



## Centre–State Relations

**T**he Constitution of India, being federal in structure, divides all powers (legislative, executive and financial) between the Centre and the states. However, there is no division of judicial power as the Constitution has established an integrated judicial system to enforce both the Central laws as well as state laws.

Though the Centre and the states are supreme in their respective fields, the maximum harmony and coordination between them is essential for the effective operation of the federal system. Hence, the Constitution contains elaborate provisions to regulate the various dimensions of the relations between the Centre and the states.

The Centre-state relations can be studied under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations.

### LEGISLATIVE RELATIONS

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states. Besides these, there are some other articles dealing with the same subject.

Like any other Federal Constitution, the Indian Constitution also divides

the legislative powers between the Centre and the states with respect to both the territory and the subjects of legislation. Further, the Constitution provides for the parliamentary legislation in the state field under five extraordinary situations as well as the centre's control over state legislation in certain cases. Thus, there are four aspects in the Centre–states legislative relations, viz.,

- Territorial extent of Central and state legislation;
- Distribution of legislative subjects;
- Parliamentary legislation in the state field; and
- Centre's control over state legislation.

## **1. Territorial Extent of Central and State Legislation**

The Constitution defines the territorial limits of the legislative powers vested in the Centre and the states in the following way:

- (i) The Parliament can make laws for the whole or any part of the territory of India. The territory of India includes the states, the union territories, and any other area for the time being included in the territory of India.
- (ii) A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object.
- (iii) The Parliament alone can make 'extra-territorial legislation'. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

However, the Constitution places certain restrictions on the plenary territorial jurisdiction of the Parliament. In other words, the laws of Parliament are not applicable in the following areas:

- (i) The President can make regulations for the peace, progress and good government of the four Union Territories—the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu. A regulation so made has the same force and effect as an act of Parliament. It may also repeal or amend any act of Parliament in relation to these union territories.
- (ii) The governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the state or apply with specified modifications and exceptions.

- (iii) The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.

## 2. Distribution of Legislative Subjects

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule:

- (i) The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 100 subjects (originally 97<sup>1</sup> subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.
- (ii) The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 61 subjects (originally 66<sup>2</sup> subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling and so on.
- (iii) Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects (originally 47<sup>3</sup> subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, (a) education, (b) forests, (c) weights and measures, (d) protection of wild animals and birds, and (e) administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts.

The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary

taxes.

From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.

In US, only the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states. The Australian Constitution followed the American pattern of single enumeration of powers. In Canada, on the other hand, there is a double enumeration—Federal and Provincial, and the residuary powers are vested in the Centre.

The Government of India (GoI) Act of 1935 provided for a three-fold enumeration, viz., federal, provincial and concurrent. The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the governor-general of India. In this respect, India follows the Canadian precedent.

The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List. Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail.

In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the central law prevails over the state law. But, there is an exception. If the state law has been reserved for the consideration of the president and has received his assent, then the state law prevails in that state. But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.

### **3. Parliamentary Legislation in the State Field**

The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended. In other words, the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:

**When Rajya Sabha Passes a Resolution** If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter. Such a resolution must be supported by two-thirds of the members present and voting. The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time. The laws cease to have effect on the expiration of six months after the resolution has ceased to be in force.

This provision does not restrict the power of a state legislature to make laws on the same matter. But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail.

**During a National Emergency** The Parliament acquires the power to legislate with respect to matters in the State List, while a proclamation of national emergency is in operation. The laws become inoperative on the expiration of six months after the emergency has ceased to operate.

Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.

**When States Make a Request** When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. However, any other state may adopt it afterwards by passing a resolution to that effect in its legislature. Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states.

The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it

has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.

Some examples of laws passed under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.

**To Implement International Agreements** The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions. This provision enables the Central government to fulfil its international obligations and commitments.

Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS.

**During President's Rule** When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state. A law made so by the Parliament continues to be operative even after the president's rule. This means that the period for which such a law remains in force is not co-terminus with the duration of the President's rule. But, such a law can be repealed or altered or re-enacted by the state legislature.

## **4. Centre's Control Over State Legislation**

Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways:

- (i) The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The president enjoys absolute veto over them.

- (ii) Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the president. (For example, the bills imposing restrictions on the freedom of trade and commerce).
- (iii) The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency.

From the above, it is clear that the Constitution has assigned a position of superiority to the Centre in the legislative sphere. In this context, the Sarkaria Commission on Centre–State Relations (1983–87) observed: “The rule of federal supremacy is a technique to avoid absurdity, resolve conflict and ensure harmony between the Union and state laws. If this principle of union supremacy is excluded, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by interference, strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union–state concern will be stymied. The federal principle of unity in diversity will be very much a casualty. This rule of federal supremacy, therefore, is indispensable for the successful functioning of the federal system”.<sup>4</sup>

## ADMINISTRATIVE RELATIONS

Articles 256 to 263 in Part XI of the Constitution deal with the administrative relations between the Centre and the states. In addition, there are various other articles pertaining to the same matter.

## Distribution of Executive Powers

The executive power has been divided between the Centre and the states on the lines of the distribution of legislative powers, except in few cases. Thus, the executive power of the Centre extends to the whole of India: (i) to the matters on which the Parliament has exclusive power of legislation (i.e., the subjects enumerated in the Union List); and (ii) to the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement. Similarly, the executive power of a state extends to its territory in respect of



matters on which the state legislature has exclusive power of legislation (i.e., the subjects enumerated in the State List).

In respect of matters on which both the Parliament and the state legislatures have power of legislation (i.e., the subjects enumerated in the Concurrent List), the executive power rests with the states except when a Constitutional provision or a parliamentary law specifically confers it on the Centre. Therefore, a law on a concurrent subject, though enacted by the Parliament, is to be executed by the states except when the Constitution or the Parliament has directed otherwise.<sup>5</sup>

## **Obligation of States and the Centre**

The Constitution has placed two restrictions on the executive power of the states in order to give ample scope to the Centre for exercising its executive power in an unrestricted manner. Thus, the executive power of every state is to be exercised in such a way (a) as to ensure compliance with the laws made by the Parliament and any existing law which apply in the state; and (b) as not to impede or prejudice the exercise of executive power of the Centre in the state. While the former lays down a general obligation upon the state, the latter imposes a specific obligation on the state not to hamper the executive power of the Centre.

