

## INDIAN FEDERAL STRUCTURE

**A**federal Constitution establishes a dual polity with the Union at the centre and the States at the periphery, each endowed with powers to be exercised in the field assigned to them. The legislative, executive and the financial authority is divided between the centre and the units not by any law passed by the Centre but by the Constitution itself.

The Indian Constitution provides for a new kind of federalism to meet India's peculiar needs. In the matter of distribution of powers, the framers followed the pattern of the Government of India Act, 1935. Centre- State relations have been classified as under-

1. Legislative relations
2. Administrative Relations
3. Financial Relations

### 1. LEGISLATIVE RELATIONS

#### (Articles 245 to 255)

The Constitution of India makes a two-fold distribution of legislative powers—

- a. With respect to territorial jurisdiction, and
- b. With respect to subject matter of legislation.

#### A. TERRITORIAL JURISDICTION

- As regards the territorial jurisdiction, **Article 245 (1)** provides: "Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State." **Clause (2) of Article 245** further provides: "No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."
- **Article 31 (A)** provides that the State legislature can take over private property for public purpose. Any state bill that provides for this should be reserved for the consideration of the President.

□ **Article 31 (B)** created the ninth Schedule to the Constitution and the State legislatures decision can be placed under the ninth Schedule only when it is approved by the Parliament.

□ According to **Article 200**, after the passage of a bill in the State Legislature, it is presented to the Governor. The Governor can give his assent. He can declare it as with held or he can send an ordinary bill for the reconsideration of the Legislature or he can reserve the bill for the reconsideration of the President.

□ **Article 288 (2)** authorizes the state legislature to levy tax on a Central Authority situated in the state for the storage of water or electricity generated, consumed, distributed or sold. However, such bills shall be reserved for the consideration of the President.

Art 304 (b) authorizes the State Legislature to impose reasonable restrictions on Inter-state trade or commerce. However, any such bill can be introduced in the legislature only on the recommendation of President.

### B. DISTRIBUTION OF SUBJECT-MATTER OF LEGISLATION

**Article 246** provides that the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule and the State Legislature may make laws with respect to the matters contained in the State list. As regards the matters contained in the concurrent list, both the Union and the states can make laws.

**Article 246(4)** holds that the Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

#### Residuary powers of legislation

According to **Article 248 (1)** Parliament has



exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. According to Clause (2) of Article 248 such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

*The Parliament has exclusive legislative jurisdiction over the subject mentioned in the Union List and the State legislature ordinarily enjoys jurisdiction over the state list but under some special conditions the Parliament can legislate over the state list. These conditions are being discussed below:*

### First Condition

Under Article 249 the Rajya Sabha may pass a resolution where in it can authorize the Parliament to legislate on one or more subjects mentioned in the state list on the grounds of national interest but this law will not be valid for more than one year. But the Rajya Sabha by passing the same resolution again can extend it for another one year. It may be renewed as many times necessary but not exceeding a year at a time. Such a resolution has to be passed by the Rajya Sabha by a special majority of not less than 2/3 of the members present and voting and the absolute majority of the House.

### Second Condition

Under **Article 250** during the proclamation of National emergency the Parliament assumes concurrent legislative jurisdiction over each & every subject of the state list. The State list is converted into Concurrent list. Such a law, however, shall cease to have effect on the expiry of six months after the resolution has ceased to operate.

### Third Condition

Under **Article 252** the Parliament has the power to legislate for two or more States by consent and consent of such legislation by any other State. The article makes it possible for the parliament to make such laws relating to state subjects as regards such States whose legislatures empower the parliament in this behalf by resolutions.

### Fourth Condition

**Article 253** empowers the Parliament to make any law for the whole or any part of the territory of India for implementing treaties and international treaties and agreements.

### Fifth Condition

Under **Article 356** during Presidents rule, the State government is dismissed, the State legislature is either suspended or dissolved and the legislative power of the State legislature could be entrusted to the Parliament by the President.

### Doctrine of Pith and Substance

Many times a law passed by a legislature with respect to a matter on its legislative competence encroaches upon another matter outside its competence. The doctrine requires that in such a case of encroachment the law should be read as a whole and not as a collection of the sections or clauses for determining the true nature and character of the law i.e., the pith and substance of the law. If after such an enquiry it is found that the pith and substance of the law pertains to the matter within the competence of the legislature making the law then the law would be constitutional even though it incidentally trenches on matters outside the competence of the legislature. This doctrine was propounded by the Supreme Court in F.N. Balsara v/s State of Bombay case 1951.

The Bombay prohibition act, 1950 imposed a ban on the manufacture, production, carriage, consumption or use of intoxicating liquors within the territory of Bombay. The act was challenged on the ground that it encroached on, "import & export of liquor, a matter in the Union list". The Supreme Court held that the Act is valid and the real purpose and object of the law pertained to state entry.

### Doctrine of Colourable Legislation

Many times, a Legislature makes a law with respect to a matter outside its legislative competence by giving to the legislation a different colour so as to bring it within its competence. The doctrine of colorable legislation is based upon the maxim, "***you cannot do indirectly what you cannot do directly.***"

Colorable legislation simply means legislation which while transgressing a constitutional limitation is made to appear as if it were quite constitutional. The Legislature cannot violate the Constitutional prohibitions by employing an indirect method.



## ADMINISTRATIVE RELATIONS

According to **Article 256**, the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

According to **Article 257(1)**, the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

**Clause (2) of Article 257** states that the executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

**Clause (3) of Article 257** states that the executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

According to **Article 261(1)** Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

According to **Article 261 (2)** The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

According to **Article 261 (3)** Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

## Disputes relating to Waters

**Article 262** deals with adjudication of disputes relating to waters of inter-State rivers or river valleys. According to **Article 262 (1)** Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use,

distribution or control of the waters of, or in, any inter-State river or river valley.

## Co-ordination between States

**Article 263** consists of the provisions with respect to an inter-State Council. It states that 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) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
  - (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,
- it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

## FINANCIAL RELATIONS

### Distribution of Revenues between the Union and the States

**Article 268. Duties levied by the Union but collected and appropriated by the States.— (1)** Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

- (a) in the case where such duties are leviable within any Union territory, by the Government of India, and
  - (b) in other cases, by the States within which such duties are respectively leviable.
- (2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

### Article 269. Taxes levied and collected by the Union but assigned to the States—

- (1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be



levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

**Explanation:** For the purposes of this clause,-

- (a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;
- (b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
- (2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.
- (3) Parliament may by law formulate principles for determining when a sale or purchase of, or consignment of, goods takes place in the course of inter-State trade or commerce.

#### **Article 270. Taxes levied and distributed between the Union and the States—**

- (1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268 and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).
- (2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be

distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,—

- (i) until a Finance Commission has been constituted, prescribed by the President by order, and
- (ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

#### **Article 271. Surcharge on certain duties and taxes for purposes of the Union.—**

Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

#### **GRANT-IN-AID**

##### **Grants in lieu of export duty on jute and jute products—**

**Article 273** (1) provides that there shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to those States, such sums as may be prescribed.

