,
3. Any of the union cabinet minister or chief minister or chief minister who may be concerned with a particular subject, may be invited for discussion when the relevant subject is under consideration.

4. The proceedings of this council must be secret”.

One of the most important recommendations of the Rajmnnar Committee also was the immediate establishment of an Inter-State Council.

Inspite of the fact that the need for inter-governmental co-operation was felt and the suggestion for the establishment of Inter-State Council was made by the Administrative Reforms Commission and others, however, with the return to the Congress fold of practically all the states in the Country in 1972 General Elections, the suggestion for the establishment of the Inter-State Council was relegated to the Background.

Although the centre can be held mainly responsible for neglecting to set up the Inter-State Council, the states cannot escape their share of blame. This is obvious from the fact that in 1972, the centre had sent a communication to the state governments soliciting their views on the need for the establishment of an Inter-State Council, but until many months later, only one state [Mysore] Karnataka responded. Surprisingly, even Tamil Nadu which claimed to be the pioneer for the autonomy of the states, did not care to send its views.64

Since what is needed is that we identify attitudes which inhibit effective relationships between the centre and the states as well as those which promote co-operation. For this purpose, the Inter-State Council would be very much useful. The view expressed by Mr. A.G. Noorani is pertinent here. He says : “As a matter of fact, there is nothing in the constitution to prevent the state governments from setting up inter-state bodies by themselves. The Council of state governments in the US has functioned for well nigh half a century as a
clearing house for Inter-State activities. The Southern Chief Minister of Karnataka, Ramakrishna Hegde in March 1983 was conceived in the same spirit of co-operative endeavour but caused disquiet in New Delhi."65

Whatever, the view or fear may be of the congress government, however, it appears that the new Janata Dal government has realized the importance of this Council and is in favour of its formation.

The former Governor of Karnataka Mr. Govind Narain, observed; "With the Prime Minister and six union Cabinet ministers as the members of the standing committee the weightage given to the centre is considerable. The other members are six chief ministers, one from each zone to be selected annually. It should therefore, be ensured that in this selection the representative opinion of all shades is forth coming. It should also be provided that if any chief minister is not satisfied with the finding of the standing committee he could take the matter to the Inter-Governmental Council [IGC], If the standing committee is not managed sensibly, it could become a bottleneck. This will frustrate the purpose of the whole scheme."66

THE ESTABLISHMENT OF THE INTER-STATE COUNCIL:

The ISC was eventually established in the midst of a more lasting political party realignment in the mid-1980s. Although the congress party was able to rebound spectacularly after its electoral set-back in the 1967 state assembly elections and the 1977 general elections, the pre-eminence of the congress party began to decline steadily afterwards. From the mid-1980s, using V.O.Key's classification, there has been in India a 'Secular realignment'. Despite lukewarm Parliamentary support in the Lok Sabha for the establishment of ISC, V.P. Singh made the establishment of an ISC a centre
piece of his National Front’s prominent policy about federalism in the 1989
general elections. The National Front was a coalition of the Janata Dal, and
regional parties such as the Dravida Munnetra Kazhagam [DMK], Telugu
Desam Party [TDP], and Assam Gana Parishad [AGP]. The coalition
repeatedly announced its commitment to establish the ISC in its campaign
platform. After V.P. Singh’s election as Prime Minister on December 7, 1989,
the commitment by the National Front to set up an ISC was finally
accomplished in 1990.

The actual formation of an ISC was met with high expectations in the
press. For instance, in an editorial in the Madras newspaper, The Hindu,
expected the ISC to “render superfluous several functional conferences such as
the Chief Ministers conference, the Finance Ministers conference, the Food
Minister’s conference and soon” another editorial in the same newspaper
argued that ISC would mostly “act as a fulcrum of harmony and homogeneity
and as a major instrument for promoting what has come to be understood as co-
operative federalism.”

