CHAPTER - I

CENTRE-STATE RELATIONS IN POST-INDEPENDENCE INDIA
The federal systems established in the Commonwealth after 1945 had much in common. All represented attempts to combine unity and diversity; in each the federal solution was intended to recognize the claims of minorities and to provide for them within a political union. But in a sense each of these federations was also unique. The particular problems, that they were designed to cope with, varied widely and each constituted a distinct federal experiment. In India the problem was consolidating a country which was as large in population as the whole of Europe excluding Russia, and whose regional components in size, resources, and linguistic and cultural distinctiveness could properly be compared to the sovereign nations of Europe. In fact, the concept of federalism has been a subject matter of confusion, misunderstanding and conflicting opinion. Federalism can be defined as the mode of political organization that unites separate polities within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both. By requiring that basic policies be made and implemented through a process of negotiation that involves all polities concerned, federal systems enable all to share in the overall system's decision-making and executing processes. In its simplest form, federalism means political integration through the compounding of political systems that continue to exist within the new whole. In a larger sense, however, federalism is more than an arrangement of governmental structures; it is a mode of political activity that requires the extension of certain kinds of cooperative relationship throughout any political system it animates.¹

¹ Daniel J. Elazar, A model of federal Democracy; University of Chicago Press; P.2.
A few polities are 'federal' only by courtesy, semblance and convention. As Elazar has elaborated in his article, 'Federalism', that it has often been equated with confederations, leagues, empires and intergovernmental relations. The term intergovernmental relations, on the other hand, is hardly a half-century old—its origins, as Wright points out, still are obscure, though professors Clyde F. Sridhar and William G. Anderson were among the first to use it in describing the drastic changes in the administration programmatic, and funding relations between and among the federal government. In general, according to Elazar, the rise of the Nation-State in the sixteenth and Seventeenth Centuries provided federal solutions to the problems of national unification, but founded on three problems:

1) The Conciliation of Feudally rooted hierarchies with a system demanding fundamental social, equality in order to facilitate the sharing of power.

2) The reconciliation of local autonomy with national unity in an era of political upheaval that required most nations to maintain a state of constant mobilization basically incompatible with the toleration of local differences: and

3) The problems of executive leadership and succession which was not solved until the United States invented the elective presidency.

The successful operation of federal systems requires a particular kind of political environment, one which is conducive to popular government and has

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the strong traditions of political cooperation and self-restraint that are needed to maintain a system which minimizes the use of coercion, beyond the level of homogeneity of fundamental interests or consensus to allow a great deal of latitude in political operations and to place primary reliance upon voluntary collaboration. According to Elazar, the word "Federation" is used to describe the unification of 'Sovereign' States into a federal polity and also the permanent devolution of authority and power within a nation to subnational governments. In this ambiguity lies the essence of federal principle-the perpetuation of both union and non-centralization. For a proper understanding of federalism, a broader view is necessary. In this respect Daniel J. Elazar has made some important contribution. He observes federalism as "The mode of political organisation which unites separate polities within an overarching political system so as to allow each to maintain its fundamental political integrity".

According to him, federal systems to this by distributing power among general and unit governments in a manner designed to protect the existence and authority of all the governments. By requiring that basic policies be made and implemented through negotiation in some form, it enables all to share in the system's decision-making and decision-executing processes. Federalism is "something much more than the relationship between governmental units, involving as it does principles which are designed to establish the proper character of other political institutions within federal systems. Federalism concerns the way in which federal principles influences party and electoral


Ibid, p.65.
systems in federal polities just as much as it concerns the way in which local
governments relate to their regional or national ones”.

Only those who value government by conciliation and partnership, with
emphasis on local control; are likely to have respect for the federal principle.
This respect, according to Elazar, can be shown in two ways:

1) By showing self-restraint and

2) By cultivating the political art of negotiation.

Federalism can exist only where there is considerable tolerance of
diversity and willingness to take political action through conciliation even when
the power to act unilaterally is available. The fundamental principles, according
to him, of a federal polity are:

1) The strength of a federal polity does not stem from the power of
   national government but from the authority vested in the nation as
   a whole;

2) Both the national government and the governments of the
   constituent polities are possessed of delegated powers only; and

3) All governments are limited by the common national Constitution.

However, he rightly proposes that the successful operation of federal
systems requires a particular kind of political environment, one which is
conducive to popular government and has the strong traditions of political
cooperation and self-restraints that are needed to maintain a system which
minimizes the use of coercion. Beyond the level of tradition, federal systems
operate best in societies with sufficient homogeneity of fundamental interests-
or consensus, to allow a great deal of latitude in political operations and to
place primary reliance upon voluntary collaboration. They are most successful in civil societies with the human resources to fill many public offices competently and with material resources plentiful enough to allow a measure of economic waste in payment for the luxury of liberty.

As a result of these newer theories and approaches, federalism has been redefined as the mode of political organisation which unites separate polities within an overarching political system so as to allow each to maintain its fundamental political integrity. According to Elazar, its end is expressed in solving a major problem of popular government, namely, how to maintain the liberties of the people from vitiation through the consolidation of power into hands far removed from popular control or domination of minorities by an unrestrained majority, while at the same time providing a government with sufficient energy to meet the demands placed upon it. Few are worried on counts of nature content and locus of Federal Authority only Elazar has paid some attention to these problems. According to him, Federalism is much more than inter-governmental relations something much than the relationship between governmental units, involving as its does, principles which are designed to establish the proper character of those relations and which must also affect the character of other political institutions within federal systems.

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Elazar, American Federalism, A view from the States, p.47.
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governments are limited by the common national constitution.

In a relative reference frame, Dr. Balveer Arora in his contribution - "Party
System and Federal Structures in India: Linkages and Issues" raises some
interesting points. Arora points out that the one party-dominance political
system has not been successfully maintaining non-centralization. In the
absence of an adequate institutional framework to secure the cooperation of
states there has been heavy reliance on party channels for federal coordination.
This has been a marked feature not only during Congress rule but also during
the Janata interlude in India. Arora has made a very pertinent observation
regarding the working of the Indian Federation. Even though, the Indian
political system is marked by one party dominance, the federalizing process is
sustained through continuous bargaining between the central unit and the
constituent (states) units of the Congress Party. In such a federal country like
the U.S.A., the idea of the federal government giving directions to the state is
'strange and repugnant,' to the Constitution. There is also provision for the
delegation of functions to a state government. With the consent of the state
government concerned, the president can delegate functions to a state
government in relation to any matter to which the executive power of the union
extends. However, as such functions can be conferred only with the consent
of the state government concerned, it is not derogatory to the federal principle.
But apart from this power of the Union Executive to delegate its functions to

P.300.
the State Executive, the constitution authorises, parliament to confer powers and impose duties on state authorities by law, notwithstanding the fact that it relates to a matter with respect to which the legislature of a state has no power to make laws. The entire financial burden involved in the process is to be borne alone by the Government of India. The seventh Amendment Act of the constitution also provides identical powers to the states to entrust functions to the union government with its consent in relation to a matter to which the executive power of a state extends.

The Constitution seek to ensure co-ordination and cohesion between the centre and the states following the Government of India Act, 1935 excepting Art. 261 which is a new insertion regarding inter-state comity. Under the said provision full faith and credit must be given throughout India to public acts, records, judicial proceedings of the Union and of every state. The manner in which, and the conditions under which these acts, records, and the likes., are to be proved that the effect thereof, is to be laid down by parliament by law. Moreover, final civil judgement or order of any court in India are executable any where in India. The insertion of this provision in the constitution was considered necessary because India is now a union of states and its members are distinct political entities, as it has been held in vareed V. Gopal Bai, "In a federation for all national purposes embraced by the federal Constitution, the state is of course one united under the same authority and governed by the same laws. But in other respects the states are necessarily foreign to and independent of each other and a foreign judgement for purposes of private international law need not necessarily be of a state owing different allegiance. But it is not desirable or useful to remain in isolation from each other. So following Art IV
Sec. 1 of the Constitution of the U.S.A. and S.118 of the Australian Constitution, the framers of the Constitution adopted this provision. British rule had imposed a strong central authority and had provoked in response a powerful nation-wide movement for independence. But both the imperial administrators and the Congress movement found it necessary to make concessions to the powerful pull of regional interests.

From as early as 1861, and especially after 1919, the history of British India was gradual devolution of power to the provinces, as the administrators, quite apart from seeking to solve the communal problems, attempted to keep contact with their Indian subjects. By 1935, in the face of realities of the Indian situation, the British Government had committed itself to a federal form of government as the solution to a number of crucial problems facing India. "In reality, it has meant an expansion of the realm of activities of both Federal and State Governments to generate an increase in the velocity of government, that is the amount of governmental activity in relation to the total activity of society". In the first place, it provided a way of yoking together within a single constitutional system the portions of India under indirect rule and those under direct rule. The indirectly controlled princely states, where personal rule prevailed, were scattered throughout India, and together they composed two fifths of the area and a quarter of the population of sub-continental India. In the British provinces, on the other hand, where representative institutions were evolving, the Congress, hostile to the princes as undemocratic and anti-national, was entrenched. Federation was seen as a way of bringing the two Indians

together under a common constitution. Secondly, since the increasing
communal antagonism was attributed to the congress emphasis upon monolithic
unity and centralization, and to muslim fears of Hindu predominance, it was
hoped that a federal structure might reconcile the two groups by
accommodating the muslim anxieties within a United India. In the event, the
Government of India Act, 1935, achieved neither of these aims. The princes,
deterred by undisguised hostility upon being the sole and exclusive embodiment
of Indian nationalism, led to the solidification of muslim support for a completely
separate state of their own by 1947. In view of the intransigence on both sides,
the British government decided that partition was unavoidable, and two
independent dominions emerged on 15 August, 1947. The Indian Independence
Act, 1947, assigned sovereign constitution making authority, to the constituent
assemblies of India and Pakistan and at the same time provided that the federal
scheme of the 1935 Act should serve in each as the interim constitution until
the constituent assemblies completed their work.9 The constituent Assembly of
India rejected a unitary constitution as 'a retrograde step' in such a vast,
populous, and variegated country, but, influenced by the immediate experience
of partition, and concerned with the threat of insecurity and disintegration, it
insisted that 'the soundest frame work for our constitution is a federation with
a strong centre'.10 The emphasis on national unity was reflected both in the
manner in which the princely states were rapidly integrated into the Indian

9 R.L. Watts, New Federations Experiments in the Commonwealth, Oxford 1966,
p.18.

Union, and in the wide powers invested in the Central Government under the new constitution.