##### **Grants from the Union to certain States**

**Article 275(1)** authorizes the Parliament to provide by law assistance, and different sums that may be fixed for different States as grant-in aid.

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State:



**FOCUS ON****Central Taxes**

1. Taxes on income other than agricultural income.
2. Duties of customs including export duties.
3. Duties of excise on tobacco and other goods manufactured or produced in India except—
  - (a) alcoholic liquors for human consumption;
  - (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
4. Corporation tax.
5. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
6. Estate duty in respect of property other than agricultural land.
7. Duties in respect of succession to property other than agricultural land.
8. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
9. Taxes other than stamp duties on transactions in stock exchanges and futures markets.
10. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
11. Taxes on the sale or purchase of newspapers and on advertisements published therein.
12. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
13. Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

**State Taxes**

1. Taxes on agricultural income.
2. Duties in respect of succession to agricultural land.
3. Estate duty in respect of agricultural land.
4. Taxes on lands and buildings.
5. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
6. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—
  - (a) alcoholic liquors for human consumption;
  - (b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
7. Taxes on the entry of goods into a local area for consumption, use or sale therein.
8. Taxes on the consumption or sale of electricity.
9. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.
10. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.
11. Taxes on goods and passengers carried by road or on inland waterways.
12. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including trams subject to the provisions of entry 35 of List III.
13. Taxes on animals and boats.
14. Tolls.
15. Taxes on professions, trades, callings and employments.
16. Capitation taxes.
17. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.



### Co-operative federalism in India

In a vast country like India, the spirit of co-operative federalism should guide the relations between the Centre and the States on the one hand, among different States and between the States and the Panchayati Raj Institutions (PRIs) and the Urban Local Bodies (ULBs) on the other. The essence of co-operative federalism is that the Centre and the State Governments should be guided by the broader national concerns of using the available resources for the benefit of the people. Co-operative federalism encourages the Government at different levels to take advantage of a large national market, diverse and rich natural resources and the potential of human capabilities in all parts of the country and from all sections of the society for building a prosperous nation. Co-operative federalism makes it possible to raise all the available resources by the Government at different levels in a co-coordinated way and channel them for use for the common good of the people. This requires a harmonious relationship and co-operative spirit between the Centre and the States and among the States themselves. While a healthy competition among the States for evolving efficient and socially desirable policies and programmes is welcome, any competition which nullifies each other's advantages in development and erodes the resource base of the States should be avoided. Co-operative federalism is intended to ensure a minimum bundle of basic services and a nationally acceptable level of living for all the people of the country.

The Constitution of India had envisaged a 'creative balance' between the need for an effective Centre and effectively - empowered States. The Constitution has worked as a functioning mechanism, not just for resolving inter-governmental disputes, but in maintaining a constitutional balance between the tiers of government. A country the size of a continent, this "Union of States" has 28 States and six 'union territories', as units of federation. At the time of independence, it was realized that federalism could be a good device for solving the problems based on ethnicity, language and others if these ethnicities are territorially identifiable.

### Constitutional mechanisms providing for Cooperative Federalism

**Delegation of Executive Functions:**

Article 258(1) holds that the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends. According to Article 258A, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.

**Full Faith and Credit Clause:** Since the jurisdiction of each state is confined to its own territory [Articles 162, 245(1)], the acts and records of one State might, have been refused to be recognized in another State, without a provision to compel such recognition. The Constitution, therefore, provides that-

1. Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State. **[Article 261 (2)]**
2. Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law. **[Article 261 (3)]**

**Adjudicating Mechanism: Under Article 262,** the 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 and also provide for the exclusion of the jurisdiction of all Courts, including the Supreme Court, to entertain such disputes.

In exercise of this power, parliament has enacted the Inter-State Water Disputes Act, 1956, providing for the constitution of an adhoc Tribunal for the adjudication of any dispute arising between two or more states with regard to Inter- State River or river valley.



- **Consultative Mechanism:** Article 263 says that the President may appoint an Inter-state council if public interest should be served in this regard. The functions of Inter-State Council are to enquire into and advise upon the disputes which may have arisen between the states themselves or between the centre and the state. Investigating and discussing subjects in which some or all the states or the union or one or more states have a common interest.

The judiciary provides rigid procedure of resolving disputes and the decision are binding on the parties. Whereas the Inter-State Council provides flexible system of resolving disputes more in the form of discussions and consensus. The centre and the other states can extend their good offices for resolving their disputes. The consultative mechanism also investigates and makes recommendations but the courts don't do this. The Inter-State Council (ISC) was established under Article 263 of the Constitution of India through a Presidential Order dated May 28, 1990. The Council is a recommendatory body for making recommendations upon any such subject and in particular, recommendations for the better coordination of policy and action with respect to that subject and deliberating upon such other matters of general interest to the States as may be referred by the Chairman of the Council.

The Council comprises of the Prime Minister as Chairperson and Chief Ministers of all the States, Chief Ministers of Union territories having Legislative Assemblies, Administrators of Union territories not having Legislative Assemblies, Governors of States under President's rule, six Ministers of Cabinet rank in the Union Council of Ministers nominated by the Prime Minister as Members and four Ministers of Cabinet rank in the Union Council of Ministers nominated by the Prime Minister as permanent invitees.

The Sarkaria Commission in its report had recommended the change of name of Inter-State Council to Inter Governmental Council

Apart from this, in exercise of this power, the President has already constituted the Central Council of Health, the Central Council of Local Self Government, the Central Council of Indian Medicine and Central Council of Medicine.

- **Balancing Mechanism:** An important feature of India's Fiscal Federalism is revenue sharing between the Union and the states. There is a clear vertical imbalance between (1) the powers of taxation assigned to the Union and the states and (2) the social and economic responsibilities assigned to the states. That is, the states' responsibilities exceed their own-source revenues. But, the Finance Commission, the Planning Commission, and the National Development Council provide mechanisms for periodically correcting this imbalance and for allowing the states to better discharge their responsibilities. These forums cater to the grievances of the states, which they redress to the extent possible. The Constitution provides that the distribution between the Union and the states of the net proceeds of taxes that are to be divided between them, and the allocation between states of the respective shares of such proceeds, shall be done on the recommendations of a Finance Commission that is appointed by the president every five years. The Commission also recommends the principles that should govern grants-in-aid to the states. The grants are both a means to assist development schemes in states lacking adequate financial resources and an instrument to exercise control and coordination over the states' welfare schemes.

#### **Agencies working outside the Constitution**

- **Zonal Councils:** The zonal councils were constituted on the recommendation of State Reorganization Commission of 1956. Five Zonal Councils- were constituted in 1956. These were- Northern, Southern, Eastern, Western and Central. In 1971, the North -East Zonal council act established the 6<sup>th</sup> Zonal council i.e., the North-East Zonal council. These Zonal Councils owe their origin to an Act of Parliament. The creation of the Zonal Councils was a logical outcome

The Zonal Councils are high level advisory bodies chaired by the Union Home Minister and the members are the State Chief Ministers and two Ministers nominated by the respective member States. These Zonal Councils have been set up with the aim to provide a common



meeting ground in each zone for ensuring resolution of inter-State problems, fostering balanced regional development and building harmonious Centre-State relations.

