CHAPTER - VI
COOPERATIVE FEDERALISM

MEANING OF COOPERATIVE FEDERALISM:

Traditionally the federalism was more or less a dualistic polity "in which the federal and State Government pursued virtually independent courses of action during a period when government activity was in any case minimal." Federalism then consisted of "the separate federal and State stream flowing in distinct but closely parallel channels." This tradition like Freeman, Dicey, Garran and has in more recent years been refined and justified by where...

Since the first world was the alteration in the working of the federalism in the old federations like the United States, Canada and Australia have been profound. The older constitutions of these federations have been adopted to fit the needs of the present time by the development of extra-constitutional devices such as administrative cooperation between governments, the coordination of state policies by conditional grants from the federal government, and the purchases of federal monopoly of the taxation of incomes and profits. The new constitutions included provisions for these practices, and also for other means of securing flexibility. Thus the reality has moved far away from what is called 'classic federalism,' and has given birth to the new phase of federalism in which the coordinate governments no longer work in isolation from one another.
A self-centered states' right or provincial autonomy is no longer practicable even in the United States, Canada and Australia. The regional governments can no longer think as they once did, as independent principalities bowing only to federal dictates on foreign policy, foreign trade and a few other matters. They are now increasingly engaged in cooperative venture in that each relies heavily on the other. A.H. Birch and others have rightly called this new structure "cooperative federalism".

Cooperative federalism is distinguished by the practice of administrative cooperation between national and state governments, the partial dependence of the state governments upon payments from the national governments, and the fact that the national governments, by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the states.

Using the concept in its broadest sense Prof. M.P. Jain has observed that the meaning of the concept of Cooperative federalism, is the promotion of cooperation and minimisation of friction between the various constituent governments of the federal union whether it is centre v. State or state v. state. The realisation that the promotion of the general public welfare is the common-goal of government at the centre and in the states
and they should work in concert and not in complete isolation in their efforts, to reach the goal is the essence of 'cooperative federalism'.

It is a general approach rather than a specific programme. It visualises the national and state governments as partners in the common function of serving the people. It rejects the concept of two governments as antagonistic sovereigns jealously competing with each other for power. It is the search for a middle-ground between the either, or attitude typified by discussion of national government versus the state governments or the advantages of centralisation versus decentralisation. Cooperative federalism thus, "It is hoped, will gradually produce the advantages of a unitary state without destroying the essential values of federalism."

Thus due to the new developments in the older federations and the new characteristics of the post-war federations, the federalism has entered a new phase. This new phase may conventionally be called the 'cooperative federalism' which is a system by which state and national governments supplement each other in their day-to-day working and jointly perform a variety of functions.

ORIGIN OF COOPERATIVE FEDERALISM:

The idea of cooperative federalism is not mes nor is this
a twentieth-century development. It is as old as the modern federal movement itself. Elements of cooperative federalism are found in the federation of the United States which is chronologically the first of modern federations. As some recent studies show, the traditional picture of the nineteenth century American federalism is real, and federalism in the United States, is not in theory, has traditionally been cooperative. The theory of dual federalism was not viable when applied to concrete problems in specific situations even in the early days of the American Republic says Elazar and adds federalism when interpreted to mean demarcation of responsibilities and functions has never worked in practice. While the amount of governmental activities in all spheres in relation to total activities of the American society has increased, the governmental activities that existed in the nineteenth century were shared in much the same manner as governmental activity in the twentieth century. Indeed, the roots of cooperative federalism are entwined with the roots of federalism itself.

These elements of cooperative federalism were further elaborated in the constitutions of federations subsequently formed the federations of Switzerland, Canada, Australia, the German Republic and Republic of India. It is even possible to speak of a continuous process of evolution of federalism as a system of government during the last two hundred years and to point out
that the basic feature of this process is the incorporation of a large and larger number of cooperative techniques and device into federal constitutions. Viewed from this standpoint the constitution of India may be said to be superior to that of any other federal constitution. Several suggested proposals and recommendations made in other countries to bring about a large amount of cooperation between the Centre and the units and among the units themselves have actually been included in the basic framework of Indian constitution.
FACTORS THAT PROMOTE COOPERATIVE FEDERALISM

Cooperative federalism became necessary in old as well as new federations mainly on account of three reasons: First, it emerged as an alternative to classic federalism to antidote the evils arising out of the competitive trends of the classic federalism. All the problems peculiar to federalism arise out of the division of powers between the Centre and the states and then out of competition of powers between Centre and states and among states themselves. Competition of power is inherent in federalism. Material and moral forces create this competition.

First it becomes necessary that the competitive exercise of power which is dominant characteristics of governments in federations, has to be checked and regulated if the interest of the public are to be promoted to the maximum extent. It is for securing this purpose that a number of cooperative devices have been introduce.

Secondly, cooperative federalism has been nourished according to an Indian writer by three main factors: (a) the exigencies of war when for national survival, national effort takes precedence over fine points of centre-state division of
exercise one is the appointment of Prime Minister and
other is the dissolution of parliament the position of the
Governor is exactly the same as the position of the

P.30.

58. See the Report of the Governor's committee (1971), P.28

59. Reference may also be made on this question to the
Rajmunnar committee Report, Supra note 21 at 119-131.

60. However, some are of the opinion that the root cause of
the problem lies in Ram, Gaya Ram. The terms of Aya
Ram Gaya Ram is said to have been coined after the name
of Gaya Lal, M.L.A., Haryana, who defeated thrice in
1967 within a fortnight, when Gaya Lal was won over by
Chief Minister Rao Birendra Singh, he called him Aya
Ram. Later on the same term was used by Chaven in his
speech in the lok Sabha, See Subhash C. Kashyap. The
Political defection, 95(1969).

61. Article 51 of the Government of India Act, 1935, provide
"The Governor's ministers shall be chosen and submitted
by him. The functions of the Governor under this section
with respect to choosing and summoning of ministers......
shall be exercised by him in his discretion.
powers (b) technological advances making means of communication faster (c) the emergence of the concept of a social welfare state.