The Indian Independence Act had terminated the British paramountcy over the princely states and had left them legally independent of both India and Pakistan. But since without the co-operation of these princely states which lay scattered between the provinces India could not hope to achieve political stability or full economic development, and there was a pressing need to incorporate them into a new federation. By a combination of persuasion, cajolery, bribery, and the threat of military power, some 555 states were induced to accede to the Union by 1948. This is because "The unique feature of our system is that, for securing implementation of many of its laws and policies, the union depends on the machinery of the states, particularly in the concurrent spheres." Between 1947 and 1950 the integration of these states into viable units, the democratization and modernization of their administrations, and their subordination constitutionally and financially to the central government, were carried out simultaneously. By 1950 the Ministry of states under the leadership of sardar Patel had brought the states into an organic whole unified with the Union and had transformed the map of India thoroughly.

The actual working of the Indian federal system since 1950, has reflected the simultaneous development of strong centralizing and decentralising tendencies. The predominance of the centrally dominated congress party in both central and state politics, the long prominence of Nahiru’s leadership, the dedication to economic and social planning under central direction, the

administrative hegemony of the Indian Administrative Service, the willingness of the Central Government on a number of occasions to invoke its emergency powers, and the emphasis upon national defence in the face of eternal threats from countries like Pakistan and China, have fortified the authority of the Central Government. At the same time, there have also been evidences of powerful centrifugal tendencies. The Central Government has clearly been dependent heavily upon the states for a large part of its administration, and the strength of regional linguistic feeling has been strong enough to enforce a national-wide reorganization of state boundaries, and to postpone the imposition of a single common national language. Moreover, there has been a shift in the focus of political power and influence from the Central Government to the states, reflected in the growing importance of state leaders in the council of the national leadership. The general effect of the interaction of the two conflicting and highly dynamic forces for integration and regionalism since 1950 has thus been to intensify in practice the federal character of politics in India.\textsuperscript{12}

Our systematic analysis of the process of political power proceeds from the discussion of the horizontal controls that operate either within one and the same power holder (intra-organ control) or between the several power holders (interorgan controls) to a different type of control instrumentality, here called "vertical controls". By this term are understood those patterns of action and interaction that function between the totality of all instituted power holders - parliament, government, courts, and the electorate - and society as a whole. Seen structurally, horizontal controls pertain to the level of the state machinery,

\textsuperscript{12} R.L.Watts, New Federations experiments in the Commonwealth, Oxford 1968, p.20.
vertical controls, to the level on which the state machinery confronts society. Expressed graphically, horizontal controls move sideways while, vertical controls upward and downward.

Under the heading of "vertical controls" three different areas of reciprocal action are grouped together.

1. Federalism

The juxtaposition and counterbalance of two territorially differentiated sets of state sovereignties and the existence of interfederal barriers restricts the power of the central state over the member states and the vice versa.

2. Individual rights and fundamental guarantees

These are established for the benefit of the power addresses as limits beyond which none of the instituted power holders can proceed. They can be created as zones of individual self-determination which are inaccessible to them.

3. Pluralism

Plural groups - the "intermediary powers" of mortequeu and de Tocqueville - interpose themselves between the mass of the power addresses and the instituted power holders.

These vertical controls of the power process may seem heterogeneous. Federalism and fundamental guarantees are institutionalised in legal terms, but pluralism a sociological phenomenon, is not. The verticalism of federalism pertains to the relation between two different sets of governmental institutions; the verticalism of the plural stratification is different: it operates between
society as a whole and the instituted power holders. What ties these three situations together is that, within their frame and context the power process moves between the "upper" and the "lower" levels. What they have in common is that they function as a sort of shock absorber within the power process. Either they are intended to restrain the state Leviathan as are federalism and individual guarantees, or, in the case of the plural groups, they tend to reduce the impact of state power exercised by the legitimate power holders on the socio-economic and political status of the individual in the state-society.

**FEDERALISM WITHIN THE CONTEXT OF SHARED POWER**

In contradistinction to the "monolithic" unitary state organization, federalism presents a system of territorial pluralism. The various state activities are distributed between the central and the number states and among the latter; they are, therefore, shared. The phenomenon of shared functions appears in its purest form when both the central and the member states possess concurrent jurisdiction on one and the same field of specified activities. However, here, a dilemma arises which sooner or later confronts every federal organization unless the constitution explicitly stipulates that, in case of concurrent and competitive action, the federal entity prevails over the member units - the theory of "pre-emption", consistently, formulated, for example, in Germany (Constitution of 1871, Art.2, sec.1; Weimar, Art.13, sec.1, Bonn, Art.31) and in India (constitution of 1948, Art.254). The facts of federal life will necessarily assign priority to the Central-State relationships.

The principle of shared powers is often expressed in constitutional theory by the concepts of the dual sovereignty, ascribing to the federal state as well
as to the member units supreme or sovereign power in their spheres of Jurisdiction. The concept is misleading and even dangerous, as evidenced by the gravest constitutional crisis of the United States, the civil war, which was conducted, on the part of the rebellious south, under the flag of state sovereignty. Actually, the federal organization possesses only one, indivisible sovereignty, that of the central state which absorbs, within the limits of the constitution, the original sovereignties of the member units. Shared power; in a federal organization, must not be equated with a system of dual sovereignty. What the federal organization accomplishes from the viewpoint of shared power is that the rights of the states are protected, as effectively as may seem compatible with the sovereignty of the central state, against unconstitutional usurpation and absorption by the central state and that, correspondingly, the latter is sheltered against unconstitutional intervention of the former on the fields assigned to its jurisdictional monopoly.

The co-existence of two governments, each within its own specified sphere of administration, necessarily involves the distribution of powers between these two governments - the central or federal government and the state government. This division of powers is, indeed, the very essential condition of a federal government whose formation is based upon this and this principle alone.\textsuperscript{13} The division of powers is essentially different from the separation of powers in the government - the division of legislative, executive and judicial functions although this latter division is also essential in a federal government for more solid reasons than in a unitary government.

\textsuperscript{13} Dicey; Law of the Constitution; p.147.
There are two forces which tend towards the formation of federations, the centripetal and the centrifugal. It is only when either (1) number of smaller and independent states living side by side, or (ii) a big state extending over a wide area, find it difficult to carry on the governmental machinery smoothly and effectively, that the necessity of establishing a federation becomes manifest. Therefore, the ways in which federations found are:

(a) the centralising of certain specified powers by the smaller states into the hands of the newly formed central or federal government, and (b) the decentralizing of some powers, in a big state, by the state itself, into the hands of the several governments set up over the several states or provinces into which that big state may be parcelled out. And in each federation either the one or the other method is adopted for demarcating the powers of government.

'Paramountcy' is the term used to denote the relationship of the Central Government in India to the governments of Indian States. It is also distinguished from 'Sovereignty' which is the basis of its relationship with the provinces. In both cases the ultimate incidence of the relationship is on the people of the respective territories.¹⁴ 'Sovereignty' may be spoken of as power which is legislative in form, direct in the method in which it is exercised and immediate in the effects it produces, while 'paramountcy' is political in form, indirect in the way in which it is exercised and ultimate in its effects. Neither the people nor the territories of the rulers of states are British in law. The parliament of England and the Central Government of India as its agent - are not competent

¹⁴ M. Venkatarangaiya; Federalism in Government, Andhra University Series No.12, 1935, p.16.
to enact laws binding on the subjects of states. They only obey the laws made by their own rulers, which are tried in courts and they can not appeal to the English privy council. From their point of view the government which they have to recognise is the government of the state-rulers. The central government is no 'government' to them. In this respect they and like the people of the dominions within the British common wealth or those of the member-states in a confederacy. All this is in contrast with the 'sovereignty' which the parliament as well as the central government has over the people of the provinces who are in consequence bound by their legislation. 'Paramantcy' is political in its form because it is through the exercise of political pressure or influence that the central government carries its authority and power to the people of the states. This political pressure exercised on the rulers of states produces all the results which sovereign legislation does in the provinces and in this way paramountcy becomes as effective as sovereignty.

'Paramantcy' is indirect in the process of its manifestation while 'sovereignty' is direct. The paramountcy power has to reach the people of the states through their rulers. The agency of state governments cannot be dispensed with. The central government has guaranteed the territorial integrity of states and the rights of dynastic succession therein. They cannot, therefore, be brought under the direct control of the Central Government. In the case of the provinces it is open to the central government in India and the parliament in England to abolish provincial governments and directly deal with the people. This alternative is not open in the case of the Indian states. In this respect the states are like states in England. It is an authority that is kept in reserve and drawn upon as the occasion demands. Its effects, therefore, are ultimate but
not immediate. 'Sovereignty' on the other hand is exercised as a matter of course from day to day. It is continuously conscious of the presence and the fact of British supremacy. Those in the states are not very conscious of it, although it lies firmly in the background. It can be evoked into action at any moment. The demarcation of the powers of the Central Government and of the governments of Indian states is quite as rigid as the division of powers in federal system. The central government is supreme in all external affairs - which include among them the relations with foreign states, defence, finance, posts and telegraph, railways and other means of communication to the extent to which they are required for military and strategic purposes. In all these matters, the rulers of states have no hand and they have to implicitly obey the decisions of the Central Government. A large field of sovereignty has thus been taken away from them. This carries along with it the implication that the paramount power has the constitutional authority to require the rulers of states to do anything which in its opinion is essential and legal to make effective its control of external affairs. It can demand supplies during the period of war, build forts and cantonments within the state territories, construct strategic railways, obtain military recruits, and lay down its own general policy on all these and similar subjects.

The subjects maintained by the Central Governments are usually created and maintained and there are the Defence and Security of the federated area against danger of foreign invasion, the development of its military strength, the regulation of Trade with foreign countries and the removal of barriers impeding internal trade so that there might be a wide home market. It is agreed by all that in respect of these matters the whole area act as a single unit. It implies that
their regulation should be left entirely in the hands of the Central Government. It is the wisest course as it not only leads to efficiency in the sense that the expected result is achieved more effectively and economically but it is also conducive to the development of good will and harmony between one unit and another within the area and to the preservation of the union. The contrary method of entrusting such subjects to local governments not only brings about inefficiency but also becomes a source of friction and conflict between one local government and another, ultimately paving way for the disruption of the union. Powers over subjects like these may be designated as "necessary" powers of the central government.\textsuperscript{16} They are necessary in the sense that they are vital to the very existence and preservation of the union, and that in their absence the breaking away of the units from the centre and from each other becomes a matter of certainty. While external relations, trade with foreign countries and between one number of the federation and another fall normally within the category of "necessary powers" it has to be noted that any other power which satisfies a similar test deserves to be included in it. For instance, the militant spirit in which labour has become organised in recent times and the equally militant spirit behind employers organisation and trusts and combinations make control over them a 'necessary power' of the central government. It is quite possible that with the increasing change and complexity in social and economic conditions, there may arise a need in every federal state for the expansion of necessary powers.