The Zonal Council Secretariat interacts with State Governments, Central Ministries and institutions like the Planning Commission to explore issues of relevance for deliberation of the Zonal Councils. However, it is open to the enlightened citizens to identify such issues and bring them to the notice of the Zonal Council Secretariat.

The Zonal Councils have so far, met 106 times since their inception and have contributed significantly in bringing about socio-economic advancement in different parts of the country. Apart from specific issues relating to States/Union territories of the Zones, issues of national importance like Internal Security, Right to Information Act, National Rural Employment Guarantee Act, trafficking in women and children, coastal security, etc. have been discussed and useful recommendations made. Recommendations of the Zonal Councils have facilitated significant changes at the ground level.

**Universities Grants Commission:** - The UGC Act, 1956 created UGC as an agency of cooperative federation. Its functions are as follows:

- (i) To take all necessary steps for the promotion and coordination of university education and for the determination and maintenance of the standard of teaching examinations and researches in Indian Universities.
- (ii) To investigate into the financial needs of the Indian Universities and allocate funds to them.

**National Development Council:** The National Development Council (NDC) is composed of the Prime Minister, Chief Ministers of all the States, and members of the Planning Commission. The NDC is required to supervise the work of national planning, to recommend measures for the achievement of plan targets and to consider important questions of social and economic policy affecting national development. The State

governments submit their five year plans to the Planning Commission which prepares the National Plan and, after its approval by the Central government, the NDC goes through it. The recommendations of the NDC are taken into consideration by the Planning Commission before the final shape is given. The process represents the principle of cooperative federalism. Also, the NDC ensures a coordinated implementation of the Plan. Because of the coordinated-concerted approach of involving the Centre and the States, the NDC is able to ensure a balanced development in different regions of the country. The NDC is a policy-making body and its recommendations are not just advisory suggestions but policy-decisions and policy-directives. It is a national forum for planning which gives informal sanction to the underlying concept of cooperation between the Centre and the States. It brings States into an organic relationship with the organization of national planning. It occupies an important position in the Indian federal set up as it consists of the chief executives of the Central and State governments and, therefore, its advice can hardly be distinguished from a clear mandate.

The Sarkaria Commission in its report had recommended the change of name of National Development Council to National Economic Development Council.

Thus, the Indian Constitution would seem to create a "cooperative union" of states rather than a dual polity. The actual working of cooperative federalism in India has entailed the Union's exercising its influence rather than its constitutional authority. A redistribution of powers through decentralization and the devolution of authority from the Union to the states and from the states to the Panchayats and municipalities are serving to facilitate the attainment of the objectives of the Constitution: unity, social justice, and democracy. Any federal system is a device of shared-governance, and the Constitution of India envisages a 'creative balance' between the need for an effective Union and effectively-empowered states. The debate is today less about division of powers and more about recognition of roles and responsibilities.



## COMMITTEES/ COMMISSIONS ON CENTRE- STATE RELATIONS

### Rajamannar Committee

A Centre-State Relations Inquiry Committee was set up by the then DMK Government of Tamil Nadu on 2nd September, 1969 under the Chairmanship of Dr. P.V. Rajamannar to consider the entire question regarding relationship that should subsist between the Centre and the States in a federal set up. The Committee in its report recommended that "the Inter-State Council should be constituted immediately" and that "no decision of national importance or which may affect one or more States should be taken by the Union Government except after consultation with the Inter-State Council". The Committee further recommended that "every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be referred to the Inter-State Council and its views thereon should be submitted to Parliament at the time of introduction of the Bill". Other important recommendations of the Committee were "the abolition of All-India Service" and "the abolition of residuary power or vesting them in the State".

### Sarkaria Commission

With a view to reviewing the working of the existing arrangements between the Union and the States in the changed socio-economic scenario, the Government constituted a Commission vide Ministry of Home Affairs Notification No.IV/11017/1/83-CSR dated June 9, 1983 under the Chairmanship of Justice R.S. Sarkaria with Shri B. Sivaraman and Dr. S.R. Sen as its members. The terms of reference of the Commission as enunciated in this notification were as under:

*"The Commission will examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate".*

*"In examining and reviewing the working of the existing arrangements between the Union and the States and making recommendations as to the changes and measures needed, the commission will keep in view the*

*social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people."*

The Commission after conducting several studies, eliciting information, holding discussions and after detailed deliberations submitted its report in January 1988. The report contains 247 recommendations spreading over 19 Chapters.

### On Legislative Relations

- Residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of Parliament, while the residuary field other than that of taxation, should be placed in the Concurrent List. The Constitution may be suitably amended to give effect to this recommendation

### On Administrative Relations

- Articles 256, 257 and 365 are wholesome provisions, designed to secure coordination between the Union and the States for effective implementation of Union laws and the national policies indicated therein. Nonetheless, a direction under Articles 256 and 257 and the application of the sanction under Article 365 in the event of its non-compliance, is a measure of last resort. Before issue of directions to a State or application of sanction under Article 365, utmost caution should be exercised and all possibilities explored for settling points of conflict by all other available means.
- Federalism is more a functional arrangement for cooperative action, than a static institutional concept. Article 258 provides a tool, by the liberal use of which, cooperative federalism can be substantially realized in the working of the system. A more extensive and generous use of this tool should be made, than has hitherto been done, for progressive decentralization of powers to the Governments of the States and/or their officers and authorities.

### On Role of the Governor

- A person to be appointed as a Governor should satisfy the following criteria :



- (i) He should be eminent in some walk of life.
  - (ii) He should be a person outside the State.
  - (iii) He should be a detached figure and not too intimately connected with the local politics of the State; and
  - (iv) He should be a person who has not taken too great a part in politics generally, and particularly in the recent past.
- In selecting a Governor in accordance with the above criteria, persons, belonging to the minority groups should continue to be given a chance as hitherto.
- 14 It is desirable that a politician from the ruling party at the Union is not appointed as Governor of a State which is being run by some other party or a combination of other parties.
- In order to ensure effective consultation with the State Chief Minister in the selection of a person to be appointed as Governor, the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155. The Vice-President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. The consultation should be confidential and informal and should not be a matter of constitutional obligation.
- The Governor's tenure of office of five years in a State should not be disturbed except very rarely and that too, for some extremely compelling reasons.
- A Governor should, at the end of his tenure, irrespective of its duration, be provided reasonable post-retirement benefits for himself and for his surviving spouse.
- The Governor has no discretionary power in the matter of nominations to the Legislative Council or to the Legislative Assembly. If at the time of making a nomination, a Ministry has either not been formed or has resigned or lost majority in the Assembly, the Governor should await the formation of a new Ministry.
- Where a State University Act provides that the Governor, by virtue of his office, shall be the

Chancellor of the University and confers powers and duties on him not as Governor of the State but as Chancellor, there is no obligation on the Governor, in this capacity as Chancellor, always to act on Ministerial advice under Article 163 (1). However, there is an obvious advantage in the Governor consulting the Chief Minister or other Ministers concerned, but he would have to form his own individual judgement. In his capacity as Chancellor of a University, the Governor may be required by the University's statute to consult a Minister mentioned in the statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

### On Emergency Provisions

- Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a break-down of constitutional machinery in the State.
- A warning should be issued to the errant State, in specific terms that it is not carrying on the Government of the State in accordance with the constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. However, this may not be possible in a situation when not taking immediate action would lead to disastrous consequences.
- Every proclamation should be placed before each House of Parliament at the earliest, in any case before the expiry of the two months' period contemplated in clause (3) of Article 356.
- The State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under Article 356 (1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.
- Normally, the President is moved to take action under Article 356 on the report of the Governor. The report of the Governor is placed



before each House of Parliament. Such a report should be a "speaking document" containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356.