COOPERATIVE FEDERALISM IS NOURISHED DUE TO EXIGNCIES OF WAR

The working of the older federations has revealed that during emergency like war the centre comes to assume a very wide sweep of authority and encroaches upon State autonomy. In Canada the doctrine of emergency powers has developed through judicial interpretation of the general clause of section 91 of British North America Act. During the period of national crisis such as war, actual or apprehended invasion, insurrection or any other grave national peril, the Domination assumes a power through this general clause which is allowed to sweep off any of the provincial powers which obstruct it. For instance, during the first and second world war he general clause of section 91 came into full operation, and the Dominion invested itself with virtually unlimited powers.21

It is of course, true that in the United States of America and Australia no such doctrine of emergency powers has been accepted by judiciary. H.S. Nichols has explained this standpoint of the American Supreme Court and the Australia High Court in regard, to emergency.

According to him in Australia, as in the United States, the
doctrine has recognized that emergency does not grant power to remove or diminish the restrictions imposed upon powers granted or reserved, but while emergency does not create power, emergency may furnish the reasons for the exercise of the power.\textsuperscript{22}

Unconfirmity with the doctrine, the war power contained in Article I, Section B, of the American Constitution, and the defence power embodied in section 51 (VI) of the Australian constitution are allowed to operate during national emergency like war, and the judiciary in both the countries has given such power a very broad meaning. In the United States during war period the war power provides the basis for comprehensive economic control and regulation by the federal government. This power has been allowed by judiciary even to cover the relocation of certain citizens away from vital defence area\textsuperscript{23}. In Australia the defence power was permitted by judiciary in time of war to cover any and every matter-prices, fair-rents, capital issue, monetary control, reinstatement in civil employment, wheat requisition, acquisition by the common wealth of the States' machinery for assessment and collection of income tax\textsuperscript{24}. Thus the liberal and very broad interpretation of Common wealth's defence power by the High Court produced in time of war the flexibility of a unitary-cum-cooperative system in Australia and the United States.
Similarly, the Constitution of India in its structural design reflects awareness of the Government needs in abnormal situations created by war, by failure of constitutional machinery in a state and by economic depression in the country. This proves that the framers have incorporated the federal principle in our constitution in a modified form in the light of experience of other federations in view of the peculiar requirements of our country; and this modification is certainly towards establishing the cooperative federalism.

**COOPERATIVE FEDERALISM IS NOURISHED DUE TO THE TECHNOLOGICAL AND COMMUNICATION ADVANCES**

Whatever might have been considered to be the best structure of the balance of power as between the Centre and the federating units in the classical model of federalism in the 19th century, the far-reaching advances in science, technology and communication, since the end of that century, abridging time and space, had their impact on the nature of old as well as new federations. These advances have introduced cooperative trends to the working of federalism but with an unavoidable centralist bias.

In the wake of technological reorientation in all the old as well as new federations, the industrial revolution led to a complete transformation of the economy. Modern economy which is
characterised by wide prevalence of large industrial concentrations is highly complex and consequently, the economic problems have transcended the state, solution demands national action and authority.  

The tremendous development of transport facilities has aided the development of national markets and produced interstate mobility in trade and commerce necessitating central control. With the fast means of communications, trade, industry and labour all being nationally rather than regionally organized, it becomes impossible for the individual units of a federation to effectively 'regulate' trade, industry or labour when they were organized on a national wide scale. Hence, the cooperation on a nation wide scale between the centre and the units became necessary due to technological and communication advances.

COOPERATIVE FEDERALISM BECAME NECESSARY DUE TO THE EMERGENCE OF SOCIAL WELFARE STATE:

The concept of a social welfare state has generated public demands for various social services involving huge outlays which the governments of the units in a federation could not meet by themselves, out of their own poor resources. The concept of cooperative federalism thus arose to help the federal system, with its divided jurisdiction, to act in union; to minimise friction and promote cooperation among the units of the federal union so that they can pool their resources to 'achieve certain national
goals to satisfy public demands for various social welfare services.

I has come to be realised that the various governments in a federation are interdependent and that they should act, not at across purposes, but in cooperation so as to promote and maximise the public welfare.

Thirdly, there are also other matters which make cooperative federalism necessary by their nature. Matters relating the navigations of rivers flowing through several provinces, irrigation projects, hydro-electric system, conservation of natural resources, municipal water supply, sewage, disposal, prevention of river pollution control of floods, cyclone, famine and the protection of the life of migratory workers and their internal families are some of the matters which can be efficiently administered only by joint action through cooperation of the centre and states and the states inter se.

**COOPERATIVE FEDERALISM A PERMANENT CURE FOR CENTRE STATE ILLS**

Federalism, with its divided loyalties, means weak government. A.D.V. icy rightly argues that federalism may well have been suited to particular hase of unification of large contets
with small populations and poor communications, but today, by the very rigidity of their constitutions and the obsolescence of the economic philosophies underlying them, federal states are seriously handicapped in undertaking expeditiously and efficiently the tasks of the modern government as "nobody would have a federal constitution if he could possibly avoid it". Due to its rigities, technicalities inefficiency, conservatism and excessive legalism federalism is only suitable for peoples of mature political experience, capable of playing the complicated game of circumventing such restrictions. Further more, competition of powers also is inherent in federalism.

In contrast, the defenders of the federalism argue that it still has many of the merits originally claimed for it as the right form of government for peoples of multi-national states who want to be united without being too united. It has been found from the experience of the federal governments that they have been sufficiently flexible to be able to adapt themselves successfully to the changing social and economic conditions. And the dispersal of power, which federalism is designed to achieve, may be an advantage is some new states where there may be strong pressures under single party-system for too much power to get into few hands.

Despite the good and bad points in federalism the fact remains that under certain circumstances and in certain countries
federalism is the only system of government that is appropriate and workable hence remedy proposed must be in the context of federalism and not in supersession of it.

It becomes, therefore, necessary that the competitive exercise of power which is the dominant characteristic of federal governments in federations, has to be checked and the other characteristic like rigidities, technicalities conservatism, excessive lengalism and over centralisation, have to be minimised to the suitable extent if the interests of the public are to be promoted to the maximum extent. It is for curing these ills of federalism that the reality has moved far ways from what is called, 'classic federalism" and has given birth to a new phase of federalism, that is, cooperative federalism. It is a system by which state and national governments supplement each other and jointly or collaboratively perform a variety of functions.