\textsuperscript{16} Ibid., p.74.
The other powers exercised by central governments may be styled their ‘optional’ powers. The essential consideration in determining them is the need for uniformity. All subjects which yield maximum advantage and convenience to the public when regulated on uniform lines over the whole area should naturally be placed under central control. The jurisdiction of the central government extends over all the federal territory and this gives it a superiority in securing uniformity to any extent required. The tendency has, therefore, been to entrust it with power over weights and measures, currency and coinage, posts and telegraphs, trunk roads and other national means of communication, patents and copyrights, naturalisation, bankruptcy and many other similar matters. No elaborate argument is required to show that a uniform system of currency, for instance, is more productive of advantage and convenience to the interests of business and trade and is more conducive to the growth of economic prosperity than a diversified system which is inevitable if local governments are given the freedom to regulate it each in its own way. This principle of uniformity is accepted when stated in general terms; but differences of opinion arise when one has to decide whether a particular subject comes under this principle. There are, for example, some countries where it is thought desirable to include ‘marriage and divorce’ among central subjects on the ground that uniformity of marriage laws is an essential basis of civilized community. There are, however, several other countries where a different view is commonly held, as law in these countries personal or tribal and as they contain many minority groups each with its peculiar system of civil law. In such territories people will not agree to have uniformity in matters relating to
marriage. Similar differences of opinion are bound to crop up in respect of agriculture, land development, education and the like.

Much of this difficulty in the practical application of the principle of uniformity will disappear if it is recognised that with reference to any particular subject—education, public health, public morals and the like, it may be necessary to give control to the central government at certain points and to local governments at certain other points. A subject may have different aspects to deal with, some requiring uniformity of treatment and others diversity. And again some of the purposes of the state cannot be realised fully through the action of the central government alone or through that of the local government by themselves. A division of labour between the two is essential and it is mainly through their co-operative effort that the end in view is achieved. Elementary education is considered in all countries to be a subject of national importance, but in all federal states control over it is in the hands of local governments. This is rather an anomaly as all local governments may not be keen on making it compulsory and free, with the result that along side of progressive areas there may be diverse backward areas also. It is really a matter in which all the people have interest; it follows that legislation to make it compulsory and free and to determine its content and scope should be undertaken by the Central Government. At the same time it is not possible for a Central Government not in touch with local conditions to lay down rules regarding the working season, the particular hour of work, detailed courses and syllabus, methods of instruction, nature of school buildings and thier equipment and several other

16 Kennedy, Some aspects of the theories and workings of Constitutional law, p.103.
subjects of importance. It is bother that these are kept under the control of local governments; so also the Central Government may be regarded as the appropriate agency in the preservation of public health in certain respects while in other respects the local governments are more competent. The control of epidemics, the fixing of standards of purity in articles of food and drinking and the regulation of traffic in them may consequently be left in the hands of the central government, while other matters relating to public health where local conditions and knowledge are the deciding factors might be subject to the control of local governments. A Similar division is possible in respect of many other subjects like factory labour, agriculture, land development, transport and the like. It has been found from experience, that in the suppression of gambling and of commercialised vice in the United States, the central government was able to take certain administrative measures of great efficiency even-though the promotion of public morals is a subject naturally falling within the jurisdiction of the units.\(^\text{17}\) While there may be a difference of opinion as to whether the action of congress was constitutional or not there is no doubt that its measures were of considerable use. It is, therefore, a sound policy of frankly recognised all this, and to provide in the constitution for central control over some aspects of a subject and local control over other aspects of it.

**NORMATIVE AND CONCURRENT POWERS**

The distinction that is often drawn between the standards on the basis of which a subject is to be regulated and their application in practice is to some extent based on the above view. In such a case, it will be the duty of the

\(^{17}\) Thompson; Federal Centralization; pp.111-112.
central government to lay down the fundamental principles regarding a subject and it will fall to the share of local governments to determine the ways and means for working them out. The goal to be reached is fixed by the former and the means required to reach it are settled by the latter. Although it is not easy to group the different phases of a subject under the two broad categories of principles and details, and although in regard to diverse subjects it is difficult to say where principles end and details begin, this distinction is on the whole as satisfactory a guide as one could get in a matter like this. At least one of the federal states has boldly recognised the usefulness of this distinction. The constitution of the German Federal Republic provides for the exercise by the Central government of what is known as ‘Normative Authority’ which consists in the power to establish fundamental principles in regard to matters like:

1. The duties and rights of religious associations,
2. Education,
3. The law of officers of all public corporations
4. The land law, and
5. The disposal of the dead.

The more important phases of these subjects are regulated by the Central authority while the units are given power to settle all questions of detail. The German Republic may fall short of being a typical federal state in various respects; but its example deserves to be followed in this particular by the other federations. A similar feature is found in the constitution of Austria also. The group of ‘concurrent’ powers found in federation fulfils a similar purpose.
If powers which are necessary to prevent the disruption of the federal union as well as those which are required to maintain uniformity in regard to matters of general interest and national importance, are thus conferred on central government, it naturally follows that all other powers which are essential for realising the remaining ends of the state should be exercised by local governments. This is the one criterion by which one could decide what the proper sphere of local governments is. On an examination of the subject, it will be found that the powers thus failing to the share of these governments are such as concern themselves with the regulation of matters which are of only local importance in the sense that it is the inhabitants of particular area alone that are benefited when they are properly managed and, it is they that suffer when their management proves inefficient. They are matters in regard to which anything done or left undone by one local government does not in any way affect the interests of those living in the other portions of the federal territory. The usefulness of this criterion depends on the possibility of drawing a definite line of separation between subjects of local and those of national importance.

In the practical application of this principles, there have always been several influences at work. It has already been pointed out that in various cases a federal system is necessitated by the existence of cultural minorities determined to preserve their separate entity and unwilling to subject themselves to the dictation of the majority in all that they consider essential to the preservation and development of their cultural life. Under such circumstances, independent local governments which are primarily established to satisfy the cultural needs of these minorities should be entrusted with power over education, religion, language and civil law. This constitutes the minimum of
authority that they should have. But there is also a second influence to be taken into account, and that is the instinctive love of power which every group possesses. The cultural minority feels that it cannot impress its individuality on the public, unless the government which it calls its own is endowed with several other powers, so that it may be supreme over as wide as field as possible. It is this, much more than mere local convenience and advantage, that determines what powers local governments do really come to have. Just as in the case of the individual, it is often argued that the personality in him cannot develop unless adequate and full opportunities are given to him, a claim is put forward on behalf of the minority groups that the scope for the expression of their individuality should be as large as possible, meaning thereby that the local governments through which they happen to work should be given control over numerous factors and their functions. The handing over agriculture, industries, public works, municipal institutions and the like to these governments is the result of this claim.

Culture is intimately connected with conceptions of right and wrong in relation to the moral conduct of individuals. In a vast country like India, standards of morality are bound to vary from one local area to another and from one cultural group to another. It will be next to impossibility to try to have one Uniform standard. Ordinarily no modern state attempts to regularise the morals of its citizens, partly because morality is considered to be a private matter and partly because it is difficult to make men moral through the imposition of punishment. All the same there are laws against gambling, commercialised vice, alcoholic drinks, unhealthy amusements and pornographic literature and the like. It has, however, been found from experience that, unless
there is a strong public opinion to co-operate with the executive in the enforcement of such laws, all governmental action becomes futile. A favourable local opinion can more easily be created about them than a national opinion. One locality may be a strong advocate of prohibition while another may not favour it. Under these circumstances, prudence is the best judge of local governments to regulate the subject of prohibition. The field of morals is also one where cautious experiment is necessary before a general plan of action is decided upon because of their relative a sensitive nature. In a country where there are numerous local governments, it is utilise them to make such experiments, so that if they succeed in one area, they may be extended to other areas. In view of considerations like these, it may be concluded that on the whole, legislation effecting morals, falls more appropriately within the sphere of local governments. This need not preclude them from taking the administrative help of the Central government in enforcing their laws.

The discussion of administrative aspects in Centre-State relations obviously is much more modest in its scope. It will have to be confined to a mere discussion of the set of Constitutional provisions and functional arrangements and practices which in most discussions of the subject have come to be grouped under Centre-State 'administrative relations' in broad distinction to 'legislative relations' dealt within the Chapter-I of part XI of the constitution, 'financial relations' which are the subject matter of part XII and the provisions relating to the judiciary in parts V and VI. As a theme paper, its aim will be to describe Centre-State administrative relations, the conflicts and

18 Ibid., P.207.
issues that have emerged, the context in which the debate on these issues has been, and is being, carried on and, finally, the kind of framework within which these issues need to be tackled in the Indian context.¹⁸

The government of India Act, 1935 made a division of Legislative and Executive powers between the central and provincial governments with meticulous care; but separation between their administrative systems was not effected completely. Even after the adoption of the new constitution the structure of administration has been left almost undisturbed.

Under Article 73 of the Constitution, the executive power of the union extends (a) to matters with respect to which parliament has power to make laws; and (b) to the exercise of its treaty rights. Articles 162 lays down that the executive power of the states extends to all matters with respect to which the state legislature has power to make laws proviso to Art. 162 lays down that the executive power of a state as regards the concurrent list shall be exercised, subject to the limitations proposed by the constitution or by any law made by parliament. Execution of policies in regard to matters in the concurrent list ordinarily belongs to the states. But according to the proviso to Art 73, parliament may provide by law that the executive power of the union shall also extend to such cases.²⁰ Here the constitution goes a bit further than the government of India Act, 1935. Under the Act of 1935, the concurrent matters were generally administered by the provinces alone. The said Act empowered the centre to give directions to the provinces as to the carrying out into

²⁰ Bharati Ray; Evolution of Federalism in India, 1967, p.122.
execution therein of a central law relating to a concurrent subject. Under the constitution the union can take up the executive power regarding a matter included in the concurrent list, if it deems it necessary. Under the Government of India Act, 1935 the centre had one such power to take up the administration of a concurrent subject.

Under the Constitution it is obligatory on the part of a state to exercise its executive power in such a way as to ensure due compliance with all union laws and existing laws that may apply in the state. Enforcement of central laws by the governments of the units, however, is not a feature peculiar to the Indian constitution alone. In Switzerland, in many matters, the federal authority legislates and the execution of the laws is left with the cantons. Federal administration in Switzerland is still of limited size and consequently the obligation to execute federal laws frequently devolves upon the canton.  

For example, execution of military laws, enforcement of civil and criminal procedure, the carrying out of laws regarding weights and measures are the businesses of the cantons and federal supervision. In earlier times, in the imperial federation of Germany, the executive functions of the Federal Governments were ‘limited for the most part to the laying down of general regulations and a supervision of their execution by several states.’ Now in the federal republic of west Germany also, the states, unless the constitution otherwise requires, ‘execute the federal laws as their own concerns’ under federal supervision.