### On All India Services

- The All India Services should be further strengthened and greater emphasis given on the role expected to be played by them. This can be achieved through well planned improvements in selection, training, deployment, development and promotion policies and methods. The present accent on generalism should yield place to greater specialization in one or more areas of public administration. Training and career development policies should be geared to this objective. Disciplinary control should aim at nurturing the best service traditions and relentless weeding out of those who fail to make the grade. Finally, there should be greater coordination and periodical dialogue between the authorities in the Union and the State Governments who are responsible for the management of these services.
- It should be ensured, through strict observance of the tenure principle, that the services of the best among All India Service officers are not monopolized by the Union Government but are also readily available to the State Governments to whose cadres they belong.
- The Union Government may dissuade State Governments from using the powers of transfer, promotion, posting and suspension of All India Services officers in order to 'discipline' them.

### On Inter Governmental Council - Article 263

- A permanent Inter-State Council called the Inter-Governmental Council (IGC) should be set up under Article 263.
- The IGC should be charged with the duties set out in clauses (b) and (c) of Article 263 other than socio-economic planning and development.

- The separate identity of the National Development Council should be maintained. However, its status should be formalised and duties reaffirmed through a Presidential order passed under Article 263 and it should be renamed as the National Economic and Development Council.
- The Inter-Governmental Council will evolve guidelines for identification and selection of issues to be brought before it and will take care to ensure that only such matters of national importance relating to subjects of common interest are brought up before it as would fall with the ambit or clauses (b) and (c) of Article 263.

### On Financial Relations

- Taxation of agricultural income is a sensitive matter. Both the Union and the State Governments are not inclined at present for a change in the Constitutional provision in regard to Entry 46 of List II. Many problems have been highlighted by the Union and the State Governments in connection with the levy of such a tax. Nonetheless, in view of its potential, the question of raising resources from this source by forging political consensus and the modalities of levying the tax and collection of proceeds, etc., would require an in-depth and comprehensive consideration in the National Economic and Development Council.
- By an appropriate amendment of the Constitution, the net proceeds of Corporation Tax may be made permissibly shareable with the States, if and as Parliament may by law so provide. This would have the advantage of enlarging the base of devolution so that in the revenues of the States there would be greater stability and predictability, in future. Further, being an elastic resource, the States would benefit from its growth.
- The Union Government should give its consent freely to States for borrowing from banks and financial institutions for periods less than one year under clause (4) of Article 293.

### On Inter-State River Water Disputes

- Once an application under Section 3 of the Inter-State River Water Disputes Act (33 of



1956) is received from a State, it should be mandatory on the Union Government to constitute a Tribunal within a period not exceeding one year from the date of receipt of the application of any disputant State. The Inter-State River Water Disputes Act may be suitably amended for this purpose

- The Inter-State Water Disputes Act should be amended to empower the Union Government to appoint a Tribunal, *suo-moto*, if necessary, when it is satisfied that such a dispute exists in fact.
- The Inter-State Water Disputes Act should be amended to ensure that the award of a Tribunal becomes effective within five years from the date of constitution of a Tribunal. If, however, for some reasons, a Tribunal feels that the five years period has to be extended, the Union Government may on a reference made by the Tribunal extend its term.
- The Inter-State Water Disputes Act, 1956 should be amended so that a Tribunal's award has the same force and sanction behind it as an order or decree of the Supreme Court to make a Tribunal's award really binding.

#### Miscellaneous Matters - Language

- The command of Article 351 is that, in the process of developing Hindi, it is neither desirable nor necessary to replace commonly understood terms by difficult sanskritised words. The growth of the official language can best be fostered by following the command of Article 351 both in letter and in spirit. It would be against the mandate of the Constitution, if, in the process of developing the Official Language, the forms, styles and expressions of the various regional languages of India, including, English, which have become assimilated in Hindustani are sought to be discarded.
- The work of the Government, both Union and States, which involves or affects the local people must be carried on in the local language. This is even more important in a welfare State. It is necessary that all forms, applications, letters, bills notices, etc. are available in the local language as well as the official language. This is of equal relevance to State

Governments which have sizeable linguistic minorities concentrated in certain areas.

#### Miscellaneous Matter - High Court Judges

- Article 217 may be amended by inserting in it a clause as under:  
"IA. The President may after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause (1) of the Article, and in order to ensure that vacancies in the posts of Judges in the High Courts are promptly filled in, these rules may prescribe a time-schedule within which the various functionaries having consultative role in the appointment of judges under this Article, shall complete their part of the process.

#### PUNCHHI COMMISSION

The government appointed the Punchhi Commission on Centre-State ties on 27<sup>th</sup> April, 2007 under the chairmanship of Justice Madan Mohan Punchhi. The other members of the Commission are: Dhirendra Singh, V.K. Duggal, N.R. Madhava Menon and Amresh Bagchi. The Commission submitted its report in May, 2010.

#### The Commission's terms of reference include:

- To examine what could be the role, responsibility and jurisdiction of the Centre during major and prolonged outbreaks of communal violence, caste violence or any other social conflict.
- To review other aspects of Centre-States relations including taxes and linking of rivers.
- To examine whether there is a need to set up a Central law enforcement agency to take up *suo motto* investigation of crimes having inter-State or international ramifications with serious implications on national security.
- To study the feasibility of supporting legislation under Article 355 for the purpose of *suo motto* deployment of Central forces in the States if and when the situation demanded.
- To study the role, responsibility and jurisdiction of the Centre vis-à-vis States in promoting effective devolution of powers and



- autonomy to Panchayati Raj institutions and local bodies.
- To promote the concept and concept of independent planning and budgeting at the district level and linking Central assistance of various kinds with the performance of the States.
  - To study the need and relevance of separate taxes for freeing inter-state trade to establish unified domestic market.
  - To examine the role of Governors, emergency provisions, financial relations, economic and social planning, Panchayati Raj institutions and sharing of resources, including inter-State river waters.