In both the cases, the executive power of the Centre extends to giving of such directions to the state as are necessary for the purpose. The sanction behind these directions of the Centre is coercive in nature. Thus, Article 365 says that where any state has failed to comply with (or to give effect to) any directions given by the Centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution. It means that, in such a situation, the President's rule can be imposed in the state under Article 356.

## **Centre's Directions to the States**

In addition to the above two cases, the Centre is empowered to give directions to the states with regard to the exercise of their executive power in



the following matters:

- (i) the construction and maintenance of means of communication (declared to be of national or military importance) by the state;
- (ii) the measures to be taken for the protection of the railways within the state;
- (iii) the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state; and
- (iv) the drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state.

The coercive sanction behind the Central directions under Article 365 (mentioned above) is also applicable in these cases.

## **Mutual Delegation of Functions**

The distribution of legislative powers between the Centre and the states is rigid. Consequently, the Centre cannot delegate its legislative powers to the states and a single state cannot request the Parliament to make a law on a state subject. The distribution of executive power in general follows the distribution of legislative powers. But, such a rigid division in the executive sphere may lead to occasional conflicts between the two. Hence, the Constitution provides for inter-government delegation of executive functions in order to mitigate rigidity and avoid a situation of deadlock.

Accordingly, the President may, with the consent of the state government, entrust to that government any of the executive functions of the Centre. Conversely, the governor of a state may, with the consent of the Central government, entrust to that government any of the executive functions of the state.<sup>6</sup> This mutual delegation of administrative functions may be conditional or unconditional.

The Constitution also makes a provision for the entrustment of the executive functions of the Centre to a state without the consent of that state. But, in this case, the delegation is by the Parliament and not by the president. Thus, a law made by the Parliament on a subject of the Union List can confer powers and impose duties on a state, or authorise the conferring of powers and imposition of duties by the Centre upon a state (irrespective of the

consent of the state concerned). Notably, the same thing cannot be done by the state legislature.

From the above, it is clear that the mutual delegation of functions between the Centre and the state can take place either under an agreement or by a legislation. While the Centre can use both the methods, a state can use only the first method.

## **Cooperation Between the Centre and States**

The Constitution contains the following provisions to secure cooperation and coordination between the Centre and the states:

- (i) The Parliament can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.
- (ii) The President can establish (under Article 263) an Inter-State Council to investigate and discuss subject of common interest between the Centre and the states. Such a council was set up in 1990.<sup>7</sup>
- (iii) Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state.
- (iv) The Parliament can appoint an appropriate authority to carry out the purposes of the constitutional provisions relating to the interstate freedom of trade, commerce and intercourse. But, no such authority has been appointed so far.

## **All-India Services**

Like in any other federation, the Centre and the states also have their separate public services called as the Central Services and the State Services respectively. In addition, there are all-India services—IAS, IPS and IFS. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns. But, they are recruited and trained by the Centre.

These services are controlled jointly by the Centre and the states. The ultimate control lies with the Central government while the immediate control vests with the state governments.

In 1947, Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All-India Services. In 1966, the Indian Forest Service (IFS) was created as the third All-India Service. Article 312 of the Constitution authorises the Parliament to create new All-India Services on the basis of a Rajya Sabha resolution to that effect.

Each of these three all-India services, irrespective of their division among different states, form a single service with common rights and status and uniform scales of pay throughout the country.

Though the all-India services violate the principle of federalism under the Constitution by restricting the autonomy and patronage of the states, they are supported on the ground that (i) they help in maintaining high standard of administration in the Centre as well as in the states; (ii) they help to ensure uniformity of the administrative system throughout the country; and (iii) they facilitate liaison, cooperation, coordination and joint action on the issues of common interest between the Centre and the states.

While justifying the institution of all-India services in the Constituent Assembly, Dr B R Ambedkar observed that: “The dual polity which is inherent in a federal system is followed in all federations by a dual service. In all federations, there is a Federal Civil Service and a State Civil Service. The Indian federation, though a dual polity, will have a dual service, but with one exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to the strategic posts. The Constitution provides that without depriving the states of their rights to form their own civil services, there shall be an all-India service, recruited on an all-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to those strategic posts throughout the Union”.<sup>8</sup>

## **Public Service Commissions**

In the field of public service commissions, the Centre–state relations are as follows:

- (i) The Chairman and members of a state public service commission, though appointed by the governor of the state, can be removed only by the President.
- (ii) The Parliament can establish a Joint State Public Service Commission (JSPSC) for two or more states on the request of the state legislatures concerned. The chairman and members of the JSPSC are appointed by the president.
- (iii) The Union Public Service Commission (UPSC) can serve the needs of a state on the request of the state governor and with the approval of the President.
- (iv) The UPSC assists the states (when requested by two or more states) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

## **Integrated Judicial System**

Though India has a dual polity, there is no dual system of administration of justice. The Constitution, on the other hand, established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. This is done to eliminate diversities in the remedial procedure.

The judges of a state high court are appointed by the president in consultation with the Chief Justice of India and the governor of the state. They can also be transferred and removed by the president.

The Parliament can establish a common high court for two or more states. For example, Maharashtra and goa or Punjab and Haryana have a common high court.

## **Relations During Emergencies**

- (i) During the operation of a national emergency (under Article 352), the Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.
- (ii) When the President's Rule is imposed in a state (under Article 356), the

President can assume to himself the functions of the state government and powers vested in the Governor or any other executive authority in the state.

- (iii) During the operation of a financial emergency (under Article 360), the Centre can direct the states to observe canons of financial propriety and the President can give other necessary directions including the reduction of salaries of persons serving in the state and the high court judges.

## Other Provisions

The Constitution contains the following other provisions which enable the Centre to exercise control over the state administration:

- (i) Article 355 imposes two duties on the Centre: **(a)** to protect every state against external aggression and internal disturbance; and **(b)** to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.
- (ii) The governor of a state is appointed by the president. He holds office during the pleasure of the President. In addition to the Constitutional head of the state, the governor acts as an agent of the Centre in the state. He submits periodical reports to the Centre about the administrative affairs of the state.
- (iii) The state election commissioner, though appointed by the governor of the state, can be removed only by the President.

## Extra-Constitutional Devices

In addition to the above-mentioned constitutional devices, there are extra-constitutional devices to promote cooperation and coordination between the Centre and the states. These include a number of advisory bodies and conferences held at the Central level.