Furthermore, cooperative federalism depends not so much on an institutional system and devices but on the congruence of the national norms and the trends in the pattern of economic, political, social and cultural life of the nation. The So called cooperative federalism does not replace the legal framework of federalism. Rather, it supplements, corrects federalism and checks over centralisation in the federalsm by providing a just system of resolution of centre state and inter-state conflicts through an
an adequate institution system for consultation, co-ordination, interchange and integration. It emphasize the interdependence and sharing of functions between the centre and the states. It is also focuses on the mutual leverage that each level is able to exert on other.

Thus it may be asserted that 'dual federalism' was wrong because it encouraged a false competition between national and state governments and left too many problems in a no-man's land in between. Cooperative federalism is an improvement to act, and it encourages the two levels act jointly on occasion. Theoretically, it tends to assume that the responsibilities of national the state governments are coordinate, but in practice the national govt. needs to be superior. It is so because the cooperation of the national government with the states should always be on the basis of national standards rather than adjusting its scale to state-local standards which in many cases could be below those of the national government. A.

MEANINGFULNESS OF COOPERATIVE FEDERALISM IN INDIA

The Indian constitution aims at cooperative federalism which seems to be a panacea for the grievances of the states. The Centre's powers should not be diminished. But it is essential to
Make more effective all the constitutional, extra-constitutional and statutory instructions devised so far for solving the centre-state problems.

The solution to the problems of the centre-state tensions lies in co-operative federalism and that calls for a continual consultation between the centre and the state. The constitution of India lays down the foundations of cooperative federalism in India not by the device of a meticulous balance or an approximate equivalence between the union and the states, but by emphasizing the dominance of the centre occasionally for attaining the general good. It assumes that equality of states inter se or equality between the centre on the one hand and the states on the other is not a necessary pre-condition for cooperative federalism.

The Indian constitution also accepts that the principle of operation of the federal and state governments in water-tight compartments is now undesirable, if not impossible, and it includes a large number of provisions for interaction between the central and state Governments and further provides for other means of securing flexibility.

The constitution has empowered the president to establish an inter-state council to effect co-ordination between the
Centre and the states and between the the state inter se. The Constitution is silent as regards its composition but it specifically lays own the duties that may be assigned to this institution. The duties are to enquire into dispute arising between states, to investigate and discuss subjects of common interest to the Union and the State or to the state themselves and to recommend a better coordination of policy and action with respect to matters so investigated. The council may be adhoc or permanent. So far, this power has been used only to constitute a central 'Council of Health, a central council of local self-government and four regional Sales Tax Councils in North, South, East and West'.

The study team of Administrative Reforms Commission, Administrative Reforms Commission and Tamil Nadu Committee all being high powered Commissions set up to examine the whole spectrum of Centre-sate relations, have recommended the setting up of the inter-state council to deal with all issues of national importance in which the states are interested. Even now, it is not too late to set up the prime institution envisaged by the constitution for effectuating the principles of cooperative federalism.
The Zonal Councils established for the five zones under the state reorganisation Act, 1956, constitute a forum for promoting co-operative federalism. They can be most useful in the present political situation of the country and particularly where different parties are in power at the central and state levels. These councils could be further activated to solve all problems of vital importance only between the centre and the states but also among the states.

Likewise various non-statutory bodies, have been set up which assumed a very important role in the working of cooperative federalism. The most important among these bodies are the planning commission and the national development council (NDC). The planning commission formulates the plans, that is, five years and annual plans. After formulating the plans (five years and annual plans) the planning commission attempt to indicate to each state the financial outlay for the state plans and the guidelines regarding the formulation of the sectoral proposals. The states then formulate their plan proposals and send them to the planning commission.

The advocates of State autonomy have bitterly criticised the planning commission as the "Super economic cabinet," indissolubly with the centre and imposing its will
on the States. However, the commission has no statutory authority to impose its will on the states. The power and functions of the Commission have been evolved due to its working conventions since 1950. The Resolution setting it up only indicated that in framing its recommendations the Commission would act in close understanding and consultation with the Ministers of the Central Government and Governments of the States. The responsibility of taking and implementing decision will rest with the Central and State Governments.

The grievances of the states against the planning commission could be remedied better by making the NDC more effective to operate continuously and systematically. The NDC was constituted at the suggestion of the planning commission itself in August 1952, to serve as the highest reviewing and advisory body in the field of planning. But the NDC as the highest representative body of the Centre and the States has functioned more by fits and starts than as a regular element in the planning process. It should give guidelines to the planning commission in all matters regarding plans and particularly centre-state or inter-state relations in planning.

The Indian federation has also evolved conference technique for facilitating the working of cooperative federalism. Periodical conferences between the representatives of the union
and the states have become a regular feature of the operative machinery of Indian federalism. One would come across a stream of regular conferences in India such as conferences of the state Governors, conferences of the state Chief Ministers, conferences of states' Ministers of the same portfolios and conferences of the Union and the state officials. In each of these conferences some representatives of the union provide the necessary guidance and leadership. Although the decision of these conferences do not have any validity yet they possess special utility as they are taken by highly competent authorities and thus have proved fruitful also.
ESTABLISHMENT OF AN INTER-STATE COUNCIL
NECESSARY FOR SATISFYING THE DEMAND
OF STATE AUTONOMY

In a federal system where powers are divided between two levels of governments, some differences, problems and disputes are bound to occur. Hence the relationship between the Centre and states in the federal system remains always a sensitive matter. In India, Centre-State relations are getting the national attention these days which they deserve at long last. The developments in Punjab and Assam the conference of the Chief Ministers of the four Southern State-Andra Pradesh, Karnataka, Tamil Nadu and Pondicherry, Srinagar conclave of over 15 political parties and the appointment of Sarkaria Commission to examine the working of Centre-State relations in Indian federation in early eighties has come up against new challenges.

