Federalism in India

Part 4: Inter-State Coordination and Dispute Resolution

Arnab Bose

Rajiv Gandhi Institute of Contemporary Studies

New Delhi

Federalism in India, a Study

by Arnab Bose, Sr Research Associate, RGICS

As part of our work on the theme of Constitutional Values and Democratic Institutions and the theme Governance and Development, the RGICS had commissioned a study on Federalism in India. It was conducted by Arnab Bose, Sr Research Associate, RGICS, with support and guidance from the undersigned. The study is in four parts, as follows:

Part 1 - Features of the Constitution
Part 2 - Union, State and Concurrent Lists and the Judiciary
Part 3 - Fiscal Relations
Part 4 - Inter-State Coordination and Dispute Resolution

Each part deals with the provisions on federalism as laid down in the Constitution, and reviews their status in actual practice, documenting several examples where the original provisions have been diluted or ignored in practice.

The study is timely given the contemporary turmoil in the relations between states and the Centre, as witnessed in the recent developments in Delhi on the one hand and Kerala, Tamil Nadu and West Bengal, among others, on the other hand. The fiscal relations between the Centre and the states have also undergone a sea change since the introduction of the GST.

We present this study to serve as a basis for discussion to correct the anomalies, but have refrained from offering any recommendations on the way forward as the matter requires serious discussion among political leaders and constitutional scholars. We hope, however, that this overview study will help inform that debate.

Vijay Mahajan
Director, Rajiv Gandhi Institute for Contemporary Studies (RGICS)

Contents

1 Introduction

In a constitutional set-up where powers are distributed between the centre and various federating units, the units act independently in the exercise of their internal sovereignty. In such cases it is natural to expect conflicts of interest arise between the units. Hence, in order to maintain the strength of the Union, it is essential that there should be adequate provision for inter-governmental collaboration as well as constitutional mechanisms for the settlement of disputes between the units as well as their prevention by consultation and joint action.

This paper proposes to discuss various issues of inter-state relations and conflicts in independent India in the context of federalism. It focuses on 4 specific areas including article 131, inter-state water disputes, Inter State Council and the National Development Council. It begins by highlighting the variety of mechanisms available under the Constitution for inter-state collaboration and the settlement of inter-state disputes.

Thereafter, it highlights Article 131, which provides for the judicial determination of disputes between the States by vesting exclusive jurisdiction within the Supreme Court. Then, it looks at the issue of inter-state water disputes in India, followed by the coordination amongst states through the inter-state council. Finally, it discusses the National Development Council. The larger aim is to understand some of the major issues concerning inter-state relations in India.

2 Constitutional mechanisms for inter-state coordination and dispute resolution

When a number of governments function within a polity as they do in a federation, areas of tensions, differences and disputes are bound to arise between them from time to time. Therefore, it becomes necessary to have some mechanism to resolve these disputes in order to have a smooth functioning of the federation. The Indian Constitution provides a variety of mechanisms with this in view. The Constitution looks at disputes in the widest possible sense so as to cover not only disputes that come up before the judiciary, but also disputes which require an extra-judicial mechanism of resolution.[1]

If any inter-governmental dispute involves a question of law one needs to resort to the judiciary. For this purpose, the Supreme Court of India has been given original jurisdiction in any legal dispute between two governments. The principal provision for dealing with such inter-State disputes involving a legal right is article 131 of the Constitution. This article covers any dispute which involves any question (whether of law or of fact), on which the existence or extent of a legal right depends[2]. The disputes could be between:

a) the Government of India and one or more States; or
b) the Government of India and any State or States on one side and one or more other States on the other; or
c) between two or more States,

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[1] https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf

[2] *Article 131 of the Indian Constitution*

However, the jurisdiction of the SC does not extend to a dispute arising out of any treaty, agreement, covenant, or other similar instruments which have been entered into or executed before the commencement of the Constitution and continues in operation after such commencement.[3] As a matter of practice, when an important case comes before the Supreme, the Court may itself issue notices to the Attorney-General of India and the Advocate-Generals of States, inviting them to place their respective points of view before the court, so that the matter may be decided after all its aspects have been considered.[4]

Another method to take recourse to the judiciary in the matter of inter-governmental disputes is by invoking the Supreme Court's advisory jurisdiction.[5] A question of law or fact of public importance may be referred to the court for its advice by the President. The court holds a hearing and delivers its opinion in the open court. This provision has been taken recourse to several times, for example, in the 1958 Kerala education bill case,[6] where opinion was sought on the Constitutional validity of certain provisions of the Kerala Education Bill 1957, and the 1963 Sea Customs case,[7] where opinion of the SC was sought in regard to certain provisions of the Sea Customs Act, 1878.