The non-constitutional advisory bodies include the Planning Commission (now NITI Aayog),<sup>9</sup> the National Development Council, the National Integration Council,<sup>10</sup> the Central Council of Health, the Central Council of Local Government and Urban Development, the Zonal Councils,<sup>11</sup> the North-Eastern Council, the Central Council of Indian Medicine, Central Council of

Homoeopathy, the Central Family Welfare Council, the Transport Development Council, the University Grants Commission and so on.

The important conferences held either annually or otherwise to facilitate Centre–state consultation on a wide range of matters are as follows: (i) The governors’ conference (presided over by the President). (ii) The chief ministers’ conference (presided over by the prime minister). (iii) The chief secretaries’ conference (presided over by the cabinet secretary). (iv) The conference of inspector-general of police. (v) The chief justices’ conference (presided over by the chief justice of India). (vi) The conference of vice-cancellors. (vii) The home ministers’ conference (presided over by the Central home minister). (viii) The law ministers’ conference (presided over by the Central law minister).

## FINANCIAL RELATIONS

Articles 268 to 293 in Part XII of the Constitution deal with Centre–state financial relations. Besides these, there are other provisions dealing with the same subject. These together can be studied under the following heads:

### Allocation of Taxing Powers

The Constitution divides the taxing powers between the Centre and the states in the following way:

- The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List (which are 15 in number<sup>12</sup>).
- The state legislature has exclusive power to levy taxes on subjects enumerated in the State List (which are 20 in number<sup>13</sup>).
- Both the Parliament and the state legislature can levy taxes on subjects enumerated in the Concurrent List (which are 3 in number<sup>14</sup>).
- The residuary power of taxation (that is, the power to impose taxes not enumerated in any of the three lists) is vested in the Parliament. Under this provision, the Parliament has imposed gift tax, wealth tax and expenditure tax.

The Constitution also draws a distinction between the power to levy and collect a tax and the power to appropriate the proceeds of the tax so levied



and collected. For example, the income-tax is levied and collected by the Centre but its proceeds are distributed between the Centre and the states.

Further, the Constitution has placed the following restrictions on the taxing powers of the states:

- (i) A state legislature can impose taxes on professions, trades, callings and employments. But, the total amount of such taxes payable by any person should not exceed Rs. 2,500 per annum.<sup>15</sup>
- (ii) A state legislature can impose taxes on the sale or purchase of goods (other than newspapers). But, this power of the states to impose sales tax is subjected to the four restrictions: **(a)** no tax can be imposed on the sale or purchase taking place outside the states; **(b)** no tax can be imposed on the sale or purchase taking place in the course of import or export; **(c)** no tax can be imposed on the sale or purchase taking place in the course of inter-state trade and commerce; and **(d)** a tax imposed on the sale or purchase of goods declared by Parliament to be of special importance in inter-state trade and commerce is subject to the restrictions and conditions specified by the Parliament.<sup>16</sup>
- (iii) A state legislature can impose tax on the consumption or sale of electricity. But, no tax can be imposed on the consumption or sale of electricity which is **(a)** consumed by the Centre or sold to the Centre; or **(b)** consumed in the construction, maintenance or operation of any railway by the Centre or by the concerned railway company or sold to the Centre or the railway company for the same purpose.
- (iv) A state legislature can impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by Parliament for regulating or developing any inter-state river or river valley. But, such a law, to be effective, should be reserved for the president's consideration and receive his assent.

## **Distribution of Tax Revenues**

The 80<sup>th</sup> Amendment of 2000 and the 88<sup>th</sup> Amendment of 2003 have introduced major changes in the scheme of the distribution of tax revenues between the centre and the states. The 80<sup>th</sup> Amendment was enacted to give effect to the recommendations of the 10<sup>th</sup> Finance Commission. The



Commission recommended that out of the total income obtained from certain central taxes and duties, 29% should go to the states. This is known as the 'Alternative Scheme of Devolution' and came into effect retrospectively from April 1, 1996. This amendment has brought several central taxes and duties like Corporation Tax and Customs Duties at par with Income Tax (taxes on income other than agricultural income) as far as their constitutionally mandated sharing with the states is concerned.<sup>17</sup>

The 88<sup>th</sup> Amendment has added a new Article 268-A dealing with service tax. It also added a new subject in the Union List – entry 92-C (taxes on services). Service tax is levied by the centre but collected and appropriated by both the centre and the states.

After these two Amendments, the present position in this regard is as follows:

**A. Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268):** This category includes the following taxes and duties:

- (i) Stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.
- (ii) Excise duties on medicinal and toilet preparations containing alcohol and narcotics.

The proceeds of these duties levied within any state do not form a part of the Consolidated Fund of India, but are assigned to that state.

**B. Service Tax Levied by the Centre but Collected and Appropriated by the Centre and the States (Article 268-A):** Taxes on services are levied by the Centre. But, their proceeds are collected as well as appropriated by both the Centre and the states. The principles of their collection and appropriation are formulated by the Parliament.

**C. Taxes Levied and Collected by the Centre but Assigned to the States (Article 269):** The following taxes fall under this category:

- (i) Taxes on the sale or purchase of goods (other than newspapers) in the course of inter-state trade or commerce.
- (ii) Taxes on the consignment of goods in the course of inter-state trade or

commerce.

The net proceeds of these taxes do not form a part of the Consolidated Fund of India. They are assigned to the concerned states in accordance with the principles laid down by the Parliament.

**D. Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270):** This category includes all taxes and duties referred to in the Union List except the following:

- (i) Duties and taxes referred to in Articles 268, 268-A and 269 (mentioned above);
- (ii) Surcharge on taxes and duties referred to in Article 271 (mentioned below); and
- (iii) Any cess levied for specific purposes.

The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.

**E. Surcharge on Certain Taxes and Duties for Purposes of the Centre (Article 271):** The Parliament can at any time levy the surcharges on taxes and duties referred to in Articles 269 and 270 (mentioned above). The proceeds of such surcharges go to the Centre exclusively. In other words, the states have no share in these surcharges.