The President of India, R.Venkatraman, issued a notification that the
ISC would be set up and announced that its meeting would be held in June
1990. The first meeting of the ISC was held at the invitation of Veerendra Patil,
the then Chief Minister of Karnataka. Patil’s choice to host the first meeting of
the ISC was noteworthy because he had been one of the key opponents of the
1983 opposition conclaves which called for the setting up of an ISC. More
over, based on the fact that Veerendra Patil was a prominent Congress [I] Chief
Minister, an editorial in the Hindu, believed that given the bipartisan support,
the ISC was “going to be a unifying force which will cry halt to a system under
which the states are, on occasions, forced to subordinate themselves to the
centre.”
The editorial in *The Hindu*, however expressed hope that the ISC would not become “a pole replica of the National Development Council.” Another newspaper, *The Hindustan Times*, was unclear as to the agenda of the first meeting of the ISC and reported that the ISC was probably going to discuss various inter-state water disputes.

As the date of the first meeting of the ISC approached, the then congress [I] President and Prime Minister, Rajiv Gandhi, announced that Karnataka Chief Minister, Veerendra Patil, would resign from his post for health reasons. Veerendra Patil denied the validity of these comments and an intra party clash ensued leading to the declaration of president’s rule in Karnataka. For this reason, the venue of the first ISC meeting was transferred at the last minute to New Delhi and where it met on October 10, 1990.

V.P.Singh and Home Minister Mufti Mohammad Sayeed, headed the first meeting of the ISC. The Council meeting was attended by five other ministers of the union council of ministers as well as by most of the state CMs and union territories as members. In addition, the meeting was addressed by several Chief Ministers, including Biju Patnaik of Orissa, Jyoti Basu of West Bengal, Karunanidhi of Tamil Nadu, Sundarlal Patwa of Madhya Pradesh and Bhairon Singh Shekhawat of Rajasthan.

Newly elected Prime Minister V.P.Singh discussed the Sarkaria recommendations at the meeting and observed that one of the key discoveries made by the Sarkaria Commission was “that no major structural changes were necessary.” In order to ensure an improvement in administrative relations, V.P.Singh proposed building greater consultation with the states so that the centre need to utilize its executive powers. Similarly, on the issue of financial
relations, the Prime Minister suggested sharing corporation tax, income tax, excise duties and a levy on a tax on advertisements. Moreover he urged the participants to the first ISC meeting that a modernization of treasury systems, availability of foreign borrowings by states from banks, executive functioning of the Finance Commission and Planning Commission were also needed.\textsuperscript{75}

Since it was first suggested in the Government of India Act of 1935, the subsequent focus on the study about the ISC has been on its internal structure.

Inter-State Council in India, its establishment took place in the context of a changing pattern of the federal relations occasioned by a more lasting shift in the decline in prominence of the congress party in the mid 1980s. Paradoxically as the organizational identity of the ISC became better defined, its effectiveness became hampered by these volatile changes in the party system.

As Article 249 permits the centre to legislate on any matter contained in the state list, provided that the council of states adopts a resolution to this effect with a two thirds majority, the Rajya Sabha could similarly be entrusted with a special role in respect of other centre-state issues including ratification of the reports of the Inter-State Council. The Vice-President would provide the link in the latter case, though it might be argued that this could make the Chairman of the House liable to criticism by members in his capacity as head of the Inter-State Council. However, these are matters that could and should be discussed so that a consensus might emerge.\textsuperscript{76}

Since its establishment in 1990, the inter-state council has had a mixed legacy. On the one hand, it has provided a forum for the discussion of some of India’s most pressing federal problems. The discussions have been unusually
cordial and as such provide a model of parliamentary civility. On a less positive side, although subject to considerable scholarly and governmental debate, once instituted the ISC has failed to live up to its expectations. It is neither an analytical unit providing short or long term strategy nor a public policy making institution. As a result of the increasingly chaotic structure of Indian politics, it has only met sporadically. Moreover, the inter-state council has no decision making authority. As such it has failed to implement even its basic recommendations.