21 J.C. Adams - The Government of Switzerland in foreign Governments and their backgrounds, p. 413.

22 Lowell; Governments and parties in continental Europe., vol.1., p.224.
The Constitution Acts in force before 1919 provided only for a unitary system of Government and the question of distribution of legislative powers between the various local Governments and the Central Government did not arise. Section 45-A of the Government of India Act (1919) read with section 129-A of that Act empowered the Governor General in Council with the sanction of the secretary of state in council to make rules providing for the classification of subjects, in relation to the functions of Government, as central and provincial subjects, for the purpose of distinguishing the functions of local governments and local legislatures from the functions of the Governor-General in Council and other Indian legislature. The Devolution Rules made under section 45-A provided for the classification of subjects into two categories - central and provincial. There was no concurrent list as such. Any matter not included in the Central subjects or the provincial subjects was treated as a central subject.\textsuperscript{23} Notwithstanding the division of powers, section 84(2) of the 1919 Act conferred powers on the central legislature to legislate in relation to a provincial subject and powers on the local legislature to legislate in relation to a central subject. The classification of the subjects in the Devolution Rules formed the basis for the three lists set out in the seventh schedule of the Government of India Act 1935. Constituent Assembly Parliamentary model because it would provide strength conceive action and leadership consenses, compromise and accommodation. Nehru felt that other forms might let to "Some measure of authoritarianism", Nehru "in other countries realful balanced political democracy came after a good deal of education spread because of the

\textsuperscript{23} Item No.47 of Part-I of Schedule I to the Devolution Rules in the Indian Constitution.
economic resolution all the which had added to the resources of the country and threby made it easier to fulfill the demands made by the people in those countries. In India we have taken a huge to hundred percent political democracy without the varing that to supply the demand which a politically consations elabrate makes". Structure built on foundation of mass poverty illtracy and all the explotions that go with them. "850 million people more than the combined population Africa and South America live together as one political antity. Never before in history and now-where-else in the world as one sixth of human race existed as a single free nation. The new Constitution adopted by the Constituent Assembly became operative from 26 January, 1950. Its federal features followed closely (indeed it might be described as an adaptation), those of the Government of India Act, 1935 which had placed an over-riding authority in the hands of the Central government, presided over by the British Governor-General in order to provide a check upon the congress ministries in the provinces. When, for quite different reasons the constituent Assembly, concerned about the strength of the forces of disintegration and disruption, felt the need for a strong Centre Government, it found in the frame-work of the 1935 Act a ready-made model. Thus, although the Indian Union exhibits the usual characteristics of a federation, a dual polity, a distribution of powers between national and State Governments, a relatively rigid written constitution, and a Supreme Court -its salient features, derived from its forerunner, was a unitary bias. This expressed itself in the wide authority given to the Central Government in the extensive federal and concurrent lists, in the power to

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24 Palkhivala, A., Centre-State Relations, A broad perspective, seminar on Centre-state Relations, Bangalore, August, 5-7, 1981.
implement treaties, in certain controls over administration in the states, in the power to levy taxes, in controls over public borrowing, and in the procedure for creating new states or altering state boundaries. In addition, the Supreme Court and the state High Courts were integrated into a single judiciary, and a common All-India Civil Service for important posts in both central and state governments was continued. The name itself, 'the Union of India', was deliberately chosen to emphasize the 'indestructible' character of the new federation.\(^{26}\) In emergencies even more sweeping powers were given to the Central Government to exercise an over-riding legislative and executive authority. Indeed, the new constitution was expressly designed to establish a federal system in normal times, but to be easily convertible into a unitary system in cases of war or other emergencies.\(^{28}\)

In the post-independence period one of the most significant developments is that there has been a popular demand for the reorganization of states on a linguistic basis. The movement for linguistic states had existed long before independence, but it had been brushed aside by the strength of the Hindu-Muslim communal antagonism for sometime. The demand arose because the existing provincial boundaries, established under British rule were mainly the result of historical accident and administrative convenience, bearing little correspondence to the distribution of the major language groups. As early as 1920, the congress had accepted the linguistic re-distribution of the provinces as a clear objective and had adopted the principle for the purpose of its own


\(^{26}\) Ibid., pp.34-35.
internal organization. But after independence, the congress leadership, fearing that linguistic divisions might have a disrupting effect or tendencies on the fragile union, shrewdly resisted any immediate application of the linguistic principle. Nevertheless, as resentments at differential treatment aroused tensions among different linguistic groups within the multilingual states, the movement for a reorganisation units gained ground. Under the pressure of public opinion, Nehru was forced to concede to the demands of the situtation. First, Andhra separated out from the then Madras in 1953, and then in 1966 a general reorganization of state boundaries was carried out, making most states unilingual. The result was a substantial simplification and reduction in the number of constituent units within the federation; the existing twenty-nine states and territories in four categories became fourteen states of equal status and five centrally administered territories. Subsequently, under continued pressure, the experiment of a bilingual state in Bombay was abandoned in 1960, when it was divided into the two essentially unilingual states of Maharashtra and Gujarat, and in 1962 Nagaland was made a distinct state. Thus only Punjab and Assam, where the territorial mingling of different language groups makes the creation of viable separate linguistic units especially difficult, remain multilingual states. The Constitution adopted the three lists with modifications. The union list consists of 97 centres of which 12 entries relate to taxation. The state list consists of 65 entries of which 19 entries relate to taxation. The concurrent list consists of 47 entries and the only entry which may be said to relate to taxation is that dealing with stamp duties other than duties of fees collected by means of Judicial stamps.
The residuary power of legislation and taxation is vested in the Union Parliament can legislate on a state subject, even under normal conditions, without the need for any emergency, if the council union executive to arrange for the construction and maintenance of means of communications without invoking the legislative powers of parliament for their formal declaration as ‘national’. The purpose of these executive encroachments on a parliamentary function is not very clear. The most objectionable feature in regard to articles 256 and 257 is that the only condition to be satisfied before the issue of such directions is the unilateral satisfaction of the Government of India. In both the articles, the following language is employed, “such directions to a state as may appear to the Government of India to be necessary for that purpose”. It may be also noticed that though there is an obligation imposed on the states not to prejudice the exercise of the Union executive power, there is no corresponding declaration imposing an obligation on the union not to prejudice the exercise of executive power of the states. Two courses seem open, one is the mission of articles 256 and 257 in their entirety. Another alternative has been suggested by Sri R.S.Gaa, secretary to the Government of India, Ministry of Law, Department of Legal Affairs. In his article captioned ‘Administrative Relations between the Union and the States’ published in the October-December 1969 issue of the journal of constitutional and parliamentary studies, he has suggested that Parliament could, in a case where the state has failed to carry out the directions issued to it, pass a law empowering the Central Government to call upon the state Ministers and the authorities of the state to implement the directions issued by the Central Government and imposing a penalty for failure to do so. He is in favour of invoking article 258(2) to achieve this purpose.
According to his suggestion, the State Legislature and the state cabinet could be continued. The state cabinet could continue to hold office; but the position will, in some respects be worse than what would obtain in a situation where article 366 is put into force. The state cabinet is collectively responsible to the legislative Assembly, which would continue to function in the situation contemplated by Sri Gae. The only alternative in case articles 256 and 257 are to be retained is to provide that no direction contemplated in article 256 and 257 should be issued, except in consultation with, and with the approval of, the inter-state council to be constituted in the manner and with the functions suggested by as below.

Besides articles 256 and 257, the following articles also empower the union Government to issue directions and they are dealt with as mentioned below.

Article 339 (2): This Article enables the Union to issue directions to a state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the state. The welfare of the scheduled tribes is a matter in which the states are vitally interested and in fact it is the states which have to meet the expenditure involved in the welfare schemes undertaken for the benefit of these tribes. Article 344 (6): This article empowers the President to issue directions based on the report of the official language committee of Parliament. Issue of directions in regard to language is bound to create disharmony between the union and the states.
The legislative power of parliament and state legislature has been divided into three lists in the seventh schedule of the constitution. List I gives all the subjects which are in the exclusive jurisdiction of Parliament. List II gives all the subjects which are in the exclusive jurisdiction of the state legislatures. List III, which is called the concurrent list, consists of subjects on which both Parliament and state legislatures can pass laws. Having made this division, the constitution has given a scheme of priority. Legislation by parliament on any subject in list I prevails over any legislation by a state legislature on any matter included in the concurrent list has a superior validity to any legislation passed by a state legislature on any matter included in list II or list III. Similarly, any legislation by parliament in a matter included in the concurrent list has a superior validity to any legislation passed by a state legislature on that subject. It is also superior to the legislation passed by a state on any subject included the state list if there is any conflict between the provisions of a state Act and the provisions of a parliament Act on a concurrent subject. This supremacy does not mean that a state law will become totally invalid only to the extent of its inconsistency with the law of parliament. 27

The Union list consists of 97 items. The last entry is "any other matter not enumerated in list II or list III including any tax not mentioned in either or those lists". This is really the residuary power. For abundant caution, it has been provided in Article 248 too, so that all other subjects not mentioned in lists II and III are in the jurisdiction of parliament. An interesting constitutional question on this issue is why the union list was included at all. 28 If parliament


28 Ibid. p.17.
had put on only list II and list III and said that all other matters are in the jurisdiction of parliament, it would have been sufficient. Where the residuary powers are with the states, the Constitution only defines the power of the federal government and says that all other powers are with the states. A similar procedure could have been adopted but following the precedent of the Government of India Act, the constituent Assembly, thought that it was better put in list I and also add as an item this residuary power. There was also something useful in this procedure. If there had been no list I, the scope of some items in list II, that is the state list, or list III, the concurrent list, would have to be interpreted by the courts and the courts might be inclined to expand their scope in a manner that they restricted the field of the union. Now, the scope of every subject in list II or list III will have to be limited by the natural scope of items included in list I.