India has a number of interstate rivers and river valleys which have lead to a number of disputes between states on the use, distribution and control of rivers flowing through two or more states. The Constitution therefore makes special provisions for resolving such disputes. Under article 262 of the Constitution, power has been given to Parliament to provide by law for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of any interstate river or river valley.[8] The law so enacted can exclude the jurisdiction of the Supreme Court and other courts from taking cognizance of any such dispute. Under this provision, the Parliament has enacted two Acts:

a) The River Boards Act, 1956,[9] which provides for the establishment of river boards for the regulation and development of interstate rivers and river valleys, and for advising the governments in matters concerning the regulation of any interstate river or river valley. The board also advises governments to resolve conflicts by co-ordination of their activities. Further, the boards may also prepare schemes for regulating or developing interstate rivers, may allocate among the governments the costs of executing any such scheme, and may oversee the progress of such schemes.

b) The Inter-State Water Disputes Act, 1956,[10] provides for the adjudication of disputes related to interstate rivers and river valleys. Whenever such a dispute arises, a State may request the Centre to refer the same to a tribunal for adjudication. The tribunal appointed by the Centre consists of a person nominated by the Chief justice of India from amongst the present or ex-judges of the Supreme or High Courts. The tribunal submits its report to the Central Government, which on publication becomes binding on the parties concerned. A matter referable to a tribunal or a river board is not under the jurisdiction of any court.

In spite of the existence of such detailed provisions for resolution of disputes, several disputes concerning interstate rivers have remained pending for long.

Another mechanism envisaged by the Constitution for better intergovernmental coordination is the Interstate Council. Under article 263 of the Constitution, there is provision for the formation of an inter-State Council which may be appointed by the President, and may be charged with the duty of inquiring into and advising upon disputes between States, investigating and discussing subjects in which States or the Centre may be interested, and making recommendations upon any such subject, particularly, for better co-ordination of policy and its implementation.[11]

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3 *Ibid*

4 *https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf*

5 *Article 143 of the Indian Constitution*

6 *AIR 1958 SC 996*

7 *AIR 1963 SC 1760*

8 *Article 262 of the Indian Constitution*

9 *http://www.mowr.gov.in/sites/default/files/A1956-49.pdf*

The provision is a general one and any number of such bodies having various functions in different areas may be appointed. The Council is designed to be an advisory body with no authority to give any binding decisions.[12]

Apart from these Constitutional provisions another body that was set up with the objective of better coordination of development activities amongst states was the National Development Council. The NDC was set up by a proposal of the cabinet secretariat of the Government of India in August 1952.[13] It was intended to be a coordinating mechanism for development with the goal to ensure uniformity of approach and unanimity in working. The Council was presided over by the Prime Minister of India and includes all Union Ministers, Chief Ministers of all the States, and Administrators of Union Territories, and Members of the Planning Commission. Ministers of State with independent charge were also invited to the deliberations of the Council.[14] Its functions included:

i.) prescribing guidelines for the formulation of the National Plan, including the assessment of resources for the Plan
ii.) Considering important questions of social and economic policy affecting national development
iii.) Reviewing the working of the Plan from time to time and recommending such measures as were necessary for achieving the aims and targets set out in the National Plan.

It was envisaged that the NDC would advise and make recommendations to the Central as well as state governments.