#### Major recommendations of the Commission:

1. There should be an amendment in Articles 355 and 356 to enable the Centre to bring specific trouble-torn areas under its rule for a limited period.
2. The commission has proposed "localising emergency provisions" under Articles 355 and 356, contending that localised areas-either a district or parts of a district - be brought under Governor's rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.
3. The commission however supports their right to give sanction for the prosecution of ministers against the advice of the state government.
4. To make an amendment in the Communal Violence Bill to allow deployment of Central forces without the state's consent for a short period. It has proposed that state consent should not become a hurdle in deployment of central forces in a communal conflagration. However, such deployment should only be for a week and post-facto consent should be taken from the state.
5. It laid down clear guidelines for the appointment of chief ministers. Upholding the view that a pre-poll alliance should be treated as one political party, it lays down the order of precedence that ought to be followed by the governor in case of a hung house:

- (a) Call the group with the largest prepoll alliance commanding the largest number;
  - (b) The single largest party with support of others;
  - (c) The post-electoral coalition with all parties joining the government; and last
  - (d) The post electoral alliance with some parties joining the government and remaining including Independents supporting from outside.
6. The Governors should have the right to sanction prosecution of a minister against the advice of the council of ministers. However, it wants the convention of making them chancellors of universities done away with.
  7. As for qualifications for a governor, the Commission suggests that the nominee not have participated in active politics at even local level for at least a couple of years before his appointment. It also agrees with the Sarkaria recommendation that a governor be an eminent person and not belongs to the state where he is to be posted.
  8. The commission also criticizes arbitrary dismissal of governors, saying, "*the practice of treating governors as political football must stop*".
  9. Underlining that removal of a governor be for a reason related to his discharge of functions, it has proposed provisions for impeachment by the state legislature along the same lines as that of President by Parliament.
  10. The appointment of Governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and chief minister of the concerned state. The Vice-President can also be involved in the process.
  11. Unlike the Sarkaria report, the Punchhi report is categorical that a governor be given fixed five-year tenure. The Punchhi Commission report also recommends that a constitutional amendment be brought about to limit the scope of discretionary powers of the governor under Article 163 (2). Governors should not sit on decisions and must decide matters within a four-month period.



12. The creation of an overriding structure to maintain internal security along the lines of the US Home-land Security department, giving more teeth to the National Integration Council.
13. For the National Integration Council (NIC), the commission has proposed that it should meet at least once a year. In case of any communal incident, it has said that a delegation of five members of the Council, who would be eminent persons, should visit the affected area within two days National debate and submit a fact-finding report.
14. The commission has also studied new set-ups like the National Investigation Agency, and recommended procedures to ensure smooth co-operation of the states in terror investigations entrusted to NIA.

### **Indian federalism in the era of Globalization**

Globalization has brought fresh challenges to the nation-states all over the world resulting in much diminished state sovereignty and state crisis. A notion of a post traditional or post-classical nation-state is being theorized by scholars of state formation. Theoretically, it is being argued that globalization may be a bad omen for the centralized nation-state known for its over-emphasis on uniformity and homogeneity, but it has contained some disguised blessings for the respect for diversity by allowing more decentralized levels of governance, and more autonomy of action for the constituent units of federations. The benefits of market-driven federalism are being positively assessed by established scholars of federalism.

In India, globalization has produced paradoxical results in the sense that while it has allowed more autonomy of action in favour of the state to reap the benefits of globalization, this has at the same time prepared the long-term basis of crisis in Indian federalism itself. First, the political autonomy of the liberal democratic states has been compromised in favour of the market. Second, the states have been engaged in fierce competition among themselves for foreign direct investment and SEZ models of development giving rise to a new division among the states such as forward and backward states, inter-jurisdictional competition

in place of inter-state cooperation, and weakening loyalty to the 'union'. Third, with the weakening of the welfare state, the newly created conflicts out of disparity in regional development, and widening inequalities following globalization remain unmitigated. Fourth, with the political autonomy of the liberal democratic state compromised in favour of the market, local governance is more and more exposed to direct penetration by global and corporate power structures. Finally, the gradual withdrawal of the very meagre welfare measures, and the relative absence of any social security, or safety nets, have meant that there is mass protest against globalization led by various forms of grass-roots political activism. This cuts into the very democratic basis of legitimacy of the party /parties in power in the states.

Over the last three decades or so, the term 'globalization' has attracted perhaps the single most important attention of scholars, rulers, opinion-makers and commoners, globally speaking, for a variety of reasons. While the first three groups often find common ground of looking at it and assessing some 'positive benefits' out of globalization, the commoners have become most often compelled to look at globalization more critically since it hit them the hardest! If your job is made insecure, if your land is taken away, if your habitat is disturbed, and you are displaced in the wake of 'development', and if your social security nets are withdrawn, you will not have a particularly pleasant attitude to the process responsible for them. If social and economic inequalities are increased; if regional disparities are increased in a multiregional and multicultural country, as a result of the so-called competition among the regions and the states for foreign capital, and for development, this does not augur well for national identity and unity, and cohesion. If the Central State, in the 'rolling the state back' mould (much propagated by globalization), withdraws itself from its social welfare activities, from its job of an arbiter in the inter-regional/state disputes, or does not plan any longer for removing intra-regional and inter-regional gaps in development, the field that is left open is dangerous. In the society, class, group including ethnic tensions are accentuated; 'the forward' and



the 'backward' states (in terms of development!) are created as a result, which are also a bad omen for 'national identity'.

The end of the Cold War, and the gaining in widespread popularity of various regional, and transnational political associations, most notably the European Union, have meant that the classical nation-state based on homogeneity and uniformity is much condemned in favour of a genuine federal state respectful of diversity and heterogeneity. Globalization, in other words, has created the congenial conditions for federalism. This has been reflected in the growing literature on federalism. The established scholarship on federalism strongly suggests that thanks to market-driven globalization in recent times there has been a kind of renaissance in federalism. It is widely believed that federalism has been proving itself to be the form of government for the contemporary world. About 40 per cent of the world's population is said to be living under federalism, and some more, under some kinds of federal arrangements including that of the European Union. According to Ronald Watts, the desire for progress, a rising standard of living, social justice, and the growing awareness of the interdependence of the world in conditions of revolutions in communication, transportation, technology and industrial organization has encouraged, on the one hand, smaller, self-governing political units, and governments more responsive to citizens' preferences as well as to some primordial group attachments based on language, culture, regions and so on, and on the other hand, larger political units (transnational, global and so on) where states pool their sovereignties for various common interests. The renewed emphasis on contractual relationships, non-centralized character of the market-based economies, entrepreneurial self-governance, consumer rights, diversity and the recognition of the difference etc is closely connected with globalization and supportive of the federal idea. Little wonder, the growing literature on federalism witnesses a paradigm shift from statism to increasingly decentralized forms of governance in the context of what Thomas Fleiner has termed 'diminished state sovereignty.'

### **Globalization and the Growing Regional Disparities in India**

Although it is commonly believed that globalization started in India from the early 1990s, the process had had its beginnings in the mid-1960s when Lal Bahadur Shastri, then the Prime Minister of India (1964-66), set in motion a process of liberalisation so much so that in the initial approach paper on the Fourth Five-Year Plan it was stated: "within the broad framework of control in strategic areas, there is an advantage in allowing the market much fuller play".