The union list contains numerous items of the 97 items; one is residuary power; 12 items relate to taxation. Of the remaining items, several of them relate to matters which are exclusively in the jurisdiction of the union like Defence, foreign affairs, minting coinage, banking, insurance and such matters in which the states and the state legislatures have no jurisdiction at all. There are some entries which affect the relations between the union and the states. There are three items, 42, 56 and 81 - which deal with inter-state matters. Item 42 reads 'inter-state trade and commerce', 56 is regulation and development of inter-state rivers and river valleys, to the extent to which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest. Item 81 is about inter-state migration; 'inter-state quarantine'. The Union is not directly interested in these matters but it is
interested in preventing inter-state disputes and quarrels and, therefore, it was considered desirable that these matters should be decided and settled by parliamentary legislation. There is a group of items which enable parliament to take itself certain spheres and subjects which are normally intended to be within the jurisdiction of the states. Industries are primarily assigned to the states but item 52 says that ‘Industries, the control of which by the union is declared by parliament by law to be expedient in the public interest’ are to be dealt with by parliamentary legislation alone. The parliament, by a mere declaration, can take over as many industries as it deems fit. As a matter of fact, various big industries like iron, steel and coal have, by parliament declaration, been taken over under the jurisdiction of parliament. It can also take over any ancient monument or archeological site and when taken over, it will, thereafter, be under parliamentary control. We may describe these as items giving optional powers to parliament. There are some items falling in the state field but appropriated by the centre Examples: Museum, Memorial, National Library, Banaras Hindu University, Aligarh Muslim University. Institutions may be declared by parliament by law to be an institution of national importance and taken under parliamentary jurisdiction. Lastly, there are two items one of which is about elections. Item 72 says ‘Elections to Parliament, to the legislatures of states and to the offices of president and vice-president; the Election Commission’. Item 76 is ‘Audit of the accounts of the Union and the states’. In the matter of elections and of audit, it was considered to be of national importance that they should be regulated by law of parliament, even where only states were concerned.
The Constitution lays down the duty of the states to exercise their executive powers in such a way as not to impede or prejudice against the executive power of the union. In both cases the Central Government is empowered to issue such directions to the state government as are necessary to secure the purposes. In addition to this the Central Government can issue directions to the state as to the construction and maintenance of means of communication declared in the direction to be of national or military importance, though communication is a state subject (entry 13 list II). This will not affect the power of parliament to declare highways or water-ways (entries 23-24, list I) or the power of the union to construct and maintain means of communication as part of its function with respect to naval, military or airforce works. The Union Government is also entitled to issue directions to a state for protection of railways within the state. The extra costs incurred by a state in carrying out the directions regarding the construction and maintenance of any means of communication or for the protection of railways are to be paid by the Union Government. Constitutional experts and political scientists concede that national integration continues to be elusive despite governmental efforts and intellectual exercises. If one scholar says that India is a country not a nation (Habib) another thinks that there is an urgent need to review the working of our constitution and change and modify it in the light of forty seven years of experience as a free country (Rasheed-uddin Khan). The latter points out that India is not a nation in the conventional sense of the term. India he says is a federal nation, a ‘mixed polity’ beset with such problems as populism, parochialism, economism and break-down of national consensus. Rasheeduddin Khan argues that segmentary nationalism in India has been rooted either in
language identity, caste association or more persistently and belligerently in religious communalism. The overbearing Central authority tends to overwhelm and ignore the legitimate demands and rightful expectations of the many segments that constitute the polity. The Indian Republic, he says, failed "to coalesce the many segments of its powerful continental plural society into a mosaic of peaceful coexistence and harmony". P.N.Haksar opines that the problem is to find a balance between the need for national unity or national integration and the equal need to structure such unity and integration by an explicit recognition and respect for our diversitites. Unequal growth, he observes, results in regional imbalances.

Four aspects of the problem have come in for special attention (1) Cultural (regional and linguistic), (2) Social (differentiation of caste communities, tribes), (3) Economic (rural and urban) (4) political (cumulative articulation of exclusive demands). It has been realised that modernization does not obliterate primordial loyalties but weakens them. The need is to make a proper adjustment between the primordial and modernist concentrics. Economic integration facilitates the process of modernization. Growth of education and 'cultural literacy' would help in overcoming the hurdles in the way of national integration. Technology also if properly used would be of immense value on facing the challenge. Building national consensus on the values to be upheld and goals to be pursued is the need of the hour.

FINANCIAL RELATIONS

India is a nation of union of states; and while the states have their autonomy, they are also members of the union. At the same time, we cannot
have a dominant centre with the states serving merely as its agents and subordinates. India is not a unitary state; nor is it a federation in the orthodox and historical sense of the term. There can be neither central nor state domination over the country. What is needed is a central-state Governance of India and its development through partnership and discussion, dialogue and consensus on matters of common interest and concern, without diluting either state or union responsibilities in matters which fall within their exclusive domain. Even in matters of their respective developmental and governmental fields, there should be exchange of information, technical guidance, coordination to the extent needed, and development of a National state integrated consensus. The appropriate division of the national financial kitty between the union Government and the governments of the states taken as a whole. This in turn depends not only on the extent to which there can be a clear cut division of functions and responsibilities between the union and state Governments, but also on the extent to which they agree on a national minimum equalisation programme among the different states which will give them a feeling of one national identity, and the extent to which the union has responsibilities for co-ordination of state activities for the promotion of national integrity and unified development of the Indian economy, polity and society as a whole and its international role and status. All this of course, has to proceed on the imperative assumption that the Indian Union is as much interested in the strength, responsibility and self-respect of its constituent states as the states in turn are interested in the strength, responsibility and self-respect of the Indian Union.
There is no doubt that the Indian Tax structure is such that there can be no clear-cut division of tax resources between the union and the states. Not can one forget that we cannot lose the advantage of the vast all-India market or the internal mobility of capital and skills by adopting a clear-cut and mutually exclusive tax division that can only encourage financial monarchy and endanger the developmental prospects of the country as a whole including its constituent units. The Present division of tax resources given in the constitution is well-conceived and needs no change. There is no doubt that over the years, the state receipts from the devolution of central taxes have been increasing as also their share in the totality of central and state tax receipts. While the state raises only 32 per cent of the tax revenues of the union and states taken together, their share on accrual basis comes to about 53 per cent of the total tax revenues as a result of the recommendations of the seventh finance commission. All the same, the resources available to the states are grossly inadequate to meet their developmental requirements, while what is available to the Union Government perhaps comes for a certain measure of extravagance and irresponsibility in its expenditure - it is, therefore, necessary to take a second look at the devolution picture. What is needed is a change in the distribution or devolution of nationally collected taxes. Prevention of encroachment by the Union Government on the tax resources assigned to the States. Full implementation of the tax powers given to the Union for exclusive distribution to the states, and administration of the union taxes shared with the states in a manner beneficial to state's financial interests and not overshadowed by the Union Government’s desire for populist acclaim, by tax

concessions, the incidence of which does not, in fact, fall on their own revenues.\textsuperscript{36}

Apart from devolution to the states as a whole of centrally levied and collected taxes which is determined by the finance Commission, they also recommend differential grants to individual states based on the out-moded and universally criticised revenue-gap formula which may be replaced by the fiscal deficiency formula now becoming so popular with the economists who write and elicit on the subject. The sharing of the national revenue resources among the states as a whole and the Union Government should be determined by consensus, while its distribution among the individual states should be determined on the basis of the recommendation of the finance commission.

Tinkering with Centre-State financial relations by way of five yearly reports of the finance commission or distribution of financial grants by the planning commission for economic development is not enough to tackle the basic issue of mobilising resources for development by the centre and the states acting in concert. This is simply not possible without a fairly radical restructuring of Centre-State relations. The fact which is also to be reckoned with is the revamping of Centre-State financial relations and this has been a vital issue of much heated debate for nearly two decades, as the Central Government has been foreclosing the available avenues for meeting, first of all, its own often extravagant current consumption demands and for the rest using discretionary financial assistance to strangle the political and development

\textsuperscript{36} Ibid.
intruders of the State Governments. The stress placed lately on decentralisation and integrated area planning with concomitant devolution of resources to boost development effort at the grassroots is well-conceived, but there is a lacuna in this approach to development planning and implementation of plans. It glosses over the question of Centre-State relations in economic and political matters which, unless put in proper shape, will block the entire decentralising mechanism, as well as scuttle the equity aims of the development process. The idea of transferring centrally sponsored welfare scheme to the states too does not envisage any significant improvement in the resource position of the State Governments - in particular their capacity as well as opportunity to raise resources meaningfully to deploy for socially broadbased development. The priority task is not improvement in the criteria and mechanism for distribution of central largesse among the states; it is not devolution of more resources either from the centre to the states to be passed on to the local bodies. It is to widen the avenues for the states and local bodies themselves to raise resources for development by a variety of ways-one of which would be for the Central Government to vacate some of the avenues it has wrongfully come to occupy. The deployment of development funds has become, in particular, a very sore point with the state Governments. Interest is charged on plan funds advanced to the state Governments. The Central Government advances these funds out of allocated money to fill its own heavy deficit budget but builds assets for itself at the cost of the State Governments.

31 Balraj Mehta, "opportunity to Reorder Centre-State Ties" Mainstream; May 4, 1991; p.6.

32 Ibid., p.7.
The demand for relief from this burden by reducing the interest bearing component of the advance plan funds and for a portion of this liability to be written off is fair and deserves positive response from the Central Government.

The initiative for the reform of financial as much as of political relations between the centre and the state governments, big and small, really rests with the central Government. To be meaningful, this reform has to be informed by the federal principle. It should moderate regional imbalances and distortions which have come about over the years. In the Indian scheme of planned development, the Central Government has the responsibility for the development of infrastructural support to promote economic growth. Under the system of mixed economy and the tilt lately towards market-oriented liberalisation, economic activity is being encouraged by the Central Government more and more in the private sector, in particular its big business segment. The states’ sector, on the other hand, is called upon to develop areas of relevance for generation of new employment, enlarging the scope for equity and mass welfare in the growth process.

PLANNING AND CENTRE-STATE RELATIONS

The idea of planning for the economic development of India was mooted in 1938 and a number of committees were appointed to enquire into a variety of problems of planning. The recommendations for the establishment of a planning commission and the Industrial policy resolution of Government of India 1948, envisaged the establishment of a national planning body. However, it

33 National Planning Committee was constituted by the Indian National Congress Party 1938.
appears that no serious attention was paid by the framers of the constitution of India to make a special provision in the constitution for the establishment of a planning machinery. The constitution of India specifically mentions several commissions like the union public service commission, the election commission, the Finance Commission and several others, but planning commission. The planning commission was set up within two months of the inauguration of the constitution of India. The planning commission, an extra-constitutional, non-statutory and advisory body, was set up by a Resolution of the Union Cabinet in 1950. The composition and working of the Planning Commission has been criticised by various authorities, parliament, state legislatures, official committees, industrial organisations, academic bodies, individual economists and above all by Jawaharlal Nehru himself.