It is well known fact that the two levels of governments in a federal system do generate and encounter occasions of discords and disagreements. Hence in view of such inevitable discords and dis-agreements howsoever detailed may be the demarcation of functions between the two levels of government, a need for suitable machinery to discuss and resolve them in felt in all federations, and if the constitution does not provide or it, then some extra-extra-constitutional means are brought into practice to fill the gap. The U.S.A. Constitution, being as the oldest federal
The Indian constitution is a most detailed one and legislative powers have been neatly enumerated in Union, state and concurrent lists, but this detailed demarcation of legislative powers does not mean that India faces no problems in the field of centre-state relations. On the contrary, the occasions of discord are very frequent and are no less numerous. The Indian Union comprises as many as 25 states which are at varying stages of economic and political development and which have their own perspectives of looking at the problems of state-making, national-building and development. Yet, there is no viable constitutional machinery of standing nature which can resolve dispute between the centre and one or more states as well as the states inter se.

The supreme Court under Article 13 has exclusive and original jurisdiction to examine the centre-state and inter-state disputes, but not all the problems faced in the field of centre-state relations can be referred to the judiciary with its rigid procedure of working. The Supreme Court has adjudicated in last 35 years only three cases of disputes between the Union and
the states. One should also keep in mind that centre-state problems are in the ultimate analysis, political problems, and for resolving them, the Supreme Court may also refuse to entertain them, hence political solutions should be sought.

The Constitution also envisages a number of other institutions to regulate and canalise the forces of federalism, to solve centre-state and inter-state disputes and to promote cooperative federalism. These other institutions contemplated by the Constitution are the Finance Commission, an authority, for inter-state trade, commerce and intercourse, and an Inter-State Council.

Also there are in operation some extra-constitutional mechanisms which may discuss centre-state problems. One easily recalls the forms like the National Development Council, the Centre Council of Health, the Central Council of Local Self-government, the Governors Conference, the Chief Minister's Conference, and other Ministers' Conferences which are convened by the Central Ministers corresponding to these functions.

An analysis of their working, seems to suggest the general ineffectiveness of all of them in the first place. These existing bodies including the National Development Council and the Chief Minister's Conference are of the adhoc nature, convened at the will and convenience of the Central Government. Secondly, they
lack even a statutory base where as a body suited for such purposes must as a rule be embedded inn our constitution so that it may comand universal respect and attention. Thirdly the existing machinery for consultation between the Union and the States, suffer from a conspicuous lack of interest on the part of the states, which tend to regard them as centre's contrivances to make them fall in line with Centre's predetermined polices, wishes and programmes. perhaps an Inter-State Council under article 263 could provide an effective umbrella for various kind of consultation in different fields and through different means.

URGENT NEED FOR ESTABLISHING AN INTER STATE COUNCIL

There is a mounting pressure of public opinion to establish an Inter-State council under Article 263 of the constitution for solving the centre-state problem in an effective and cooperative manner. All political parties except Congress (I) Party are In favour of establishing an Inter-state Council for resolving the centre-State tensions. The already existing informal mechanical for solving Centre-State Porblems are of adhoc nature and as discussed earlier have proved non-effective for the purpose. Hence there is an urgent need for establishing an Inter-state Council for solving the problems of Centre-State Relationship. An Inter-State Council provided for in the constition would be more effective institutional agency interms of its capacity to go into continuous guestion in a manner which would command the confidence
of all concerned, facilitating and fostering the gathering and marshalling of all India Consensus.

The main purpose of the Inter-State Council would be achieve coordination between the Centre and the States. The power and initiative for constituting the conception of the responsibility of the Centre in fostering such coordination. An Inters-state Council could thus be the fulcrum of harmony and homogeneity between the Union and the states inter se.

"The advantage of a single body is that every problems can be viewed by it in the perspective of the whole. This integrated look, necessary in fashioning basic policies of national importance, is missing in the dispersed system operative at present."

"The contention that the Centre had favoured informal ways of settling Centre-State disputes and hence had kept Article 263 in abeyance so far, seems to be untenable. However, such informal methods may have had some success in the case of state Government belonging to the ruling party at the centre but the outstanding dispute in respect of states under the rule of different parties show that informal coaxing and cajoling provided no real alternatives to formal discussion of problems.

However, the centre may not be wrong in expecting that once set up there will be demands for enlarging the role of the Council
to include consultation on any action taken to impose president's rule the issuing directive to states, use of Central security forces and such other matters on which the basis for Centre's intervention may often be too slender to enable the presentation of a coherent case. The Centre should first be ready to minimise if not wholly abandon some from this angle, article 263 may will be destined to remain an infructuous provision.

DUTIES OF THE INTER-STATE COUNCIL

Article 263 of the constitution provides as follows:

"If at any time it appears to the president that the public interests would be served by the establishment of a council charged with the duty of:

a) Inquiring into and advising upon disputes which may have arisen between states.

b) Investigation and discussing subjects in which some or all of the states or the union and one or more of the states, have a common interest; or

c) Making recommendations upon any such subject and, in particular, recommendations for the better co-ordinations of policy and action with respect to the subject, it shall be lawful for the president by order to establish such a
a council, and to define the nature of the duties to be performed by it and its organisation and procedure".

Thus the provisions of Article 263 are inclusive and comprehensive. The constitution does not envisage executing role for the Inter-State Council. Its ambit would be an amixture of the consultative, cognitive, normative and advisory functions.

The constitution does not empower the Inter-State Council to adjudicate Inter-State disputes, but it would call upon to inquire into an advise upon such disputes. The findings of the inquiry as well as the advise of the Inter-state Council would be available to the contending states as well as to the Union Government and the Union Parliament. The recommendations and the advise of the council should be given highest respect and oconsideration. In addition to this, the council would also study and investigate subject of common interest for the states an the centre and would make recommendations for the better coordination of policy and action. The council would thus provide basic background data for research on federal problems.

The study team on centre-state relations appointe by administrative reform commission was also clear that inter-state council could take care of all issue of National importance in which the state are interested. In fact, Mr. M.C. Setalved, who,
who, as India's Attorney General, was invited by Mr. Nehru to address parliament on certain issues, went one step further. He wanted the proposed inter-state council to replace National development Council, the Chief Ministers Conference, the other Ministers' conference and the National integration council. The report added: "Beside issues of importance normally taken up in these forums, any other issue of national importance that arises at any time may also be placed before this Council. Thus, the proposed council will be wide embracing and will provide a standing machinery for effecting consultations between the centre and the states.