A new turn was given to the centre-state relations in the administrative sphere by the forty-second amendment, which empowered the central government to deploy armed forces for dealing with any grave situation of law & order in the states. The contingents so employed were to act in accordance with the instructions of the central government and not to work under the direction, Superintendence and control of the state government concerned, unless specifically directed by the central government. This change naturally, greatly restricted the autonomy of the states and was resented by the states. Ultimately this provision was nullified by the 44th Amendment.

It is thus evident that in the administrative sphere the states cannot act in complete isolation and have to work under the directions and in co-operation with other units of the federation. The Sarkaria Commission which considers federalism as a functional arrangement for co-operative action has favoured more liberal use of Article 258 which permits the union to confer more powers on the states in certain cases to achieve progressive decentralization of powers to the state governments and their officials.

We may conclude by saying that it is beyond doubt, that the constitutional provisions relating to Union-State administrative relations have
the sole ambition of achieving unity in diversity. The framers of the Indian Constitution intentionally bestowed a somewhat dominant role upon the centre in order to avoid the inherent dangers of a federal system which as Dicey pointed out provides for the predominance of legalism and produces a weak government. They were very much sensitive for safeguarding the century old effort at national unity. At the same time they possessed sufficient political insight and realized the practical necessity of establishing a federal polity. The urge for conserving power to rule over oneself and to be independent is as old as humanity. Dependence on other in any form is to be compensated by considerations of relative advantage. As independence without security would be short-lived, the pre-dominant considerations in devising a federal union was the urge for the preservation of independence. Excepting this paramount centralizing element and the existence of a vague, a picture of perplexing diversity. Thus the framers of the constitution, in their attempt to satisfy both these objectives, designed a federal system embodying several special features not generally found in other federations. Of course, we have to admit that these specialities were occasioned by past experience and have made the constitution a workable one.

As far as administrative relations of Karnataka state with centre concerned, in some issues the attitude of centre towards Karnataka like the imposition of President’s Rule in 1967, the dissolution of the Veerendra Patil ministry seems to be arbitrary. It is also due to the role of the Governor in recommending the suspension of the assembly and that too at a time when the assembly had already completed more than four years of its normal term of five years. Even the dismissal of Devaraj Urs and Bommai ministry was not proper.
As far as Water and Border disputes concerned the politicians simply politicizing the issues and simply playing with the feelings/emotions of the people of the dispute concerned state. These disputes always create frictions in centre and state relations between the centre and the state of Karnataka. Apart from these issues the administrative relations are cordial.
NOTES AND REFERENCES

6. Article 356
7. Article 360
8. Article 73 and 162
10. Article 256
11. Article 257
12. Article 258
13. The framers of the Constitution had borrowed the idea of directions from the Government of India Act, 1935, Section 126.
15. Article 257, op.,cit.
18. For detail see Ibid, May 21-27, 1971, p.10178
19. Ibid.

21. Ibid.

22. Ibid

23. Ibid.

24. Ibid., Dec. 17-23, 1971, p.10514


27. Bommai Vs. Union of India, AIR, 1994, SC, 1918


29. Ibid.

30. Ibid.

31. Ibid.


35. Venkataraman R., op.cit.


39. Likewise, The Asian Development Bank has agreed to finance the development of Kakinada as a major part at the cost of Rs.80crores during the Eighth Five year plan. But New Delhi has not accepted Andhra Pradesh’s proposal in that regard. Karnataka has similar grievances. [See A.G. Noorani, Centre’s Veto on State Projects, *Indian Express*, September 26, 1988.]


42. Ibid, p.6.


44. Ibid., p.93.

45. Ibid., p.84.

46. Ibid., p.96


53. Ibid., p.2351

54. Ibid.

55. Narendra S., “Will the economist PM make a difference to Cauvery Dispute”, Deccan Herald, 8 Feb., 2007, p. 11.

56. Ibid.


60. Noorani, A.G., Time to set up inter-state council, op.cit.

61. See Ashok Chanda, Institutional Base of Centre – State Relations in Centre – State Relations in the Seventies, [ed.] by B.L. Maheshwari, op.cit., pp.130-31


64. The Hindu, September, 8, 1972.


70. Ibid.


75. Ibid.