India's liberalization until the end of the 1960s took a variety of forms: 16 items were decontrolled in 1963; cement was decontrolled in 1966, and cotton in 1967; controls on investment were liberalized, and several industries were also decontrolled. However, the process of India's liberalization has since been slow and halting, and passed through phases, and even during the Emergency (1975-77) regime of authoritarianism and excessive state control, the process of liberalization, paradoxically enough, was broadened and accelerated! Hardgrave and Kochanek have noted: During the emergency, the government tried to further liberalize the industrial licensing policies, relax price controls, and provide tax incentives for industrial investment in an effort to accelerate the rate of economic growth. What remained basically a guarded process of liberalization until the early 1990s became ever since a combined process of liberalization, privatization and globalization. The so-called 'structural reforms', as is heard a lot these days, encompass the combination: 'decontrol and deregulation of industry, changes in monetary and fiscal policy, liberalization of trade policy, changes in foreign exchange regulations, encouragement of foreign direct investment, financial sector reforms, promotion of private foreign investment in infrastructure, partial privatization of public sector units, and the promise to enact labour reforms, and an exit policy that allows bankrupt private sector firms to go out of business.'

Since India is a federation (called a 'Union of States', constitutionally speaking), the states are the most significant strategic players in implementing the agenda of globalization. The



Indian Constitution entrusts the states with the major tasks of development including infrastructural development. Globalization, in fact, has increased the importance of the states. Observers of Indian politics have noted how the Central State induced, or coerced many states which were unwilling to join in the process of structural reforms. C. P. Bhambri has noted how the Central government made use of such tactics as cajoling, persuading and even bribing the unwilling states in the reforms process more particularly in the case of structural reform of the State Electricity Boards.

Many Indian states have joined in the process of reforms in order to benefit from it. Hence there has developed a fierce competition among the states for FDI, and other benefits. This takes place in the environment in which the socially interventionist state (Central State) gradually withdraws itself from public welfare activities leaving the field to a series of 'regulatory authorities'. Since the 9th Plan period there has been a drastic cut in the number of Centrally-sponsored Schemes (of development and public welfare): in agriculture from 324 to 91; in labour from 130 to 93, and in Information and Broadcasting from 94 to 34.5

### **Globalization and the Indian States**

Where and how do the states in Indian federation figure in the process of globalization? Is globalization beneficial, or harmful to the Indian states? Does globalization signal the decline, or regeneration of Indian federalism? To be sure, a federation provides for a different space for (reforms) policy interaction and implementation from that of a unitary state, and hence, the constituent units of the federation become strategically important in this respect. In the Indian constitutional system, as S. Guhan has rightly pointed out, the most important key sectors which are central to India's globalization are states' competences: 'industrial infrastructure; power development; agriculture, and its allied sectors and irrigation; roads (other than high ways), health education, medical services, nutrition, water supply and urban development and so on. And yet, until the mid-1990s, the states' involvement in the reforms process was less than satisfactory. Guhan says that the Centre was both

'unwilling and unable' to involve the states in the process for a number of reasons: external agencies' preference for policy dialogue only with the national government; Centre's sole competence in macro-economic stabilization; and the variegated nature of state governments, politically speaking.

The growing literature on globalization and Indian federalism, mostly written though from the standpoint of political economy, suggests that Indian federalism has been drastically changed so that it needs to be redefined. Rudolph and Rudolph argued that as a result of the impact, the interventionist state in India had given way to a 'regulatory state', which again was more suited to a growing multi-party system.

Lawrence Saez does not of course subscribe to the above view because he believes that 'India's redefined federal system requires the central government to play a critical role'. He is also not sure that a regulatory state will be able to mitigate the growing competition among the Indian states in the era of globalization. However, he believes that Indian federalism has undergone some major transformation from the intergovernmental co-operation to inter-jurisdictional competition (among the states). The various forms of states' growing re-assertions have also been noticed by acute observers of Indian politics and federalism since the 1990s. C. P. Bhambri said: The state governments are very important players in the economic development of the country, more pronounced of course since the 1990s. This striking fact has become clear in the 1990s because investors have to contact every state government for launching a project. Since the central state is gradually withdrawing itself from its social responsibilities including welfare-oriented development, most clearly evident, among others, in the shrinkage of the number of centrally-sponsored welfarist development schemes, as Bhambri has shown, centre-state relations have taken often peculiar forms. Cajoling, persuading and even bribing often could become tactics resorted to by the Centre for involving the state governments in the process of economic reforms and restructuring. Rao and Singh have recognized that the states' role has expanded due to market economy which demands more decentralized levels of governance, but also that all the states are not



equally equipped to access the opportunities afforded by the market.

The Indian federal system, seen from one side, offers both opportunities and constraints for structural reforms. The constraints refer to the variegated political complexion of governments at the Centre and at the states. This may facilitate (if the same party rules in the states concerned as in the Centre) the reforms process or, stand in the way of implementation of any uniform reforms package if the rival rules in the states. The coalition governments thus often become worse victim of such eventuality. When seen from the side of globalization, given that the states are today offered more freedom of action in respect of adopting and implementing structural adjustment programmes, the states have become more competitive for inviting investment, industrialization, trade and commerce, entrepreneurial governance for development. Globalization thus is encouraging for more rights for the states although it is hard to conclude that all the states will benefit equally from out of globalization, and also that people in each state will be able reap the benefits of globalization, if any, equitably. Much depends on the policy preferences of the state governments concerned, and space for the exercise of such preference. In any case, the states' role is very crucial in India's reforms process.

Three considerations in this connection are of vitally importance. First, globalization, as predominantly economic and political processes, is ultimately to be implemented in the states. Second, constitutionally, the states are responsible for a variety of development works since the Union Government (as all line and no staff!) does not have the bureaucracy to implement its laws; it has to depend on the states for the job. Third, democratically mandated state governments are more politically vulnerable because being close to the people it is they who suffer from the after-effects of the policies of globalization. In other words, implementation of some 'unpopular' structural adjustment policies may cut into the democratic basis of state governments. The states being distinct socio-cultural units, the state governments' political vulnerability especially in the face of rival mobilization of popular discontent is particularly of concern to the party in power. At the same, the

globalization may create risks and uncertainties for the states' governing parties' legitimacy since an uncritical approach to and implementation of the reforms process inevitably adversely affects the socially and economically vulnerable sections of society, and paves the way for what is termed 'democratic deficit'.

Finally, two other challenges are to be considered. First, this globalization-propelled current assertion of the states for autonomy of policy and action occurs in the age of what is fashioned as 'the rolling the state back' i.e., the increasing withdrawal of the states from social welfares. Thus, the so-called states' rights may not be as much people's rights assuring. It must not be forgotten that this re-federalization of the Indian polity, or true federalization ever taken place, is market oriented and globalization friendly. Second, given the growing inter-state and inter-regional disparities in terms of investment, whether by FDI, or otherwise, when placed in the context of the withdrawal of the Central state, there is genuine ground for fear that the situation will accentuate inter-regional tensions and encourage ethnic conflicts, which will affect adversely the sense of national identity. The researchers are already making the distinction between the 'forward states' and 'backward states' in development terms, which have immense ideological and political implications for India's unity and integrity.