COMPOSITION OF THE INTER-STATE COUNCIL

SOME SUGGESTED MODELS

As said earlier, the constitution itself reference to the setting up on an Inter-State Council in Article 263. But the constitution is silent about the composition of such a Council. As this Article 263, has been invoked on two occasions when the Central council of Health and the central council of local self-Government were established in 1952 and 1954 respectively.

Thus the first design of the proposed Inter-state council can safely be inferred that a council under Article 263
should consist of Ministers at the centre and in the states and, furthermore, should be functional in nature. The proposed Inter-State Council is to be seen in its historical perspective, and as examined in the earlier paragraphs, it is to operate as a standing machinery for effecting wide embracing consultations between the Centre and the states.

The second blueprint of the proposed all-purpose Inter-State Council is presented by the study team on centre state relation appointed by the administrative reforms commission. The study team recommended that the Inter-state council should consist of the Prime Minister, Central Ministers for home, finance, labour, Food and other subjects in the state and concurrent lists of the constitution, Chief Ministers or their nominees and any others invited by the Chairman or cooperated by the council.

The Council should be equipped with an appropriate secretariat which to prepare and circulate among the members the necessary papers and notes on items coming up for discussion in its meeting and also take follow-up action on matters decided by it. But its conclusions are to be advisory only. Furthermore, it should not involve itself in the discussion of inter-state disputes because that "would prevent it from giving full attention to the various problems of national
concern which it ought primarily to consider. The study team also recommended that the council should not be given a hand in constitutional appointments made by the president such as those of the Chief Justice of India, the Chief Election Commissioner, the Governor, the Auditor-General of India et. al.

The third blue print of the Inter-state Council is that sketched by the administrative Reforms commission (1966-70) itself in its report on centre-state relations (1969). The commission was in full agreement with its study team on the need for such an inter-state body, but differed with it on almost all other aspects. The study team had recommended that once the Inter-state council was set-up other forums like the National Development council bodies could also continue to function. It also recommended a different kind of composition of the council. It is to consist of the Prime Minister, central Ministers of home and finance the leader of the opposition in parliament and five Zonal Council representatives, one from each. Such other five Zonal Council representative, one from each such other Central Ministers as are concerned with a particular subject under discussion should also be invited to its meetings.
In order to make the council business like a small size of composition was preferred. The proposed Council should have broad terms of reference and should be free to discuss and resolve both the inter-state and the centre-state differences. While its proceedings are to be treated as secret, its decisions are advisory though these "must be able to carry weight with."

As discussed earlier, the study team visualized a very large sized council with apparently multi-purpose function but precluded from discussing inter-state disputes as well as institutional appointments made by the President. The functions of the council would look incomplete and unrealistic if it is not to discuss disputes, however distasteful these may sound coming to the A.R.C. recommendations, it seems to undermine even the very existence of the states by substituting their Chief Ministers by the five Zonal Council spokesmen. By keeping the Chief Ministers out from the inter-state council is to cripple the council at the very start. Tamil Nadu's Centre-state Inquiry committee has blown Article 263 up a bit bigger and makes proposal for a council which apparently is no less than a suppler cabinet of Indian Union whose decisions would be binding on both the centre and the states.
The farmers of Indian constitution were aware of the concept of cooperative federalism which had already come into being under the impact of depression, wars and international emergencies in the federations of America, Canada and Australia. They realised that the decision amongst the governments in a federal structure can be promoted not by dictation but by discussion, persuasion, compromise and agreement. The states in India have a wide field of administration and, therefore, it becomes essential to create agencies to coordinate intergovernmental activities in those fields at least where the repercussions of a state action would have effect even outside the state or where the national interests demand a uniform approach with a view to achieve certain desired national goals, e.g., health, family planning, agriculture, etc. which, through state subjects, demand a great deal of coordinated action and a uniform policy for optimum development.

With this purpose in view, the constitution itself envisages a number of agencies of intergovernmental coordination and cooperation in Article 131, 262, 263, 280 and 307. Article 280 and 307 envisage the constitution of a finance commission and a body for promoting a free flow of trade respectively. Article 262 provides for creation by parliament...
of a suitable machinery for adjudication of inter-state disputes with respect to the distribution, use or control of waters of inter-state rivers and river valleys. Parliament has enacted the inter-state water disputes Act, 1956, which provides for a setting up of tribunals for adjudicating disputes among the states concerning waters of inter-state rivers, and River Boards Act 1956 empowering the centre to establish river boards for regulation and development of inter-state rivers valleys. A constitutional provision much talked about after the fourth general elections (during 1967-71) is Article 262 which provides for the appointment of an Inter-state Council. This article is general and, therefore, a number of such bodies for various purposes may be established. So far only the central Council of Health, the Central Council of Local Self-Government and Regional Councils on Sales Tax have been established.

Except Finance Commission, no other body envisaged by the constitution has had much impact on the working of inter-state or centre state relations. For example, a number of inter-state water disputes have remained unresolved for a long time and thus many urgent development projects have remained suspended for years putting the country to a great loss. However, these bodies can be made of full use in the field of centre state relations by the confidence of state Governments.
in these and by the assertion of attitude of moderation and give and take on all sides.

Since 1967 there has been a demand and plea to establish an inter-state council on abroaded basis to discuss federal problems and find solutions for them. The central government, however, has remained cool to the idea of creating such a body. Perhaps the Central Government is indifferent due to the reason that once such a body is appointed, the states will seek to use it to intrude into the matters which fall within the purview of the central cabinet, such as appointment of Governors, High Court Judges, application of Article 356, etc. Because of these apprehension, the central government has preferred to make use of Article 263 to establish only such bodies which have will defined and narrow terms of reference.

One of the ways to promote cooperation between the centre and states and state inter se is to resolve disputes which may arise between them. Legal controversies between two government s can be resolved by the Supreme court either in its original jurisdiction, as has been done in West Bengal v. Union of India 74 state of Rajasthan v. Union of India 75 and Karnataka state v. Union of India 76 or on its advisory
jurisdiction, as was done in the Kerala cases. However, the disputes and differences are bound to occur in our polity where powers are divided between two levels of government. In this context a serious effort may be made by the center to establish an inter-state council and further activate the councils already established.