According to them, it had become a 'Super Cabinet', an 'Economic Cabinet' and a 'fifth wheel in the administration', encroaching upon the autonomy of the states and the function of the finance Commission and involving itself in the actual process of formulation of public policies even in matters other than development. In order to meet this criticism, it has been pointed out that the Planning Commission should be allowed to be only an advisory body as envisaged in 1950, to formulate plans and it should be made an independent, statutory, non-political expert body to advise changes in the plans without any party affiliation or predilections. The West Bengal Government, in a memorandum on Centre-State Relations, urged that an article


should be introduced in the constitution to ensure that the composition of the Planning Commission is determined by the National Development Council so as to enable the states to have some say in the operation of the Commission.\textsuperscript{36}

At the conceptual level, there are three phases in Centre-State Planning relations: (a) the Five Year Plan is formulated, amended and adjusted to the national plan, (b) the Annual Plan of the State is similarly formulated, amended and adjusted; and (c) the collaboration of the centre and the states in the process of plan implementation. Each state Government has undertaken to formulate agencies and institutions. A draft outline is prepared after discussions with the state officials and heads of the departments. The draft chapters are discussed by the working groups of the state planning Board and they are submitted after approval to the Planning Board, and after necessary modifications, to the council of Ministers of the state.

An approach paper to the plan is prepared in the light of the Planning Commission's general instructions following the meeting of the National Development Council.\textsuperscript{37} Then the Plan document is approved by the council of Ministers of the state and the sector-wise expenditure ceilings are sent to each department for preparing their proposals in detail for continuing projects and new projects. After receiving proposals from the heads of departments, discussions are held in a number of meetings with various concerned officials to fix tentative targets and financial allocations to the schemes. Then, a

\textsuperscript{36} Government of West Bengal; Memorandum on Centre-State-Relations; Calcutta, December, 1977, p.4.

preliminary memorandum on the five year plan is prepared and submitted to the planning commission after the approval of the council of Ministers of the state. The Planning Commission, after going through the schemes seeks clarifications with the state Planning Department on various questions.

The State Government officials discuss the points raised with the officials of the Planning Commission in a number of meetings and finalise the plan. The state plan, nevertheless, has to take stock of its resources and needs and prepare an overall plan; based on its own detailed and intimate knowledge of data. But, these develop a tendency on the part of the states to present inflated plan outlays with a view to maximise bargaining with the centre.\textsuperscript{33}

Planning in India essentially began as a Central effort. Prof. Gadgil described the Indian Planning as the most centralised system of Planning in the world. One of the justifications given for centralisation was the need for uniformity and national stability to ward off threats whether external or internal. But it is inevitable for a country like India that planning must be a multi-level process, if it has to achieve certain meaningful results. In this context, the states were encouraged from time to time to take some steps from the technical aspect, but the level of planning was not found yet anywhere upto the mark. It was observed that the Planning machinery in most states did not function sufficiently enough above the ordinary departmental level to make the impact needed in terms of policy and approach. D.R. Gadgil pointed out that 'Planning at state level was essentially a secretariat affair without any experience and no attention was paid even to obvious failures and schemes and

\textsuperscript{33} V.K.R.V. Rao; et al (eds), Planning for change; Vikas; Delhi, 1975, p.17.
projects carried over from plan to plan with little charge, or modification. This was an important consideration behind the suggestion made by the Planning Commission to the states in April 1962, to set up state planning Boards. The Administrative Reforms Commission has also recommended the constitution of Planning Boards in the states for formulating plans and for evaluating plan performance. But the recommendation was not accepted by most of the state Governments except Kerala and Mysore for want of expert personnel and financial resources.

The survey of the vast literature on planning relations between the centre and states reveals that there is a widespread feeling among the authors that the autonomy of the state visualised in the constitution has been reduced by the operation of five year plans and the federal system functioned almost in a unitary way. The states are treated as "legatees" rather than partners. Perhaps, the planning process has upset the Centre-State relationship and enabled the centre to exercise a degree of control exceeding than envisaged in the constitution. The excessive dependence of the states upon the centre, arose in part from the dominant place external resources happened to occupy in the scheme of resource mobilisation for the plans and in part from the fiscal arrangements built into the Indian constitution in the pre-planning period. Introduction of planning has been the greatest single factor for the increase in


41 R.K. Vepa, Change and Challenge in Indian Administration, Manohar Publications; New Delhi; 1978, p.207.
state's expenditure. The basic federal financial equations of the distribution of revenues and through them the division of powers, became rather national with the phenomenal increase in central assistance to states. Though the quantum of Plan-aid has increased substantially, several states expressed dissatisfaction both with what they had received or what they were likely to receive in the future. Nevertheless, the policies bearing on development and the formulation of plans are the tasks that have to be undertaken jointly by the centre and the states in close co-operation with one another. The Planning Commission was set up with the assumption that it would assist and advise both the Union and State Governments. Over the last three decades, a pattern of Centre-State relationships has developed within the framework of certain common premises and mutual interests between the centre and the states. The Government of India accepted its responsibility to provide resources and technical assistance to support developmental activities in the states and the states also recognised the interdependence that exists between the economic advancement of different parts of the country and the nation as a whole. The federal economy under Planning could well be governed by four principles. First, the centre has a special place and function in terms of overall national perspective, as also inter-state relations; Second, the states shall not be reduced to 'receiving ends' of central charities, but will constitute member units in the federal family with all the rights and responsibilities; Third, some states have peculiar problems and certain needs which require separate treatment on merit; further there is no rigid formula applicable to all situations and for all time. Mutual understanding and common exercises are needed to impart dynamism in a functional sense.
Consensus and co-operation, which are pre-requisites for the smooth functioning of the Union-state relations as arranged in the Constitution, have in recent years been threatened by a growing politics of confrontation. It was in this context. In 1983 the Government of India announced the appointment of a Commission to examine and review the working of existing arrangements between the Union and States with regard to powers, functions and responsibilities in all spheres and recommend appropriate changes and measures. The Commission came to be known as the ‘Sarkaria Commission’ on Centre-State relations after the name of its Chairman, R.S. Sarkaria. The scope of the terms of reference included constitutional provisions relating to the respective powers, functions and responsibilities of the Union and the States and impinge on each other’s area, and administrative conventions and practices in areas of concurrent or separate responsibilities. In recommending measures and changes, the Commission was to keep in view the social and economic development that had taken place over the years and had due regard for the frame-work of the constitution.

ISSUES IN CENTRE-STATE RELATIONS

The Rajamannar Committee on Centre-State Relations recommended the setting up of an inter-state council but its composition was on lines substantially different from those laid by the ARC. It recommended that the council should comprise all the Chief Ministers, headed by the Prime Minister. It observed; "No other Minister of the Union Cabinet should be a member of the

Council. The Governor should be appointed in consultation with the State Government and he should be ineligible for second term of office as Governor or any other office under the Government. He should have a fixed tenure and is not to be removed except for proved misbehaviour or incapacity after inquiry by the Supreme Court. These provisions are calculated to make him independent of the Central political leadership in the discharge of his responsibilities. Further, the jurisdiction of Article 356 of the Constitution should be restricted and the only contingency which may justify the imposition of President’s rule under Article 356 is the complete breakdown of law and order in a state, when the state Government itself is unable or unwilling to maintain the safety and security of the people and property in the state.\textsuperscript{43} The Committee’s other recommendations include transfer of some functions from the concurrent to the state list and redefinition of some items in the Union list. It, moreover, wanted residuary powers of legislation and taxation to rest in the State legislature. The 282 page Rajamannar Report came out in 1971 but it proved to be still-born, because action on it lay in the hands of the Centre. But the Central Government has been uniform in its treatment of all reports: none has gained any acceptance, even in the past.

The Sarkaria Commission has identified certain major issues in Union-State relationship from the replies to the questionnaire and memoranda submitted by the State governments and Political parties. Some issues arise from the way the constitutional institutions have been utilized, some from the

\textsuperscript{43} Government of Tamil Nadu; "Rajamannar enquiry committee on Centre-State Relations", Madras, 1971; p.24.
gap between the theory and practice or the spirit and the substance, some from political differences between the Union and the state Governments, and some form a general notion of uniformity in the standard of administration through centralization. Therefore, while there are certain common grievances regarding the intrusion of the Centre into the States, specific grievances are based on individual experiences in inter-Governmental relationship. Complaints about over-centralization in legislative, administrative and financial powers reducing the states to mere administrative agencies is a generalized version of the overall discontent of the states. Extension of the centre in the concurrent areas and intrusion in areas reserved for the states through the planning commission are among the common grievances arising from the expansion of the government's role and the entry of the Union government into vast area which should logically belong to the states. Inadequacy of resources in relation to the responsibilities of the states and their development needs was a grievance listed by the Commission among the major issues. It was alleged by a number of states and political parties that heavy dependence on the union for financial resources had resulted in erosion of the jurisdiction, authority and initiative of the states even in their own 'constitutionally defined spheres' - planning in another area of union-state relations in which institutional arrangements and processes are heavily centralized. The grievance of the states pertain to the system of centralized planning and "deep inroads into states' sphere of activity" by the Centre.

In Centre-State relations the role of the Governor emerged as the key issue which has strong political implications. The Governor, belonging to the ruling party, who is supposed to be the link between the Centre and the state
is looked down upon rather suspiciously as a 'spy' or an 'agent' of the centre. The conflicts arise mainly in the sphere of the exercise of discretionary power by the Governor, and his role in ministry-making and recommending President's role. The Karnataka government laid a white paper on the 'Role of the Governor' on the table of the Legislative Assembly in 1983 which analysed the intentions of the constitution makers and the manner the office of the Governor utilized with extensive illustrations under the Title 'Constitutional Position and Political Perversion'. The white paper, reproduced in the memorandum of the Government of Karnataka to the Sarkaria Commission concluded that the record proved beyond doubt that, in most cases the Governors had used their office to serve the interests of the ruling party at the centre. Four state Governments - Andhra Pradesh, Tamil Nadu, Tripura and West Bengal - have recommended to the Commission the extreme step of abolishing the post of the Governor.44 All India services, another point of close union-state contact, although largely satisfactory to several state Governments, have evoked sharp criticism from some states. It was alleged that the members of these services served the centre and not the states. The Government of Karnataka recommended that the Indian Administrative Service and the Indian Police Service should be wound up; the Government of West Bengal sought a constitutional amendment to permit state governments to opt out of the system. The governments of Andhra Pradesh and Tamil Nadu wanted state control over the offices allotted to the state. The main issue that came up was about the over-all control over the management of these services and the scheme of disciplinary control.

44 Ibid., p.194.
Sarkaria Commission’s recommendations are primarily based on the premise that the existing constitutional principles and arrangements are sound and what is needed is to build a mechanism to ensure a system of collective decision. It was not concerned with the ‘politics’ of Centre-State relations but only with the ‘administration’. It has made a total of 265 recommendations classified under subject-wise under twenty areas, viz., legislative relations, administrative relations, role of the Governor, reservation of bills by Governors for president’s consideration and promulgation of ordinances, emergency provisions, deployment of union armed forces in a state for public order duties, all-India services, Inter-governmental council, financial relations, economic and social planning, industries, mines and minerals, agriculture, forests, food and civil supplies, inter-state river water disputes, trade and commerce and intercourse within the territory of India, mass media, miscellaneous matters, language, union territories and high court judges, and general observations.