**F. Taxes Levied and Collected and Retained by the States** These are the taxes belonging to the states exclusively. They are enumerated in the state list and are 20 in number. These are<sup>18</sup>: (i) land revenue; (ii) taxes on agricultural income, succession and estate duties in respect of agricultural land; (iii) taxes on lands and buildings, on mineral rights, on animals and boats, on road vehicles, on luxuries, on entertainments, and on gambling; (iv) excise duties on alcoholic liquors for human consumption and narcotics; (v) taxes on the entry of goods into a local area, on advertisements (except newspapers), on consumption or sale of electricity, and on goods and passengers carried by road or on inland waterways; (vi) taxes on professions, trades, callings and employments not exceeding Rs. 2,500 per annum; (vii)

capitation taxes; (viii) tolls; (ix) stamp duty on documents (except those specified in the Union List); (x) sales tax (other than newspaper); and (xi) fees on the matters enumerated in the State List (except court fees).

## **Distribution of Non-tax Revenues**

**A. The Centre** The receipts from the following form the major sources of non-tax revenues of the Centre: (i) posts and telegraphs; (ii) railways; (iii) banking; (iv) broadcasting (v) coinage and currency; (vi) central public sector enterprises; and (vii) escheat and lapse.<sup>19</sup>

**B. The States** The receipts from the following form the major sources of non-tax revenues of the states: (i) irrigation; (ii) forests; (iii) fisheries; (iv) state public sector enterprise; and (v) escheat and lapse.<sup>20</sup>

## **Grants-in-Aid to the States**

Besides sharing of taxes between the Centre and the states, the Constitution provides for grants-in-aid to the states from the Central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants:

**Statutory Grants** Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state. Also, different sums may be fixed for different states. These sums are charged on the Consolidated Fund of India every year.

Apart from this general provision, the Constitution also provides for specific grants for promoting the welfare of the scheduled tribes in a state or for raising the level of administration of the scheduled areas in a state including the State of Assam.

The statutory grants under Article 275 (both general and specific) are given to the states on the recommendation of the Finance Commission.

**Discretionary Grants** Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this provision, the Centre makes

grants to the states.

“These grants are also known as discretionary grants, the reason being that the Centre is under no obligation to give these grants and the matter lies within its discretion. These grants have a two-fold purpose: to help the state financially to fulfil plan targets; and to give some leverage to the Centre to influence and coordinate state action to effectuate the national plan.”<sup>21</sup>

Notably, the discretionary grants form the larger part of the Central grants to the states (when compared with that of the statutory grants).

**Other Grants** The Constitution also provided for a third type of grants-in-aid, but for a temporary period. Thus, a provision was made for grants in lieu of export duties on jute and jute products to the States of Assam, Bihar, Orissa and west Bengal. These grants were to be given for a period of ten years from the commencement of the Constitution. These sums were charged on the Consolidated Fund of India and were made to the states on the recommendation of the Finance Commission.

## Finance Commission

Article 280 provides for a Finance Commission as a quasi-judicial body. It is constituted by the President every fifth year or even earlier. It is required to make recommendations to the President on the following matters:

- The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states, the respective shares of such proceeds.
- The principles which should govern the grants-in-aid to the states by the Centre (i.e., out of the Consolidated Fund of India).
- The measures needed to augment the Consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the State Finance Commission.<sup>23</sup>
- Any other matter referred to it by the President in the interests of sound finance.

Till 1960, the Commission also suggested the amounts paid to 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.

The Constitution envisages the Finance Commission as the balancing wheel of fiscal federalism in India. However, its role in the Centre–state fiscal relations has been undermined by the emergence of the planning commission, a non-constitutional and non-statutory body.

## **Protection of the States’ Interest**

To protect the interest of states in the financial matters, the Constitution lays down that the following bills can be introduced in the Parliament only on the recommendation of the President:

- A bill which imposes or varies any tax or duty in which states are interested;
- A bill which varies the meaning of the expression ‘agricultural income’ as defined for the purposes of the enactments relating to Indian income tax;
- A bill which affects the principles on which moneys are or may be distributable to states; and
- A bill which imposes any surcharge on any specified tax or duty for the purpose of the Centre.

The expression “tax or duty in which states are interested” means: **(a)** a tax or duty the whole or part of the net proceeds whereof are assigned to any state; or **(b)** a tax or duty by reference to the net proceeds whereof sums are for the time being payable, out of the Consolidated Fund of India to any state.

The phrase ‘net proceeds’ means the proceeds of a tax or a duty minus the cost of collection. The net proceeds of a tax or a duty in any area is to be ascertained and certified by the Comptroller and Auditor-General of India. His certificate is final.

## **Borrowing by the Centre and the States**

The Constitution makes the following provisions with regard to the borrowing powers of the Centre and the states:

- The Central government can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has

been enacted by the Parliament.

- Similarly, a state government can borrow within India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that state.
- The Central government can make loans to any state or give guarantees in respect of loans raised by any state. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India.
- A state cannot raise any loan without the consent of the Centre, if there is still outstanding any part of a loan made to the state by the Centre or in respect of which a guarantee has been given by the Centre.

## **Inter-Governmental Tax Immunities**

Like any other federal Constitution, the Indian Constitution also contains the rule of ‘immunity from mutual taxation’ and makes the following provisions in this regard:

**Exemption of Central Property from State Taxation** The property of Centre is exempted from all taxes imposed by a state or any authority within a state like municipalities, district boards, panchayats and so on. But, the Parliament is empowered to remove this ban. The word ‘property’ includes lands, buildings, chattels, shares, debts, everything that has a money value, and every kind of property—movable or immovable and tangible or intangible. Further, the property may be used for sovereign (like armed forces) or commercial purposes.

The corporations or the companies created by the Central government are not immune from state taxation or local taxation. The reason is that a corporation or a company is a separate legal entity.

## **Exemption of State Property or Income from Central Taxation**

The property and income of a state is exempted from Central taxation. Such income may be derived from sovereign functions or commercial functions. But the Centre can tax the commercial operations of a state if Parliament so provides. However, the Parliament can declare any particular trade or business as incidental to the ordinary functions of the government and it would then not be taxable.

Notably, the property and income of local authorities situated within a state are not exempted from the Central taxation. Similarly, the property or income of corporations and companies owned by a state can be taxed by the Centre.

The Supreme Court, in an advisory opinion<sup>24</sup> (1963), held that the immunity granted to a state in respect of Central taxation does not extend to the duties of customs or duties of excise. In other words, the Centre can impose customs duty on goods imported or exported by a state, or an excise duty on goods produced or manufactured by a state.