Source: https://img.jagranjosh.com/imported/images/E/Articles/national-development-council.jpg

3 Original jurisdiction of the Supreme Court: Article 131

Under Article 131, the Supreme Court has exclusive and original jurisdiction over legal issues originating between states and the union or between states. The article is based largely on its predecessor- section 204 of the Government of India Act, 1935.[15] The article itself was amended by the Constitution (7th Amendment) Act, 1956. In its present form it basically provides the Supreme Court, to the exclusion of any other court, original jurisdiction in any dispute between (a) the Government of India and one or more States, (b) the Government of India and any State or States on one side and one or more other States on the other; or (c) two or more States. The dispute itself should necessarily involve any question of law or fact on which the existence or extent of a legal right depends.[16]

[12] *Article 263 of the Indian Constitution*
[13] *Ibid*
[14] http://14.139.60.153/bitstream/123456789/4355/1/Summary%20Record%20of%20Discussions%20of%20the%20National%20Development%20%28NDC%29%20Meetings.%20Five%20Decades%20of%20National%20Building%20%28Fifty%20NDC%20Meetings%29.%20Vol-I%20%281st%20to%2014th%20Meetings%29.pdf
[15] https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf
[16] *Article 131 of the Indian Constitution*

Further the said jurisdiction does not extend to a dispute arising out of any treaty, agreement, covenant, engagement, or other similar instrument which had either been entered into or executed before the commencement of the Constitution and continues in operation after such commencement, or which explicitly provides that the said jurisdiction shall not extend to a dispute arising out of it.[17]

Thus, for a dispute to qualify under Article 131, it has to necessarily involve central and/or state governments as parties and must involve a question of law or fact on which the existence of a legal right of the state or the Centre depends. Disputes which do not involve any questions of legal right, such as where the disputes have an exclusively political dimension, are not covered by article 131. However, if a right arising under the Constitution is at issue then article 131 can be invoked, even if the subject matter might have provoked political controversy.

The meaning of the expression "legal right" is often explained in terms of the views of Salmond.[18] According to him, a legal right is an interest recognised and protected by a rule of legal justice, the violation of which would be a legal wrong done to him whose interest it is, and respect for which is a legal duty.

There is an important 1939 judgment in connection to section 204 of the Government of India Act of 1935 which further elaborated the term legal right.[19] In the case, the plaintiff had brought a suit against the defendant for the recovery of certain sums of money, which, he alleged, were wrongfully credited to the Cantonment fund.

The defendant had pleaded that since no suit could be instituted by a Province against the Government of India under the law prevailing at the time, the dispute was one which was not justiciable before the Federal Court in its original jurisdiction. However, the Federal Court held that because the dispute involved a question on which the existence of a legal right depended, it was justiciable. The judgment had stated:

The term "legal right", used in section 204, obviously means a right recognised by law and capable of being enforced by the power of a State, but not necessarily in a court of law. It is a right of an authority recognised and protected by a rule of law, a violation of which would be a legal wrong to his interest and respect for which is a legal duty, even though no action may actually lie. The only ingredients seem to be a legal recognition and a legal protection. The mere fact that under the previous Act the Provincial Governments were subordinate administrations under the control of the Central Government and could only have made a representation to the Governor-General-in-Council or the Secretary of State, would not be sufficient, in itself, for holding that the former could not possibly possess any legal right, at all, against the Central Government, even in respect of rights conferred upon them by the provisions of the Act or the rules made there under.

At this stage it needs to be pointed out that the jurisdiction of the Supreme Court under article 131 is not confined to any specific or particular category of disputes. Subject to certain provisions of the Constitution, which explicitly excludes this jurisdiction, article 131 confers on the Supreme Court jurisdiction in any kind of dispute (between the federation and its units, or between the units themselves).[20] The jurisdiction is extremely wide, provided the dispute is a justiciable one. The intention of the Constitution-makers was that such disputes should not be subjected to several tiers of the judicial hierarchy, but should come, once and for all, before the highest court of the land. [21]

Over the decades, the Supreme Court of India has taken contradictory decisions on the applicability Article 131.

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[16] *Article 131 of the Indian Constitution*
[17] *Ibid*
[18] *John Salmond, 2010. On Jurisprudence 12th Ed, Universal Law Publishing.*
[19] *United Provinces Vs. Governor General of India in Council, AIR 1939 FC 58.*
[20] *https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf*
[21] *Ibid*

In a 1977 case between State of Rajasthan and Union of India,[22] a peculiar situation had arisen, where one party was voted to power (through Parliamentary election) by an overwhelming majority. At the same time, in nine States, another party was already in power. The Central Government at the time was of the view, that in these States, the Government should seek a fresh mandate from the electorate.