The constitution that emerged after Independence, though described as federal, was essentially unitary in character. It clothed the centre with more powers at the expense of the autonomy of the states.46 In the debate over federalism in India, especially over the last five to ten years, the trend has been to subsume the federal idea under the slightly narrower question of Centre-state relations, the constitutional division of powers and the actual operation of the federal political process in which these powers have been used or mis-used.46


46 Nirmal Mukarji & Balveer Arora, Federalism in India origins and development, 1992, P.41.
The right of the people to manage their affairs even within the limited sphere allotted in the states list of the constitution has been sought to be reduced to a force. For this purpose, all manner of pressures had been used, sometimes formally through the power of the centre, sometimes indirectly by denying finances and other resources, to non-Congress Governments and by applying pressure on the Chief Ministers of the Congress party through the organisation and leadership. During the last twenty five years, the centre’s tentacles have further spread to the states even in the sphere of law and order, which is formally a state subject through the creation of Central Reserve Police, Border Security Force, Industrial Security Force, and the like. By the 42nd Amendment to the constitution, Education, which was a state subject, transferred to the concurrent list. The process has now reached a stage when it threatens to reduce the states to the states of subordinate departments of the centre under the aegis of the Central Home Ministry.

The problems of Indian federation have been discussed by three Committees which have been set up since the inauguration of the constitution. The period between 1950-66 was characterised by the dominance of the congress party as the ruling party in the centre and in most states, and as such any major questions of Centre-State relations did not arise, at least in the open. The fourth general election (1967) changed for the first time the political complexion of the country as the congress was defeated in several states in India. As a result, other regional parties came into power, and problems of centre-state relationship became prominent, and relations strained for the first
time. The states mounted a campaign for a re-structuring of relationships in a bid to have a higher measure of autonomy. Just before the election, the Central Government had appointed an Administrative Reforms Commission (ARC) whose terms of reference included examination of Centre-State relations also. The ARC constituted a study team under M.C. Setalvad to carry out a comprehensive examination of this problem. The study team submitted its Report in 1968. Taking it as the basis, the ARC finalised its own report on the subject in 1969. The Central action in setting up a Commission to examine inter-governmental relations did not completely satisfy the states. At any rate, Tamil Nadu in 1969 constituted a Centre-State Relations inquiry Committee under P.V. Rajmahanar to inquire into this field and make recommendations for improving the relations. This Committee submitted its report in 1971. The period 1966-70 was one of extreme political fluidity in the country making Centre-State relations a subject of controversy. The controversy was continuously fanned by the manner of use of Article 356 providing for president’s rule in the states. In a short period of four years-1967-71 there occurred eleven instances of President’s rule in the states. The seventies saw the reverse swing of the pendulum, and the Congress again became nearly the dominant party in the land. Questions of Centre-State relations thus ceased to be matters of public controversy and consequently got relegated to the background. The weakening of the hold of the Congress party and the coming into power of other parties in a number of states, since 1982, have again revived this question. Pressed hard, the Central Government announced, in

August 1983, constitution of a Commission was formed under the Chairmanship of Justice R.S. Sarkaria "to go into Centre-State relations and recommend appropriate changes within the present constitutional framework".

The Setalved study Team had recommended constitution of an Inter-state Council composed of the Prime Minister and other Central Ministers holding key portfolios, Chief Ministers and others, invited or co-opted. It suggested measures to rationalise the relationship between the finance commission and the Planning Commission. Besides, it recommended that the office of Governor be filled by a person having ability, objectivity and independence, and the incumbent must regard himself as a creation of the Constitution, and not as an official of the Central Government. The Administrative Reforms Commission noticed that the Central Government had even moved into the field earmarked for the States under the constitution and asked it to withdraw from them. It recommended the setting up of an Inter-state council but made a novel suggestion about its composition. Instead of giving seats in this body to all the Chief Ministers, it wanted to have five representatives One each from the five Zonal Councils. Moreover, the ARC highlighted the need for formulation of guidelines to govern the exercise of discretionary powers by the Governor. This would ensure uniformity of action and eliminate all suspicions of partisanship or arbitrariness on the part of Governor. It also recommended that the question whether a Chief Mininter enjoys majority suport or not should be tested on the floor of the legislature and for this he should summon the Assembly whenever a doubt arises it has also opined that when a ministry suffers a defeat in the legislative Assembly on a major policy issued and if the outgoing Chief Minister
advises the Governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, then Governor should normally accept the advice.

CENTRE STATE RELATIONS AND INTER-STATE RIVER WATERS DISPUTES

There are numerous inter-state rivers in India and disputes relating to those rivers may very well arise among them. But though only the Supreme Court of India possesses jurisdiction regarding inter-state disputes, as regards disputes relating to waters of inter-state river valleys, a special provision has been attached to the Constitution. 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. Parliament has also been solely empowered to take away completely by law the jurisdiction of the Supreme Court in such cases, if it so likes. Under Art.262 parliament has passed two laws:

(a) The Inter-State Water Disputes Act, 1956 and

(b) The River Boards Act, 1956.

According to inter-state water disputes Act, any state Government may make a complaint to the Central Government as to 'water disputes'. The riparian water-dispute means dispute with respect to the use, distribution or control of waters of any interstate river or river-valley, or any dispute relating to the interpretation of the terms of any agreement or levy of any water-rate prohibited by the Act S.7 of the Inter-state water disputes Act. Any state may make such a complaint and request the Central Government to refer the dispute
to adjudication. On such requests the Central Government may constitute a Tribunal the decision of which is to be final and binding on the parties under dispute.

The River Boards Act makes a different approach to solving the problems of such rivers and river valleys. It makes provision for the establishment of Boards for the development of inter-state rivers and river-valleys. Conflicts arising out of any programme offered by the board or out of question of the sharing of financial liability are to be referred to by any of the affected or aggrieved parties to a Tribunal and the decision of the Tribunal is to be binding upon all the parties. Art.263, which is a virtual reproduction of Sec. 135, Government of India Act, 1935, contains another provision to iron out differences to remove tensions and to secure harmony between the Union Government and the states under question and between the states themselves whenever occasion arises. The President is empowered by the above mentioned Article to appoint an Interstate council if he thinks it necessary to do so in public interest. The council will be charged with the duty of (a) inquiring into and advising upon disputes which may have arisen between states, (b) investigating and discussing subjects in which some or all of the states have a common-interest; and (c) making recommendation on any subject for better co-ordination of policy and action. This provision is included mainly for ensuring co-ordination and obviating litigation, although it does not exclude the jurisdiction of the Supreme Court in such cases. Various type of disputes that have arisen pertain to sharing of waters and planning, construction and

48 Government of India; Sec.3 of inter-state water disputes Act, 1956, New Delhi.

operation of projects. Some of the major specific causes leading to disputes can be classified as:

Equitable allocation of waters of a river basin among co-basin States-as in the case of Krishna and Godavari, Problems of submergence in upper State due to construction of a dam of a particular height in a lower State-as in the case of Narmada, Riparian rights of a lower State, vis-a-vis subsequent developments and utilisation in Upper co-basin State as in the case of Cauvery, Inequitous operation of common facilities at control points-as in the case of Yamuna and Chambal; and Sharing of benefits by different States in a specific project - as in the case of proposed Kishau dam on the Yamuna in Uttar Pradesh.

AMICABLE SETTLEMENTS IN THE PAST

Under the present constitutional arrangements, the Central Government has no statutory powers to resolve Inter-State disputes, excepting constitution of Tribunals under Article 262. as no legislation has so far been enacted by the Parliament under Entry-56 of the Constitution, Under the present procedure in vogue, Ministry of Water Resources, with the assistance of the Central Water Commission, has to accord clearance from Inter-State angle before any major/medium irrigation, hydro-power or a multi-purpose project is approved by the Planning Commission for inclusion in the Plan and investment of Plan funds thereon. This is a form of indirect control exercised by the Centre on the States in respect of Inter-State Projects.
In addition, in the past, the Central Government has been using its good offices in bringing the concerned States together - both at official level as well as at political level - to arrive at agreements on sharing/allocation of waters of Inter-State rivers, determining the magnitude and size of major Inter-State Projects, as also sharing of costs and benefits of such projects. Some of the major agreements arrived at in the past are:


ii. Sharing of costs and benefits and utilisation of waters of Tungabhadra between Andhra Pradesh and Karnataka in 1956.

iii. Sharing of Subarnarekha waters among Bihar, Orissa and West Bengal in 1964 and sharing of costs and benefits of Kharkai and Chandil Dams and Galudhi Barrage in 1976.


v. Rajghat Project on Betwa between Madhya Pradesh and Uttar Pradesh in 1972, and


In order to resolve disputes during construction of Inter-State Projects as well as to ensure efficient and economic construction, the Central Government,

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with the consent of the State Governments, have also set up Control Boards under the Chairmanship of Union Minister, Irrigation, with Chief Ministers of the concerned States as Members, assisted by Central and State Officers. Notable examples of this type are Bhakra Construction Board in 1950, Chambal & Mahi Control Boards in sixties and Raighat and Bansagar Control Boards in seventies.

Without direct involvement of the Central Government, some of the States have been able to resolve their disputes and arrive at bilateral and tri-lateral agreements amongst themselves, particularly regarding the features of a project and sharing of cost and benefits therefrom. Classic and a very successful example is that of Maharashtra and Madhya Pradesh. These States have been able to reach amicable agreements on a number of projects like Bagh & Pench in Tapi Basin and Bawanthadi, Bhopalpatanam, Kalisar and the like, in Godavari Basin. These States have a Standing Bilateral Inter-State Control Board to resolve disputes regarding scope of individual projects, sharing of costs and benefits, problems of submergence, land acquisition and operation.

WATER DISPUTES TRIBUNALS

In spite of vigorous and sustained efforts made by the States and Government of India, some of the major Inter-State river waters disputes could not be amicably resolved. Consequently, under the provisions of inter-State Water Disputes Act, 1956 (under Article 262 of the Constitution of India) Tribunals had to be constituted. So far five such Tribunals have been constituted as indicated below:
Narmada Tribunal

In order to utilise waters of Narmada, Gujarat proposed the construction of a high dam at Navgam in 1963. Government of India asked the eminent Engineer, Dr. A.N. Khosla, to examine the proposal and give his recommendations. He recommended a dam 500 ft high (465 ft for irrigation and balance for power generation) in 1965 and suggested allocation of 15.60 MAF water to Madhya Pradesh and 10.65 MAF to Gujarat. A number of meetings were held by Government of India between 1965 and 1968 without any success. Ultimately, a Tribunal was constituted in 1969.