## Effects of Emergencies

The Centre–state financial relations in normal times (described above) undergo changes during emergencies. These are as follows:

**National Emergency** While the proclamation of national emergency (under Article 352) is in operation, the president can modify the constitutional distribution of revenues between the Centre and the states. This means that the president can either reduce or cancel the transfer of finances (both tax sharing and grants-in-aid) from the Centre to the states. Such modification continues till the end of the financial year in which the emergency ceases to operate.

**Financial Emergency** While the proclamation of financial emergency (under Article 360) is in operation, the Centre can give directions to the states: **(i)** to observe the specified canons of financial propriety; **(ii)** to reduce the salaries and allowances of all class of persons serving in the state (including the high court judges); and **(iii)** to reserve all money bills and other financial bills for the consideration of the President.

## TRENDS IN CENTRE–STATE RELATIONS

Till 1967, the centre–state relations by and large were smooth due to one-party rule at the Centre and in most of the states. In 1967 elections, the Congress party was defeated in nine states and its position at the Centre became weak. This changed political scenario heralded a new era in the Centre–state relations. The non-Congress Governments in the states opposed



the increasing centralisation and intervention of the Central government. They raised the issue of state autonomy and demanded more powers and financial resources to the states. This caused tensions and conflicts in Centre–state relations.

## **Tension Areas in Centre-State Relations**

The issues which created tensions and conflicts between the Centre and states are: (1) Mode of appointment and dismissal of governor; (2) Discriminatory and partisan role of governors; (3) Imposition of President's Rule for partisan interests; (4) Deployment of Central forces in the states to maintain law and order; (5) Reservation of state bills for the consideration of the President; (6) Discrimination in financial allocations to the states; (7) Role of Planning Commission in approving state projects; (8) Management of All-India Services (IAS, IPS, and IFS); (9) Use of electronic media for political purposes; (10) Appointment of enquiry commissions against the chief ministers; (11) Sharing of finances (between Centre and states); and (12) Encroachment by the Centre on the State List.

The issues in Centre-State relations have been under consideration since the mid 1960s. In this direction, the following developments have taken place:

## **Administrative Reforms Commission**

The Central government appointed a six-member Administrative Reforms Commission (ARC) in 1966 under the chairmanship of Morarji Desai (followed by K Hanumanthayya). Its terms of references included, among others, the examination of Centre–State relations. In order to examine thoroughly the various issues in Centre–state relations, the ARC constituted a study team under M C Setalvad. On the basis of the report of this study team, the ARC finalised its own report and submitted it to the Central government in 1969. It made 22 recommendations for improving the Centre–state relations. The important recommendations are:

- Establishment of an Inter-State Council under Article 263 of the Constitution.

- Appointment of persons having long experience in public life and administration and non-partisan attitude as governors.
- Delegation of powers to the maximum extent to the states.
- Transferring of more financial resources to the states to reduce their dependency upon the Centre.
- Deployment of Central armed forces in the states either on their request or otherwise.

No action was taken by the Central government on the recommendations of the ARC.

## **Rajamannar Committee**

In 1969, the Tamil Nadu Government (DMK) appointed a three-member committee under the chairmanship of Dr P V Rajamannar to examine the entire question of Centre–state relations and to suggest amendments to the Constitution so as to secure utmost autonomy to the states.<sup>25</sup> The committee submitted its report to the Tamil Nadu Government in 1971.

The Committee identified the reasons for the prevailing unitary trends (tendencies of centralisation) in the country. They include: (i) certain provisions in the Constitution which confer special powers on the Centre; (ii) one-party rule both at the Centre and in the states; (iii) inadequacy of states' fiscal resources and consequent dependence on the Centre for financial assistance; and (iv) the institution of Central planning and the role of the Planning Commission.

The important recommendations of the committee are as follows: (i) An Inter-State Council should be set up immediately; (ii) Finance Commission should be made a permanent body; (iii) Planning Commission should be disbanded and its place should be taken by a statutory body; (iv) Articles 356, 357 and 365 (dealing with President's Rule) should be totally omitted; (v) The provision that the state ministry holds office during the pleasure of the governor should be omitted; (vi) Certain subjects of the Union List and the Concurrent List should be transferred to the State List; (vii) the residuary powers should be allocated to the states; and (viii) All-India services (IAS, IPS and IFS) should be abolished.

The Central government completely ignored the recommendations of the

Rajamannar Committee.

## **Anandpur Sahib Resolution**

In 1973, the Akali Dal adopted a resolution containing both political and religious demands in a meeting held at Anandpur Sahib in Punjab. The resolution, generally known as Anandpur Sahib Resolution, demanded that the Centre's jurisdiction should be restricted only to defence, foreign affairs, communications, and currency and the entire residuary powers should be vested in the states. It stated that the Constitution should be made federal in the real sense and should ensure equal authority and representation to all the states at the Centre.

## **West Bengal Memorandum**

In 1977, the West Bengal Government (led by the Communists) published a memorandum on Centre–state relations and sent to the Central government. The memorandum inter alia suggested the following: (i) The word ‘union’ in the Constitution should be replaced by the word ‘federal’; (ii) The jurisdiction of the Centre should be confined to defence, foreign affairs, currency, communications and economic co-ordination; (iii) All other subjects including the residuary should be vested in the states; (iv) Articles 356 and 357 (President's Rule) and 360 (financial emergency) should be repealed; (v) State's consent should be made obligatory for formation of new states or reorganisation of existing states; (vi) Of the total revenue raised by the Centre from all sources, 75 per cent should be allocated to the states; (vii) Rajya Sabha should have equal powers with that of the Lok Sabha; and (viii) There should be only Central and state services and the all-India services should be abolished.

The Central government did not accept the demands made in the memorandum.

## **Sarkaria Commission**

In 1983, the Central government appointed a three-member Commission on Centre–state relations under the chairmanship of R S Sarkaria, a retired judge

of the Supreme Court.<sup>26</sup> The commission was asked to examine and review the working of existing arrangements between the Centre and states in all spheres and recommend appropriate changes and measures. It was initially given one year to complete its work, but its term was extended four times. The final report was submitted in October 1987, and the summary was later officially released in January 1988.

The Commission did not favour structural changes and regarded the existing constitutional arrangements and principles relating to the institutions basically sound. But, it emphasised on the need for changes in the functional or operational aspects. It observed that federalism is more a functional arrangement for co-operative action than a static institutional concept. It outrightly rejected the demand for curtailing the powers of the Centre and stated that a strong Centre is essential to safeguard the national unity and integrity which is being threatened by the fissiparous tendencies in the body politic. However, it did not equate strong Centre with centralisation of powers. It observed that over-centralisation leads to blood pressure at the centre and anemia at the periphery.