In some of the newer federations also such bodies are specified in the constitution itself. Examples are the National Council for local Government, the National land council and the National finance council in Malaysia and the police council.

COOPERATION THROUGH STATUTORY BODIES

The survey of statutory bodies shows that the Indian federalism does not work exclusively within the frame-work of the constitution. In view of the urge for accelerated economic growth, extension of social services and the great expansion of government functions, there have been development an extra-constitutional mechanism of establishing various statutory bodies for the working of the Indian federalism. The working of the statutory bodies, reveals that the efficiency and economy in government can not be obtained merely by a division of powers between governments, rather the cooperation in the pursuit of common objects and in the solution of common problems is essential.
Many cooperative arrangements have been developed between the centre and the state through the statutory bodies. Most prominent among them are zonal councils set up under the state reorganisation Act, 1956. The functioning of the Zonal Councils over years from its inception to-day shows that this device when utilized has proved itself to be a significant accompaniment to cooperative federalism in some states, or the centre and a state in the zone, may be interested. They have done some constructive work in the fields of irrigation and power, development of backward areas, health schemes and reciprocal concessions in regard to domiciliary curbs on admissions. Thus the allegation that these councils would be no better than a fifth wheel in the administrative coach serving no purpose other than hindering efficiency has proved to be entirely unfounded. Rather these councils by providing a regular forum for discussing matters of common interest in different zones, have become clearing houses ideas and not a mere device for registering agreements. So long as they enable the member states to understand one another's difficulties and needs, it would strengthen cooperation among states in the Zone.

The university grants commission was established under the university grants commission Act, 1956 to advise the central and state governments and the universities for the promotion and coordination of university education and for the maintenance of
standards of teaching, research and examination in the universities. It also has responsibility to give grants, out of its funds, to the universities for development purposes and to advise the central or any state government to allocate any grants to the universities for some specific or general purpose out of consolidated funds of India or the consolidated funds of the state, as the case may be. However, its functions are advisory and thus the only thing which it can do, to make a university to accept its recommendation, it to stop its grants. In the detailed analysis of the working of U.G.C. it is revealed that the universities mainly depend on states for their maintenance and the state Government oftenly did not accept the recommendations of the U.G.C. which involved expenditure, thus leaving the U.G.C. between scylla of the universities and charydis of the state Governments. As for its success, the central ministry of education and the planning commission had felt that the U.G.C.'s work was purely expenditure oriented and that it was not addressing itself to the task of monitoring programme concerning improvement of content of education.

However, the commission is an autonomous body and, to some extent, mitigates the difficulties which may otherwise have arises in the field of university education between the centre and the states. Recently, the U.G.C. has been reconstituted to make it to play a more positive role in the development of education instead of being an agency for distributing grants.
Likewise there are also at work other statutory bodies such as Damodar Corporation, Bhakra Management Board, Besa Construction Board, Betwa River Board, Drugs Consultative committee, central board for the prevention an control of water pollution, central electricity Authority and Central warehousing Board. These statutory bodies, coordinate the activities of the centre and the states in various specified fields of activities. A review of the relationship between the governments, that did develop within the sphere of ENDEAVOUR OF THE DVC, revealed that despite the constitutional and legislative power of the centre in this case, the central government leaders felt themselves completely lacking in effective power, and with the result the centre felt compelled to make substantial concession to the wishes of state of West Bengal.

We find from the analysis of the working of the statutory bodies that there is a close interaction between state's functions, central functions and concurrent functions. The coordination has perforce to come from the centre. At the same time, it is a power that can only arise out of the cooperation of the states. There is no in road into either Union or state rights. The allegation about centre's interference in states' field is a mistaken allegation. Concepts of responsibility and sovereignty are fastly changing in the world because of the greater and greater inter-action between the economise of the
world. Even the big countries of Europe have agreed to merge their sovereignties in the European economic community in order to achieve progress in their economies. Similarly, the commonwealth countries also have certain economic ties. These are not in roads into sovereignty. Rather a calculated get together for coordination for basic self interest. Against this background and argument the centre interferes, through avarious statutory bodies in state's fields appears to be irrelevant. What is relevant is whether the arrangement is acceptable to both the centre and states and whether the national interest is thereby secured.

NON-STATUTORY BODIES, CONFERENCES AND PARTY SYSTEM

A number of non-statutory bodies, have been established outside the constitution and the status for inter-governmental coordination and cooperation. The most outstanding examples of such bodies are the planning commission and the National development council. These two bodies have assumed a very important role in the field of economic planning.

The planning commission formulates the plan (annual, five year, and the rolling plans) and the N.D.C. being the highest deliberative body in the field of planning gives guidelines to the planning process. However, criticism have often been raised as to the manner they operate. The planning commission has been criticised as to be the super cabinet indentifying itself.
Closely with the union Government and imposing it will on the states. The N.D.C. being a representative body of the centre and the states has functioned more by fits and starts than as a regular body in the planning setup. Oftenly, it has been used merely to 'rubber stamp' the decisions of planning commission.

The advocate of greater state autonomy have strongly criticised the close association of the planning commission with the centre and have demanded a constitutional or statutory status for it. Only conferring such a status on it would not serve the whole purpose. The critics should not forget that the plans deal with many functions within the exclusive competence of the centre. It is the centre who is constitutionally incharge of monetary policy, foreign tradie, foreign exchange, foreign aid and other important fiscal areas and all these factors are very important in the formulation of economic plans. Further the plans also affect other matters directly under the jurisdiction of centre such as railways, industries, minerals, shipping, inter-state transport, and inter-state communications. The development finance for the states, the backbone of planning is also provide to the states, the backbone of planning is also provided to the states by the centre. For all these reasons, the commission has to work more closely with the centre than the states. In spite of all this, the states also remain in continuous dialogues with the commissison over their formulation and implementation.
The grievance of the states in this regard will be better remedied by making the N.D.C. more effective operationally. It should operate continuously and its work should be systematic. In all matters regarding plans and particularly centre-state relation in planning, the commission should seek guidance from the N.D.C. The N.D.C. should prescribe guideline for the formulation of the plans, consider the plans formulated by commission and assess the resources required for the implementation of the plans and suggest measures for raising them.