## CONCLUSION

The post-reforms study of India's globalization-propelled growth gives us a dismal scenario. Growth has favoured, broadly urban India, organized sectors, richer states, and property owners against rural India, unorganized sectors, poorer states and wage earners. The result is a huge polarization of the economy and society resulting from a policy of growth with inequality.

The strategically most significant effect of globalization, from the viewpoint of national unity and integrity, is the growth in inter-state and intra-regional disparity in development. Historically, India's regions have lacked balanced development. The centuries of colonial exploitation and plunder of India left the country at the point of independence (1947) not only underdeveloped, but



with huge unevenness in regional development. Later day regionalism and separatism, politically speaking, have had their roots in the sense of regional deprivation in development. This has called for the most judicious management of ethno-regional conflicts in post-independence period on the part of the socially interventionist State for ensuring political unity and cohesion.

Globalization process seems to be upsetting all that by re-creating bases of ethno-regional conflicts. For one thing, globalization in India has resulted in creating broadly two groups of states, namely, 'have' and 'have-not' states. The following facts are worth-considering here: the so-called 'have' states such as Maharashtra, Gujarat and Tamil Nadu account for 40% of the all-India value added in manufacturing; also two-thirds of foreign investment during 1991-98 were in these states also. Of these three states, Gujarat and Maharashtra were the largest beneficiaries (36.7%) of the above investment during the same period. By an estimate, the categories of 'forward states' and backward states' in India became a reality in terms of such criteria as urbanity, female literacy, female infant mortality, per capita income, percentage of the poor, per cent investment, infrastructural development, and consumption of power per capita. Thus, the 'forward states' were Andhra Pradesh, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Punjab and TamilNadu, and the 'backward states' were Assam, Bihar, Madhya Pradesh, Rajasthan, U. P and West Bengal. Surely, some of the so-called 'backward states' must have caught up since, especially West Bengal which in the above categorization was found to be very close to Tamil Nadu in terms of most indicators. But then, the competition among states is fiercer today for attracting foreign investment and other private investment for development. The sources of the regional offices of the Reserve Bank of India suggest that the disparity among the states in terms of FDI inflows has been growing (the period considered is January 2000-January 2006). During the same period, West Bengal (including Sikkim and A & N Islands) received only 1.4% of the total inflow of FDI compared to Karnataka (7.53%), Maharashtra (20.28%), the seven North- Eastern states together (0.05%), Bihar and Jharkhand (0.00%). That speaks volumes of growing regional disparity in India.

Building a cohesive national identity in the midst of manifold, complex diversity coupled with mass poverty, illiteracy, extremes of social and economic inequalities and so on in India, has since independence been perhaps the most difficult task. But India's achievement in this regard, when compared to many post-colonial and even the industrially advanced former socialist systems, has been remarkable indeed. But in the wake of globalization, in the wake of the withdrawal of the public welfare state, when a certain paradigm of development produces disparities of many sorts, and polarizes the society sharply, ultimately it is the sense of national identity, unity or cohesion that is the victim. For over five decades, in the context of a social welfare state, people's wishes and aspirations have informed, democratically speaking, programmes of decentralization and autonomy, not at the cost of national identity and unity, but as complementary to the latter. That was how democracy could be married to diversity. But today when the very domain of the public is fast shrinking, harnessing democracy for national unity would be very difficult.

### **INDIAN FEDERAL STRUCTURE AND NATURE OF INTER GOVERNMENTAL RELATIONS**

In the Commonwealth parliamentary federations like Canada, Australia, and India, the typical method and forums for conducting Inter Governmental Relation among the federal and regional governments has been called "executive federalism". It is so called because the major forums bring together the executive of administrative heads of the two orders of governments for joint policy initiatives, harmonization, and coordination, or for implementation and review of these policies. The examples are the formal IGR forums like the National Development Council (NDC) set up in 1952 by a cabinet resolution for guidelines, approval and review of five-year plans; the Inter-State Council (ISC) provided for in article 263 in the constitution of India (1950) and first set up by a Presidents order in 1990. Political, or non-economic issues at the apex are generally dealt with by the ISC. Other examples include the ministerial and secretarial conferences on



intergovernmental affairs in various policy areas and are chaired by the concerned Union minister or Union secretary. In addition, there are National Councils in some key policy areas set up under article 263 including ministerial and secretarial representations from the two orders of governments. These relate to limited issues, e.g. health, local selfgovernment, and sales tax.

Not all the foregoing Inter Governmental Relation forums have been equally and uniformly operational in practice. In the past indeed many issues of intergovernmental implications were more likely to be settled on national party forums in the era of the dominance of the Indian National Congress, which ruled in all or most states. The most conspicuous of these national party forums were the Congress Working Committee (CWC) and Congress Parliamentary Board (CPB). Even after the advent of the multiparty system at the federal level since 1989 and a considerably differentiated pattern of state party systems since the 1980s, most frequently used IGR forums are ad hoc chief ministerial / ministerial/secretarial conferences than the formal ones like the ISC and NDC. Between the last two, NDC is more frequently convened. Than the ISC, even though the latter is constitutionally sanctified. It is worth pointing out in this context, however, that the presidential order setting up the ISC reduced its full constitutional mandate by omitting clause (a) of article 263, which would have changed it with the duty of "(a) inquiring into and advising upon disputes which many have arisen between states." This was in conformity with the recommendation of the Sarkaria Commission Report on Center-state Relations. This obviously diverts such disputes to other political or judicial forums like tribunals or courts of law.

The conference of Governors or Chief Justices of High Courts, chaired by the President or Chief Justice of India respectively, also occasionally take place, But these forums deal with constitutional or legal issues rather than political matters in the IGR.

Prominence of *executive federalism* and the eclipse of *legislative federalism* in the Commonwealth parliamentary federations, including India, may be explained by referring to the fact that these

countries differ in constitutional design from presidential federations in the USA, Switzerland, and Latin America. Parliamentary federations in the Commonwealth political tradition with the possible exception of Australia, despite the pretense of bicameral equality in powers, barring money bills, end up making the popular or national chamber the real centre of political gravity in comparison to the federal second chamber giving regional representation to the states. This is the reason why the tendency of legislative federation via the second chamber does not grow beyond a limited range. The situation is different in presidential federations founded on an overdeveloped notion of separation of powers and checks and balances. In the directly elected Senate (two senators for each federating state, small or big) and armed with equal legislative powers and some special executive powers (in treaty-making and federal and judicial and diplomatic appointments) can become effective spokesmen for their states, along with of course the Governors.