The Commission made 247 recommendations to improve Centre–state relations. The important recommendations are mentioned below:

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
2. Article 356 (President's Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.
3. The institution of All-India Services should be further strengthened and some more such services should be created.
4. The residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List.
5. When the president withholds his assent to the state bills, the reasons should be communicated to the state government.
6. The National Development Council (NDC) should be renamed and reconstituted as the National Economic and Development Council (NEDC).
7. The zonal councils should be constituted afresh and reactivated to promote the spirit of federalism.

8. The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.
9. The Centre should consult the states before making a law on a subject of the Concurrent List.
10. The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself.
11. The net proceeds of the corporation tax may be made permissibly shareable with the states.
12. The governor cannot dismiss the council of ministers so long as it commands a majority in the assembly.
13. The governor's term of five years in a state should not be disturbed except for some extremely compelling reasons.
14. No commission of enquiry should be set up against a state minister unless a demand is made by the Parliament.
15. The surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period.
16. The present division of functions between the Finance Commission and the Planning Commission is reasonable and should continue.
17. Steps should be taken to uniformly implement the three language formula in its true spirit.
18. No autonomy for radio and television but decentralisation in their operations.
19. No change in the role of Rajya Sabha and Centre's power to reorganise the states.
20. The commissioner for linguistic minorities should be activated.

The Central government has implemented 180 (out of 247) recommendations of the Sarkaria Commission.<sup>27</sup> The most important is the establishment of the Inter-State Council in 1990.

## **Punchhi Commission**

The Second commission on Centre-State Relations was set-up by the Government of India in April 2007 under the Chairmanship of Madan Mohan Punchhi, former Chief Justice of India.<sup>28</sup> It was required to look into the issues of Centre-State relations keeping in view the sea-changes that have

taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago.

The terms of reference of the Commission were as follows:

- (i) The Commission was required to examine and review the working of the existing arrangements between the Union and States as per the Constitution of India, the healthy precedents being followed, various pronouncements of the Courts in regard to powers, functions and responsibilities in all spheres including legislative relations, administrative relations, role of governors, emergency provisions, financial relations, economic and social planning, Panchayati Raj institutions, sharing of resources including inter-state river water and recommend such changes or other measures as may be appropriate keeping in view the practical difficulties.
- (ii) In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission was required to keep in view the social and economic developments that have taken place over the years, particularly over the last two decades and have due regard to the scheme and framework of the Constitution. Such recommendations were also needed to address the growing challenges of ensuring good governance for promoting the welfare of the people whilst strengthening the unity and integrity of the country, and of availing emerging opportunities for sustained and rapid economic growth for alleviating poverty and illiteracy in the early decades of the new millennium.
- (iii) While examining and making its recommendations on the above, the Commission was required to have particular regard, but not limit its mandate to the following:-
  - (a) The role, responsibility and jurisdiction of the Centre vis-à-vis States during major and prolonged outbreaks of communal violence, caste violence or any other social conflict leading to prolonged and escalated violence.
  - (b) The role, responsibility and jurisdiction of the Centre vis-à-vis States in the planning and implementation of the mega projects like the inter-linking of rivers, that would normally take 15–20 years for



completion and hinge vitally on the support of the States.

- (c) 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 including the Autonomous Bodies under the sixth Schedule of the Constitution within a specified period of time.
- (d) The role, responsibility and jurisdiction of the Centre vis-à-vis States in promoting the concept and practice of independent planning and budgeting at the District level.
- (e) The role, responsibility and jurisdiction of the Centre vis-à-vis States in linking Central assistance of various kinds with the performance of the States.
- (f) The role, responsibility and jurisdiction of the Centre in adopting approaches and policies based on positive discrimination in favour of backward States.
- (g) The impact of the recommendations made by the 8<sup>th</sup> to 12<sup>th</sup> Finance Commissions on the fiscal relations between the Centre and the States, especially the greater dependence of the States on devolution of funds from the Centre.
- (h) The need and relevance of separate taxes on the production and on the sales of goods and services subsequent to the introduction of Value Added Tax regime.
- (i) The need for freeing inter-State trade in order to establish a unified and integrated domestic market as also in the context of the reluctance of State Governments to adopt the relevant Sarkaria Commission's recommendation in chapter XVIII of its report.
- (j) The need for setting up a Central Law Enforcement Agency empowered to take up suo moto investigation of crimes having inter-State and/or international ramifications with serious implications on national security.
- (k) The feasibility of a supporting legislation under Article 355 for the purpose of suo moto deployment of Central forces in the States if and when the situation so demands.

The Commission submitted its report to the government in April 2010. In finalising the 1,456 page report, in seven volumes, the Commission took



extensive help from the Sarkaria Commission report, the National Commission to Review the Working of the Constitution (NCRWC) report and the Second Administrative Reforms Commission report. However, in a number of areas, the Commission report differed from the Sarkaria Commission recommendations.

After examining at length the issues raised in its Terms of Reference and the related aspects in all their hues and shades, the Commission came to the conclusion that ‘cooperative federalism’ will be the key for sustaining India’s unity, integrity and social and economic development in future. The principles of cooperative federalism thus may have to act as a practical guide for Indian polity and governance.

In all, the Commission made over 310 recommendations, touching upon several significant areas in the working of Centre-state relations. The important recommendations are mentioned below:

1. To facilitate effective implementation of the laws on List III subjects, it is necessary that some broad agreement is reached between the Union and states before introducing legislation in Parliament on matters in the Concurrent List.
2. The Union should be extremely restrained in asserting Parliamentary supremacy in matters assigned to the states. Greater flexibility to states in relation to subjects in the State List and “transferred items” in the Concurrent List is the key for better Centre-state relations.
3. The Union should occupy only that many of subjects in concurrent or overlapping jurisdiction which are absolutely necessary to achieve uniformity of policy in demonstrable national interest.
4. There should be a continuing auditing role for the Inter-state Council in the management of matters in concurrent or overlapping jurisdiction.
5. The period of six months prescribed in Article 201 for State Legislature to act when the bill is returned by the President can be made applicable for the President also to decide on assenting or withholding assent to a state bill reserved for consideration of the President.
6. Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of

legislative and executive powers.