Even after the constitution of the Tribunal, negotiations between the States continued. In a meeting on 22 July 1972 of the Chief Ministers of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan, it was agreed that 75% dependable flows of Narmada are 28 MAF, out of which, share of Maharashtra is 0.25 MAF and Rajasthan 0.50 MAF. All the Chief Ministers recommended that the Prime Minister of India should allocate balance 27.25 MAF between Madhya Pradesh and Gujarat and should also fix a suitable height of Navgam dam in Gujarat. Again on 12 July 1974, the Chief Ministers agreed on the common issues to be considered by the Tribunal. On 8 March 1975, it was agreed by the States that without prejudice to the decisions of Narmada Tribunal, Gujarat can go ahead with construction of some projects of tributaries like Karjan, Heran, Rami and Sukhi; while Madhya Pradesh can go ahead with Kolar, Bichia, Sukta and Latia. Similar agreement on additional 4-5 Projects of Gujarat and Madhya Pradesh was reached on 5 April 1978. The Tribunal’s award was published in December 1979. Total available water at 75%
dependability was agreed to as 28 MAF. Allocation among the States was
decided as following:\textsuperscript{51}

\begin{tabular}{ll}
Madhya Pradesh & 18.25 MAF \\
Gujarat & 9.00 MAF \\
Maharashtra & 0.25 MAF \\
Rajasthan & 0.50 MAF \\
\textbf{Total} & 28.00 MAF \\
\end{tabular}

Height of Navgam dam was decided as 455 ft, as against 500 ft
suggested by Dr. Khosla. The Tribunal recommended that Narmadasagar dam
in Madhya Pradesh and Sarda Sarovar in Gujarat be implemented simultaneously
to derive full benefits from available waters. The award is subject to a review
after a period of 45 years.

Gujarat Government prepared a revised project in 1983 based on the
award of the Tribunal, which was approved by the Planning Commission in
1988. Thus, a total period of about 25 years was lost in utilising Narmada
waters going waste to the sea all these years.

\textbf{Krishna Tribunal}

As far back as on 28 July 1951, Late Shri V.T.Krishnamachari, the then
Deputy Chairman of the Planning Commission, convened an Inter-State
Conference of Chief Ministers of States falling within the Krishna and the
Godavari river basins to decide the sharing of waters of these two major rivers
of the south. It is interesting to note that in 1951, he emphasised that water

\textsuperscript{51} Narmada Waters Tribunal, Narmada Water Dispute, Government of India
Gazette, December 1979.
should be considered as National Resource and the waters should be utilised expeditiously to meet the country’s growing food requirements. Allocation of waters of both Krishna and Godavari among the co-basin States of the then Bombay, Hyderabad, Mysore, Madras and Madhya Pradesh were decided after taking into account the then existing utilisations and future needs of each State. It was also agreed that these allocations will be reviewed after 25 years. These agreements were ratified by all the State Governments.

However, on account of re-organisation of all the States in these basins (Bombay, Hyderabad, Madras and Mysore) the allocations decided in 1951 had to be revised. Unfortunately, no agreements could be reached in spite of protracted negotiations and ultimately Krishna & Godavari Tribunals were constituted in 1969. The decisions in the award of the Krishna Tribunal published in May 1976 are briefly as follows: \(^{62}\)

<table>
<thead>
<tr>
<th>75% dependable flow up to Vijayawada</th>
<th>2060 TMC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocations:</td>
<td></td>
</tr>
<tr>
<td>Maharashtra</td>
<td>580 TMC</td>
</tr>
<tr>
<td>Karnataka</td>
<td>700 TMC</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>800 TMC</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2060 TMC</strong></td>
</tr>
</tbody>
</table>

Soon after this award, the three States agreed to give 5 TMC each from their shares to Tamil Nadu for water supply to Madras City.

\(^{62}\) Krishna Waters Dispute Tribunal, Krishna Waters Dispute, New Delhi, May 1976.
Godavari Tribunal

One of the deficiencies of July 1951 Agreement was that the State of Orissa, a riparian State, was not a party to the Agreement. Besides, with the creation of a new State of Andhra Pradesh from October 1953 and re-organisation of other States from 1 November 1956 (States Re-organisation Act, 1956), reallocation of Godavari waters had to be made among the new States. Central Water Commission prepared a proposal of reallocation, which was considered in Inter-State Conference in September 1960, but no settlement could be reached.

State Governments began to raise objections to the clearance of new projects prepared by the other States on the basis of 1951 allocations. On 1 May, 1961, the Central Government appointed Krishna-Godavari Commision. However, in spite of several Inter-State Conferences convened by the Centre, the dispute could not be settled. In March 1963, the Union Minister for Irrigation & Power made a statement in the Parliament in which he stated that Union Ministry of Law advised that the 1951 Agreement was legally wholly ineffective and unaffordable. The Attorney-General also opined that the Agreement must be treated as having become void.

As early as in January 1962, Mysore Government had requested the Central Government to refer the dispute to the Tribunal. In 1968, all the concerned State Governments applied to the Centre to refer the dispute to the Tribunal. Eventually, in April 1969, the Central Government constituted the Tribunal. While the Tribunal was continuing its proceedings on 19 December 1975, all the five States agreed to the sanction and clearances of some projects
the on Godavari and its tributaries framed by different States. This Agreement was filed before the Tribunal in July 1976. From time to time, other Agreements were also reached among the States and filed before the Tribunal. Interestingly, the same Tribunal was adjudicating on Krishna and Godavari disputes. All the parties agreed that Krishna case should be heard first. Krishna award was given in December 1973. Godavari hearings commenced from January 1974. The case of Godavari Tribunal is note-worthy in the sense that while the Tribunal which was constituted in 1963 commenced the hearing of Godavari case in January 1974 and gave its final award in November 1979, all the States continued negotiations among themselves and ultimately reached agreements outside the Tribunal on the allocation of waters as well as the scope of various projects proposed by various States.

Ravi-Beas Tribunal

On the basis of the flow data available from 1921-1945, the waters of the Ravi and the Beas (mean flows) were estimated to be 15.85 MAF over and above the actual pre-partition use. In January 1955, in an Inter-State meeting convened by the Central Government, these waters were allocated to various States as under:

<table>
<thead>
<tr>
<th>State</th>
<th>MAF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rajasthan</td>
<td>8.00</td>
</tr>
<tr>
<td>Punjab</td>
<td>5.90</td>
</tr>
<tr>
<td>PEPSU</td>
<td>1.30</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>0.65</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>15.85</strong></td>
</tr>
</tbody>
</table>

On the merger of PEPSU with the Punjab in November 1956, the share of composite Punjab became 7.20 MAF. The Indus Waters Treaty was signed
in 1960 whereunder waters of the three Eastern rivers viz., the Ravi, the Beas and the Sutlej were reserved for the exclusive use by India. The State of Punjab was re-organised with effect from 1 November 1966 and that raised the question of Haryana’s share in the waters allocated to Punjab under the agreement of January 1955.

In exercise of the power conferred by Section 78 (1) of the Pubjab Re-organisation Act, Central Government issued a Notification dated 24 March 1976 allocating 3.5 MAF to Haryana out of 7.2 MAF earlier allocated to the composite Pubjab State. However, Punjab was not happy with the allocation made by the Central Government. Therefore, after a number of discussions, a fresh agreement was accepted between the party States on 31 December 1981 in the presence of the Prime Minister of India whereby the available supplies were estimated to be 17.17 MAF on the basis of 1921 to 1960 flow series and these were allocated to Punjab 4.22 MAF, Haryana 3.50 MAF, Rajasthan 8.60 MAF, Jammu & Kashmir 0.65 MAF and Delhi Water Supply 0.20 MAF.

Even after this agreement was signed by the Chief Ministers of the concerned States, the question of sharing of water resources continued to be a politically live issue in the Punjab. An Accord called, "The Punjab Settlement" was signed between the Prime Minister of India and Sant Longowal the than Punjab Akali Dal Leader on 24 July 1985. The Tribunal was constituted on 2 April 1986. The Tribunal was to give its award within a period of 6 months, which was extended thereafter.
Since the main dispute was regarding the allocation of waters between the Punjab and Haryana, the Tribunal examined various factors like geographical area, basin area, culturable area, water requirements, population density, extent of arid areas, rainfall etc., both in the Punjab and Haryana calculated the ratios of these parameters between Punjab and Haryana which varied from 1.05 to 1.30. Ultimately it allocated the waters in the ratio of 1.3 to 1 between Punjab and Haryana. Apart from accepting the 1981 assessment of the Central Government of the available water as 17.17 MAF, the Tribunal also took into account the surplus water available below the "rim stations" of which 40% was considered utilisable amounting to 1.85 MAF. Even out of these utilisable supplies, only 60% i.e., 1.11 MAF was considered for allocation for use in Punjab and Haryana. Thus, the final allocation among the various States as given by the Tribunal was as under:

<table>
<thead>
<tr>
<th>State</th>
<th>Allocation (MAF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rajasthan</td>
<td>8.60 MAF</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>0.65 MAF</td>
</tr>
<tr>
<td>Delhi Water Supply</td>
<td>0.20 MAF</td>
</tr>
<tr>
<td>Punjab</td>
<td>5.00 MAF</td>
</tr>
<tr>
<td>Haryana</td>
<td>3.83 MAF</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>18.28 MAF</strong></td>
</tr>
</tbody>
</table>

As per the prescribed procedure for the award of Tribunals, the State Governments are permitted to seek clarifications after the award is announced. Accordingly both the States sought some clarifications from the Tribunal, which however, have not yet been given.

Cauvery Tribunal

The use of Cauvery waters was governed by 1892 and 1924 Agreements between the then British Provinces of Madras and the State of
1924 Agreement stipulated that certain clauses of the Agreement be open for review after a period of 50 years. In the meantime, due to the States Re-organisation, there were changes in the territorial division of both the erstwhile Madras and Mysore. Similarly, one of the coastal States Kerala was not a party to the 1924 Agreement. Now, the parties involved in the dispute are Tamil Nadu, Karnataka, Kerala and the Union territory of Pondicherry.

On the basis of the Report of fact-finding committee and further discussions, an understanding giving the revised allocation of waters among the states was reached in 1976 in a meeting taken by the then Union Minister of Irrigation & Agriculture. However, since Tamil Nadu was under the Governor’s Rule at that time, the understanding could not be ratified. In spite of subsequent sustained efforts by the Government of India to resolve the issue, no success could be achieved. In the meantime, Karnataka took up execution of some storage projects on the tributaries of the Cauvery in its area. On account of the dispute, these projects were not cleared by the Central Government. Ultimately, the Central Government constituted the Cauvery Management Board in 1990. The Tribunal passed its order relating to interim relief on June 1991 in favour of Tamil Nadu. The Tribunal is still continuing its work.