The principle of accountability of governments to the parliament and state legislatures is sketched out in the Indian constitution in the two respective domains, if not well-established in practice. Executive federalism is envisioned in the constitution in article 263, but the question of the collective accountability of the Inter-state Council (ISC) is left unstated. The PM and his/her government are accountable to the Lok Sabha. The CM and his/her government are accountable to the Vidhan Sabha. These two accountabilities are for the decisions of the Government of India and a state government for their own separate domains. What about the collective accountability of the ISC, NDC, and other such forums for their decisions in the joint Union-State domains? An integral and reading of the constitution could yield two answers. One, PM and CMs acting together in the ISC are firstly and severally accountable to their respective legislative branches. Two, their ultimate political accountability is to their respective national or regional electorates, indeed discursively to the larger national interest. However, as of now, the first constitutional principle has remained entirely unoperationalized. Neither the Parliament nor any state legislature in the country has set up any committee on



intergovernmental relations. The ISC is here used only as an illustration since it is the only apex general intergovernmental forum that at present is constitutionally entrenched.

The major constitutional commissions set up at the Union level on Center-state relations or on review of the working of the constitution are pertinent here. These are the Sarkaria Commission Report on the Center-state Relations (1988), the Venkatachaliah Commission Report on the Review of the Working of the Constitution (2002), and the Punchhi Commission Report on Center-State Relations (2010). None of these commissions has addressed the problem of the gap in the political accountability of the IGR forums. However, it must be noted that all three are unanimous in their recommendations in favour of the imperative of strengthening the ISC, both in view of the constitutional vision and mandate for it as also greater need for it. This is in view of the growing regionalization of the Indian polity since the late 1960s or the late 1970s, and especially since the early 1990s. The tendency of regionalization that came to pass in the late 1960s and late 1970s turned out to be abortive, as political centralization overtook regionalization. But the process of regionalization that came gradually in the state party systems over the 1989 general election have proved to be a continuing and irreversible trend.

The Sarkaria Commission Report is most conservative of the three in sense that, whereas it lamented the absence of the ISC despite a provision for it in the constitution (article 263), it suggested its establishment with a certain degree of timidity. It diluted its powers by omitting clause (a) of article 263 that would have enabled it to "inquire" into and "advising" upon inter-state disputes. It was left with the constitutional mandate in clauses (b) and (c) only, "investigating and discussing" subjects of "common interest" and "recommending" matters "for the better coordination of policy and action." the commission also recommended the retention of the NDC with the added status of its entrenchment under article 263 of the constitution.

The Venkatachaliah Commission recommended that "in resolving problems and coordinating

policy and action, the Union as well as states should more effectively utilize the forum of Inter-State Council." The commission underlined "the desirability of prior consultation by the Union Government with the Inter-State Council " prior to "signing any treaty vitally affecting the interests the States regarding matters in the State List." This was obviously a response to the post-World Trade Organization (WTO) treaty (1995) signed by the Union allegedly without consulting the states, even though it impinged on agriculture a State List subject in the seventh schedule of the constitution.

The Punchhi Commission Report would appear to be most innovative of the three commissions in its preparedness to go beyond the existing provisions of the constitution with regard to the ISC and the federal second chamber. In the first place, it emphasized the need "to make the Inter-State Council a credible, powerful, and fair mechanism for management of inter-State and Centre-State differences" by making "suitable amendments to article 263." The amendment should ensure "sufficient resources and authority to carry out its functions effectively and to engage civil society besides governments and other public bodies."

Secondly, the Puchhi Commission dared to go beyond the conventional wisdom of the makers of the Commonwealth parliamentary federations in Canada and India regarding the federal second chamber. It suggested equal representation of states – small or big - in the Rajya Sabha to alter the balance of power in favour of smaller states in federal governance. It strongly expressed itself in favour of removal of "factors inhibiting the composition and functioning of the Second Chamber as a representative forum of States" by constitutional amendment. These amendments range from the restoration of the requirement of "domicile" in the state concerned for getting elected to the Rajya Sabha (abolished by amendments in the Representation of People Act, 1951, in 2003 and sustained by the Supreme Court in 2006) to the abolition of differential regional representation in this House in accordance with population (as in the Lok Sabha) in favour of equal representation to states as in the U.S. Senate. The Rajya Sabha thus restructured could be allowed to become a true forum of states interests though its



committees that are empowered to work out "alternative courses of action acceptable to the States and the Union".

Coming back to the major missing link of political accountability of IGR within the framework of governments ,none of the three commissions have given thought to it, let alone offered viable solutions. Even the seemingly radical solution of bringing in legislative federalism via a restructured Rajya Sabha may not bring about a radically different federal balance of forces in a parliamentary government in which the centre of political gravity lies in the Lok Sabha to which the government is collectively responsible. This would be particularly true in a single party government, though a multiparty coalitional government does make some difference.

The phenomenon of divided and fragmented governments in India since the early 1990s is featured by an incoherent parliamentary and cabinet government, which is *regionalized* rather than *federalized*. This is evident in world's largest coalition governments in terms of participating parties and ministers, discordant bicameralism with the two chambers of the Parliament under diverse party coalitional configurational domination and incredibly differentiated state party systems. This makes legislation and constitutional amendments Herculean tasks.

The combination of parliamentary and federal government in the same constitution demands a certain degree of demarcation between the two domains, and the federalization of the parliamentary component in a way that does not result in regional cacophony and incoherence. This kind of incoherence distorts some basic constitutional precepts like the Prime Minister's preeminence, cabinet collegiality and cohesion and collective responsibility of the council of ministers to the Parliament, especially the Lok Sabha, in the phase of coalitional governance in New Delhi. These precepts have been a casualty. Besides, it has also bred enormous corruption and criminalization of politics that stare us in face.

This unsustainable unconstitutional governance is at times remedied by larger than life roles of the Supreme Court/High Courts, the media, the social and political movements, the Comptroller and Auditor General of India, the Election Commission of India, and the like. In a somewhat feebler way, the new regime of independent regulatory authorities that have been set up in dozens under parliamentary enactments since 1991, the Central Vigilance Commission, enforcement directorate, National Advisory Council, etc. Moreover, investigative agencies also come into the picture, but these agencies, with the possible exception of the newly set up National Investigative Agency in 2008, generally lack the requisite autonomy and teeth.

Needless to add that these interventions may be necessary in governance, but are certainly not sufficient. Ultimately, the governmental and party political processes must be revived or reinvented and reformed to play their part in the enterprise of governance. In the federal context, the crucial role of forums of IGR in coordinating centre-state relations and settling the disputes that arise can hardly be exaggerated. A more functional and effective ISC and NDC are absolutely necessary to prevent the cabinet itself from becoming the arena of regional conflicts and to reduce the necessity of the judiciary going beyond normal judicial review to an overdrive of judicial activism.

In step with the times, both the Parliament and the intergovernmental forums in their respective domains must ensure opportunity of deliberative as well as participatory democracy. This can be done by creating or expanding the scope and practice of interaction with the civil society and market organizations, the media, and of hearing the public - in short, all the stakeholders in the processes of parliamentary and federal governance. We look forward to the prospects of fuller actualization of the constitutional ideals of parliamentary, federal, and democratic accountability