Likewise there are also at work other non-statutory bodies such as inter-university Board, National Intergration Council, Central family welfare Council, All India Council for Technical Educational, central water and power commission and central control boards for inter-state projects. These non-statutory bodies coordinate the activities of the centre and the states in various specified fields of activities.

We also find from the analysis of the working of these non-statutory bodies that there is a close interaction between states, functions and central functions. All these non-statutory bodies are very useful devices of cooperative federalism. Some suggest that these bodies can be even more successful if their decision are provide a mandatory status in place of their
present advisory character and this can be possible if they are autonomous bodies by providing them a statutory base.

While others support their present position and say that perhaps, their character is their strong point for, otherwise, the states might have felt that these bodies were being designed to reduce their authority. We feel that still a large number of such bodies are required to be established to make cooperative federalism in India a complete success.

Similarly, some other newer federations have also established a large number of such bodies specially in the field of economic affairs and planning. Among the most notable have been in Malaya the Tarrif Advisory Board, and in Nigeria such bodies as the National Economic Council and joint Planning Committee, the National Council on establishment, joint consultative committee on Education and many others.

In addition to the standing machinery for centre-state or inter-governmental cooperation, the Indian federation, has also evolved conference technique for facilitating smooth centre state relation and inter-level cooperation. Periodical conferences between the representatives of the union and the states have become a regular feature of the operative machinery of Indian federalism. One would come across a stream of conferences,
arranged on an ad hoc basis as the need has arisen to deal with specific problems. These conferences are such as conferences of the state Governors, conferences of the state Chief Ministers, conferences of the state Ministers' of the same portfolio and the meeting of the union and state officials. In each of the conferences some representatives of the union provide the necessary guidance and leadership.

Although the decisions of these conferences are not endowed with any legal validity, they possess special utility as they are taken by highly competent authorities and thus have proved fruitful also. But these are not free from some common shortcomings. The inefficient handling of agenda and agenda-papers, the preparation and circulation of the minutes of the meetings, the tardy manner in which meetings are conducted and absence of vigorous follow-up actions after the meetings have greatly impaired the effectiveness of the consultative machinery. Undoubtedly, the conferences could be further of much use if these shortcomings are removed. In Canada there are annually some 100 such meeting in addition to those standing boards an d commissions. Australia posses a similar ranges of inter-governmental committees with the premiers's conference as the most senior of these.
The emergence of national and regional parities in India also has upset the constitutional division of powers between the centre and the units through political forces and units. There can be identified four different phases in the development of India federalism since independence, each shaped by the political forces at work at different times. The first phase, 1971-1965 era was marked by Nehru's undeputed way over the country's affairs and domination of a single political (Congress) party over both the central and state governments. During this phase, the centre effectively dominated the constituent states and received their full cooperation in its policies and plans. The second phase, 1965-71 period, was characterised first by changes at the top and later by multiparty governments in the states which had profound implications in the centre-state relations and marked the rise of competition between the centre and the states. The third phase, the post 1972 Lok Sabha Elections stage, till the declaration of emergency in 1975, features a new semblance of stability under Indira Gandhi's dominating influence. It is in this phase that the issue of greater state autonomy was vehemently advocated by the leaders of non-Congress governments of the states. But the Congress (R) party emerged as a grand lubricant which sought to ease the tension and prevented the development of any widespread centre-state friction. The fourth phase, the advent of the Janata party at the centre in the post emergency era, had again repeated itself the post 1967 sense at
the state level and the demand for greater autonomy had again become insistent. However, there are feelings that no party in the next Lok Sabha may have an absolute majority and the regional parties will emerge quite strong. Thus, it is quite possible that a reverse process of federalisation may then be set in motion and the centre and the states may work in cooperation.
FOOTNOTES OF CHAPTER-7


5. See J. Quik and R.R. Garran, Annotated constitution of the common wealth of Australia, Sydney, Angus and Robertson, 1901.


8. See the constitution of India, Pakistan till 1958, Malaya, West Indies, etc.
9. According to Prof. Wheare and Prof. Commy, the classic federalism in the Anglo-American mode implies general and regional governments of coordinate authority, each independent of the other in its appropriate spheres ruling over the same people and the same territory under the surveillance of court.


12. The term "Co-operative Federalism" has been applied to Indian Federation by a host of Political Scientists and lawyers. See A.H. Birch, op. cit. 304 W.H. Morris-jones, The government and politics of India Hutchinson, 1964, P.O. 141-44, M.P. Jain Indian constitutional, Calcutta, Eastern Law house, 1974, P. 78 Granville Austin. The Indian constitution, cornerstone of a Nation, Oxford University, Press, 1972, P. 187.


15. Corvin defines co-operative federalism as: "The stateless and national government are regarded as mutually complementary parts of a single government mechanism
all of whose powers are intended to realise the current purposes of government according to their applicability to the problems in hand." The constitution of the U.S.A. Senate Doc, 14 (1953)


19. See S.N. Jain, Centre State relation and Co-operative Federalism, 1983. As has rightly been observed by an eminent Indian writer about the competitive trends in federalism: "The competitive trends are seen not only in acquisition and retention of power. Also in the way in which governments exercise power. Also in the way in which governments exercise power. This exercise of power by them produces consequence which are partly desirable and partly undesirable". See Venkatarangia, M. competitive and co-operative trends in Federalism, Poona, Gophale Institute of politics and Economic (1951) P. 20.
20. M.P. Jain, Op. cit., P. 407. Dr. M.P. Jain in his thesis "Financial Relations in Federal constitution" has also made out a similar case new revised theory of Federalism. He says that great changes in political, social and economic sphere of human activities, have changed the whole concept of "State functions". Many factors like war, Industrial Revolution, financial emergencies, depression, inflation and revolution in the means of communications etc. have contributed to bring out new doctrine of welfare state Laissz-Faire is the dead state. He says "This revolution in human thinking has made deep impact upon federal institutions and out hodox nations of federalism. The old nations of competitive federalism which envisaged an absolute independene of functioning have given way to modern conception of co-operative federalism" where two tiers of government are not regards as functioning in water tight compartments where co-operative relations exists between them and all governments combine to pool together their resources for the achievement of common goals and policies in the national interests co-operaton and co-ordination rather than independence are the order of the day. "His final conclusion is: The working of the government on co-operative basis depends mostly on co-operative basis depends mostly on central
government being in position to provide leadership to regional governments, to coordinate their activities to guide them and, perhaps, on occasions, compel them to act if the national interests so warrant." His ideas manifest a lesson of history which no federal country overlook. Quoted in Dr. S.P. Sharma: Distribution of Legislative powers in Canada, Vijaavahara Nirwaya Summer (1957) Foot Note at P.5.