7. Financial obligations and its implications on state finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time.
8. While selecting Governors, the Central Government should adopt the following strict guidelines as recommended in the Sarkaria Commission report and follow its mandate in letter and spirit :
  - (i) He should be eminent in some walk of life
  - (ii) He should be a person from outside the state
  - (iii) He should be a detached figure and not too intimately connected with the local politics of the states
  - (iv) He should be a person who has not taken too great a part in politics generally and particularly in the recent past
9. Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre.
10. The procedure laid down for impeachment of President, mutatis mutandis can be made applicable for impeachment of Governors as well.
11. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.
12. In respect of bills passed by the Legislative Assembly of a state, the Governor should take the decision within six months whether to grant assent or to reserve it for consideration of the President.
13. On the question of Governor's role in appointment of Chief Minister in the case of an hung assembly, it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions. These guidelines may be as follows:
  - (i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.
  - (ii) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.

- (iii) In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated here.
  - (a) The group of parties which had pre-poll alliance commanding the largest number
  - (b) The largest single party staking a claim to form the government with the support of others
  - (c) A post-electoral coalition with all partners joining the government
  - (d) A post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside
- 14. On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit.
- 15. The Governor should have the right to sanction for prosecution of a state minister against the advice of the Council of Ministers, if the Cabinet decision appears to the Governor to be motivated by bias in the face of overwhelming material.
- 16. The convention of Governors acting as Chancellors of Universities and holding other statutory positions should be done away with. His role should be confined to the Constitutional provisions only.
- 17. When an external aggression or internal disturbance paralyses the state administration creating a situation of a potential break down of the Constitutional machinery of the state, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise of the power under Article 356 should be limited strictly to rectifying a “failure of the Constitutional machinery in the state”.
- 18. On the question of invoking Article 356 in case of failure of Constitutional machinery in states, suitable amendments are required to incorporate the guidelines set forth in the landmark judgement of the Supreme Court in S.R. Bommai V. Union of India (1994). This would remove possible misgivings in this regard on the part of states and help in smoothening Centre-state relations.
- 19. Given the strict parameters now set for invoking the emergency

provisions under Articles 352 and 356 to be used only as a measure of “last resort”, and the duty of the Union to protect states under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for “localised emergency” would ensure that the state government can continue to function and the Assembly would not have to be dissolved while providing a mechanism to let the Central Government respond to the issue specifically and locally. The imposition of local emergency is fully justified under the mandate of Article 355 read with Entry 2A of List I and Entry 1 of List II of the Seventh Schedule.

20. Suitable amendments to Article 263 are required to make the Inter-State Council a credible, powerful and fair mechanism for management of inter-state and Centre-state differences.
21. The Zonal Councils should meet at least twice a year with an agenda proposed by states concerned to maximise co-ordination and promote harmonisation of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.
22. The Empowered Committee of Finance Ministers of States proved to be a successful experiment in inter-state co-ordination on fiscal matters. There is need to institutionalise similar models in other sectors as well. A forum of Chief Ministers, Chaired by one of the Chief Minister by rotation can be similarly thought about particularly to co-ordinate policies of sectors like energy, food, education, environment and health.
23. New all-India services in sectors like health, education, engineering and judiciary should be created.
24. Factors inhibiting the composition and functioning of the Second Chamber as a representative forum of states should be removed or modified even if it requires amendment of the Constitutional provisions. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the friction points which emerge between Centre and states in fiscal, legislative and administrative relations.
25. A balance of power between states inter se is desirable and this is possible by equality of representation in the Rajya Sabha. This requires amendment of the relevant provisions to give equality of seats to states in the Rajya

Sabha, irrespective of their population size.

26. The scope of devolution of powers to local bodies to act as institutions of self-government should be constitutionally defined through appropriate amendments.
27. All future Central legislations involving states' involvement should provide for cost sharing as in the case of the RTE Act. Existing Central legislations where the states are entrusted with the responsibility of implementation should be suitably amended providing for sharing of costs by the Central Government.
28. The royalty rates on major minerals should be revised at least every three years without any delay. States should be properly compensated for any delay in the revision of royalty beyond three years.
29. The current ceiling on profession tax should be completely done away with by a Constitutional amendment.
30. The scope for raising more revenue from the taxes mentioned in article 268 should be examined afresh. This issue may be either referred to the next Finance Commission or an expert committee be appointed to look into the matter.
31. To bring greater accountability, all fiscal legislations should provide for an annual assessment by an independent body and the reports of these bodies should be laid in both Houses of Parliament/state legislature.
32. Considerations specified in the Terms of Reference (ToR) of the Finance Commission should be even handed as between the Centre and the states. There should be an effective mechanism to involve the states in the finalisation of the ToR of the Finance Commissions.
33. The Central Government should review all the existing cesses and surcharges with a view to bringing down their share in the gross tax revenue.
34. Because of the close linkages between the plan and non-plan expenditure, an expert committee may be appointed to look into the issue of distinction between the plan and non-plan expenditure.
35. There should be much better coordination between the Finance Commission and the Planning Commission. The synchronisation of the periods covered by the Finance Commission and the Five-Year Plan will considerably improve such coordination.
36. The Finance Commission division in the Ministry of Finance should be

converted into a full-fledged department, serving as the permanent secretariat for the Finance Commissions.

37. The Planning Commission has a crucial role in the current situation. But its role should be that of coordination rather than of micro managing sectoral plans of the Central ministries and the states.
38. Steps should be taken for the setting up of an Inter-State Trade and Commerce Commission under Article 307 read with Entry 42 of List-I. This Commission should be vested with both advisory and executive roles with decision making powers. As a Constitutional body, the decisions of the Commission should be final and binding on all states as well as the Union of India. Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.