23. Douglas W.O. "We the judges" (Garden city, N.X. Doubleday 1956) P. 41.
24. K.C. Wheare, op. cit., P. 207.
26. Similarly, J. Rivero also observed, "the almost invariable trends of economic developments in the last hundred years has been towards a concentration of power resulting in strengthening of the central authority and the developments of bonds national community beyond the frontiers of individual states. See International Social Science Bulletin. Vo. IV spring, 1952.
27. Professor Commy also express some what similar view and says, "Co-operative federalism has emerged because several separate government share a divided responsibility for regulating a single economic and social structure. Under the heat and pressure generated by social and economic changes in (the second and third quarters of) the twentieth century, the district states of the order federalism have begun to melt and flow into one another". Prof. Commy, op. cit. P.14.

28. See A.V. Dicey, Introduction to the study of the law of the constitution, 1931, P.O. 135-76.

29. Sir Ivor Jeannings, some characteristics of the Indian constitution, 1953.

30. See the evidence of Mr. J.H. Price in report from the select committee on Federal system of government and second chamber for the gold cost 1-23 (1955) quoted in U.K. Hicks and others (ed). op. cit. P.18.

32. S.N. Jain. Supra note, 12 at 4.


33. A M.P. Jain Supra note 12 at 33.

34. See constitution of India, Article 131, 249, 250, 253, 255, 257, 258, 258-A, 262, 275, 286, 293, 301, 312, 356 etc.

35. Id, Article 263.

36. For the composition of inter-state council, See this chapter, infra.

37. For details of these constitution bodies, see M.P. Jain Co-operative Federalism in India, 265, 280.

38. See the report of the study team of the administrative reforms commission in centre-state Relations, (Vol.1) 300 (1968).


40. See government of Tamil Nadu, Madras, report of centre-state relations in quiry committee 24(1971).
41. Similarly, there are so many other statutory bodies also which bring co-operation between the centre and the states on between the states inter. These are: University grants commission, interstate Transport commission, Damodar Valley Corporation, Drugs consultative committee etc. For the detailed working of these bodies, see Chandra Pal Supra note 37 at 285-334.

42. Similarly, these are also other non-statutory bodies working in the field of centre-state relations such as national integration council, central family planning council, inter-university board, central control boards for state projects, central water and power commission, All India Council for Technical Education etc.


44. Government of India Resolution (Cabinet secretariat) No. I P (c) dated March 15, 1950.


46. The interim report of the study team of the Administrative reforms commission on the machinery for planning commission 8 (1967).

48. See for example, the leaders of 15 opposition political parties met in Sri Nagar from October 5 to 7, 1983, to draft the document for reforms in centre-state relations, Tribune Oct. 6, 1983, P.1. The union govt. also appointed Sarkaria Commission on Centre-state relations.


50. These bodies are: the council of state government, the governor's conference, the Inter-governmental relations commission, National Legislative Conference. The conference of Chief Justice etc. for working of these bodies. See - M.P. Jain Centre-state relations and co-operative federalism 41-45 (1983).
51. See for details, Indian constitution, schedule 7.


55. See Indian Constitution, Article 280.

55. Id, Article 307.

57. Id Article 263.

58. However, these two councils, the central council of health and central of local self germent are established under Artcile 263, but these councils work within a narrow ambit of activity.

60. See "The opposition conclave moots inter-state councils" Tribune Oct. 9, 1933, P.1.

61. The study team on centre-state relations appointed by the Administrative reforms commission and headed by M.C. Setalvad also strongly recommended for the establishment of an inter-state council. See generally report of the study team on centre-state relationship, Administrative reforms commission, 1968, Vol. 1, P. 294. Similarly, Tamil Nadu Committee report also makes a strong plea for the establishment of the inter-state council. See report of the centre state relations inquiry committee, Govt. of Tamil Nadu, 1931, P. 25


63. See the report of study team, Supra note 62 at 290.

64. See Inderjit, Supra note 60.

65. See Supra note 62.

66. The study team report, supra note 62 at 303.


69. Ibid.
70. Ibid.
71. Ibid.
72. Ibid.
74. Supra note 6.
75. Supra note 9.
76. Supra note 11.
79. For detailed working of the loan council in Australia. See Supra Chapter-II.
80. The North-Eastern Zonal Council has been established under the months Eastern Council Act. 1971.
81. See, Supra, A Review of the working of the councils.
82. See the statement of reasons and objects of the U.G.C. Act, 1956.
83. See The Times of India, January 5, 1979, P.1

84. See Times of India February 6, 1979, P. 1. five new members have been appointed.

85. This is revealed in the words of Mr. S.K. Patil, who was minister of irrigation and power when he made this statement "If you tell me that if the Chief Minister of a particular state does not act in a correct manner, (and that) I must do something about it, that is impossible. "All we can do is, use our good office, extent our good office, smile a little more when they come and meet us and so on. That is all. We can't do more than that, or better than that .... beyond that, we can not go, we have no powers" quoted in Marcus F. Franda, op. cit. P. 128.


87. See the Interim report of the A.R.C. on the machinery for planning commission, 1967 P. 8.

89. These short commings have also been pointed out in a case study, see shriram Maheswari "The centre-state consultative machinery in India", op. cit., P. 446.

90. See supra, Chapter II of this study.

91. See also K.K. Katyal, "Important phase in centre-state tiels" Hindu, October 15, 1976, P.8.