The Report of the Commission was circulated to all stakeholders including State Governments / UT Administrations and Union Ministries / Departments concerned for their considered views on the recommendations of the Commission. The comments received from the Union Ministries / Departments and the State Governments / UT Administrations are being examined by ISC (Inter-State Council) Secretariat and would be put up to the ISC for its consideration.<sup>22</sup>

**Table 14.1** *Articles Related to Centre-State Legislative Relations at a Glance*

<b>Article No.</b>	<b>Subject Matter</b>
245.	Extent of laws made by Parliament and by the legislatures of states
246.	Subject-matter of laws made by Parliament and by the legislatures of states
247.	Power of Parliament to provide for the establishment of certain additional courts
248.	Residuary powers of legislation
249.	Power of Parliament to legislate with respect to a matter in the state list in the national interest
	Power of Parliament to legislate with respect to any matter in the



250.	state list if a Proclamation of Emergency is in operation
251.	Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the legislatures of states
252.	Power of Parliament to legislate for two or more states by consent and adoption of such legislation by any other state
253.	Legislation for giving effect to international agreements
254.	Inconsistency between laws made by Parliament and laws made by the legislatures of states
255.	Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only

**Table 14.2** *Articles Related to Centre-State Administrative Relations at a Glance*

<b>Article No.</b>	<b>Subject Matter</b>
256.	Obligation of states and the Union
257.	Control of the Union over states in certain cases
257A.	Assistance to states by deployment of armed forces or other forces of the Union (Repealed)
258.	Power of the Union to confer powers, etc., on states in certain cases
258A.	Power of the states to entrust functions to the Union
259.	Armed Forces in states in Part B of the First Schedule (Repealed)
260.	Jurisdiction of the Union in relation to territories outside India
261.	Public acts, records and judicial proceedings
262.	Adjudication of disputes relating to waters of inter-state rivers or river valleys



263.	Provisions with respect to an inter-state Council
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**Table 14.3** *Articles Related to Centre-State Financial Relations at a Glance*

<b>Article No.</b>	<b>Subject Matter</b>
<b>Distribution of Revenues between the Union and the States</b>	
268.	Duties levied by the Union but collected and appropriated by the states
268A.	Service tax levied by Union and collected and appropriated by the Union and the states
269.	Taxes levied and collected by the Union but assigned to the states
270.	Taxes levied and distributed between the Union and the states
271.	Surcharge on certain duties and taxes for purposes of the Union
272.	Taxes which are levied and collected by the Union and may be distributed between the Union and the states (Repealed)
273.	Grants in lieu of export duty on jute and jute products
274.	Prior recommendation of President required to bills affecting taxation in which states are interested
275.	Grants from the Union to certain states
276.	Taxes on professions, trades, callings and employments
277.	Savings
278.	Agreement with states in Part B of the First Schedule with regard to certain financial matters (Repealed)
279.	Calculation of “net proceeds”, etc.
280.	Finance Commission
281.	Recommendations of the Finance Commission

### **Miscellaneous Financial Provisions**

282.	Expenditure defrayable by the Union or a state out of its revenues
283.	Custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts
284.	Custody of suitors' deposits and other moneys received by public servants and courts
285.	Exemption of property of the Union from state taxation
286.	Restrictions as to imposition of tax on the sale or purchase of goods
287.	Exemption from taxes on electricity
288.	Exemption from taxation by states in respect of water or electricity in certain cases
289.	Exemption of property and income of a state from Union taxation
290.	Adjustment in respect of certain expenses and pensions
290A.	Annual payment to certain Devaswom Funds
291.	Privy purse sums of Rulers (Repealed)

### **Borrowing**

292.	Borrowing by the Government of India
293.	Borrowing by states

### **NOTES AND REFERENCES**

1. Even now, the last entry is numbered as 97 but the total number of entries is 100. The entries numbered as 2A, 92A, 92B and 92C have been added and entry 33 has been omitted. See Appendix II.
2. Even now, the last entry is numbered as 66 but the total number of entries is 61. The entries numbered as 11, 19, 20, 29 and 36 have been omitted. See Appendix II.
3. Even now, the last entry is numbered as 47 but the total number of entries

is 52. The entries numbered as 11A, 17A, 17B, 20A and 33A have been added. See Appendix II.

4. Report of the Commission on centre-state Relations, Part I (Government of India, 1988) PP. 28–29.
5. For example, under the Essential Commodities Act, made by the Parliament on a concurrent subject, the executive power is vested in the Centre.
6. This provision (the power of the states to entrust functions to the Centre) was added by the 7th Constitutional Amendment Act of 1956. Before that, only the Centre had the power.
7. For details in this regard, see [Chapter 15](#).
8. Constituent Assembly Debates, Volume VII, PP. 41-42.
9. For details, see [Chapter 52](#).
10. For details, see [Chapter 74](#).
11. For details, see [Chapter 15](#).
12. Entries—82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 92A, 92B, 92C and 96. See Appendix II.
13. Entries—45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 66. See Appendix II.
14. Entries—35, 44 and 47. See Appendix II.
15. Originally, this limit was only Rs 250 per annum. The 60th Amendment Act of 1988 raised it to Rs. 2,500 per annum.
16. The Additional Duties of Excise (Goods of Special Importance) Act of 1957, enacted by the Parliament, has declared tobacco, sugar, silk, cotton and woollen fabrics to be goods of special importance in inter-state trade and commerce.
17. This amendment deleted Article 272 (Taxes which are levied and collected by the Centre and may be distributed between the Centre and the states).
18. Mentioned group-wise. Hence, reduced to 11 (from 20). See Appendix II.
19. See ‘Property of the Union’ in [Chapter 64](#).
20. See ‘Property of the States’ in [Chapter 64](#).
21. M P Jain: Indian Constitutional Law, Wadhwa, Fourth Edition, PP. 342–43.
22. Annual Report 2015-16, Ministry of Home Affairs, Government of India, p.58.

23. This function was added by the 73rd and 74th Amendment Acts of 1992 which have granted constitutional status on the panchayats and the municipalities respectively.
24. In Re. Sea Customs Act (1963).
25. The other two members of the committee were Dr. Lakshmanswamy Mudaliar and P C Chandra Reddy.
26. B. Sivaraman and S R Sen were two other members of the Commission.
27. Annual Report 2011-12, Ministry of Home Affairs, Government of India, P.79.
28. The other four Members of the Commission were Dhirendra Singh (Former Secretary to the Government of India), Vinod Kumar Duggal (Former Secretary to the Government of India), Prof. N.R. Madhava Menon (Former Director, National Judicial Academy, Bhopal and National Law School of India, Bangalore) and Dr. Amaresh Bagchi (Emeritus Professor, National Institute of Public Finance and Policy, New Delhi). With the passing away of Dr. Bagchi in February 2008, Vijay Shanker (Former Director, Central Bureau of Investigation, Government of India) was appointed in his place as a Member of the Commission in October 2008.