A letter to that effect was addressed by the Home Minister to the Chief Ministers of the States. Apprehending that the letter would be followed by the issue of a Presidential Proclamation under article 356 of the Constitution, the States moved the Supreme Court, questioning the validity of such a Proclamation. The Supreme Court held that it had jurisdiction under Article 131 to entertain the proceeding. In the end, however, the court decided that the apprehended Proclamation would be valid.

Another landmark case in this regard was the 1978 case between State of Karnataka v Union of India,[23] where the Central Government had issued a notification under the Commissions of Inquiry Act, 1952, to inquire into the conduct of certain Ministers of the State Government of Karnataka (including the Chief Minister). The State Government challenged the legality of this notification, mainly raising a constitutional issue connected with federalism.

The principal point raised was that the State Cabinet was collectively responsible to the State Legislative Assembly. The Constitution did not contemplate a parallel overseeing of the State Cabinet the Centre. In the end, the contention of the State Government failed. But the jurisdiction of the Supreme Court, under article 131, to go into the above question was upheld. In the judgment,[24] Justice P N Bhagwati had stated that for the Supreme Court to accept a suit under Article 131, the state need not show that its legal right is violated, but only that the dispute involves a legal question. But, article 131 cannot be used to settle political differences between state and central governments headed by different parties.

However, in contrary to the above judgments, in a recent 2011 case of State of Madhya Pradesh v Union of India,[25] the Court held that Central enactments could only be challenged as writ petitions under Article 32 and 262 of the Constitution and not under the original jurisdiction of the Court under Article 131. Thereafter, in a 2015 case of State of Bihar v Jharkhand,[26] the Court again disagreeing with the 2011 judgement stated that "We regret our inability to agree with the conclusion recorded in the case of State of Madhya Pradesh v. Union of India, that in an original suit under Article 131, the constitutionality of an enactment cannot be examined.

Since the above decision is rendered by a coordinate Bench of two judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the above-mentioned decision." As the Court did not have the requisite bench strength to overturn the prevision decision, it left the matter open for a larger bench to decide. Since this inconclusive situation has not been resolved, it allows both the judgements to be used as a precedent for future references.

The State of West Bengal v. Union of India[27] is a 1962 case that also dealt with the issue of State's rights to challenge Central Laws. While this case did not specifically deal with the question of state power to contest central laws under Article 131, its proceedings does have a bearing on the issue. The case involved the West Bengal Government challenging the Coal Bearing Areas (Acquisition and Development) Act, 1957, a Central law that allowed it the rights to acquire coal mining lands even though the land belonged to the State.

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[22] *1977 AIR 1361*
[23] *1978 AIR 68*
[24] *Ibid*
[25] *https://indiankanoon.org/doc/125662/*
[26] *https://main.sci.gov.in/jonew/ropor/rop/all/184010.pdf*
[27] *1963 AIR 1241, 1964 SCR (1) 371*

4 Inter-State river water disputes

Water is a major resource for sustaining life on earth. It contributes to the welfare of a nation in several ways such as in health, agriculture, industry, etc. This extraordinary demand for water in diverse fields makes it one of the most important resources. Moreover, availability of water is highly uneven across geographies as it is dependent upon varying seasons of rainfall and capacity of storage.

India's need for water is met by its 25 major river basins, with most rivers flowing across states.[28] As river basins are shared resources, there is a need for a coordinated approach between the states and the Centre, for the preservation, equitable distribution and utilisation of river water. However, because of the federal nature of the republic, and because the rivers cross state boundaries, numerous inter-state river-water disputes have erupted since independence. These disputes over the possession and control of river water have persisted with prolonged delays in resolution, and have for long been an important legal and Constitutional issue.[29] In recent years, increasing water scarcity and a rapid rise in urban and rural demands for freshwater have further exacerbated the problem.[30]

The complicated nature of inter-state water disputes in India needs to be understood through the history of water governance in the country. Before independence, India comprised of the British government with several semi-sovereign princely states. At the time governmental power was highly centralized with the Secretary of State being empowered under the purview of the Government of India Act, 1919 and the subsequent Government of India Act, 1935.[31] For any dispute between the provinces, the decision of the Secretary of State was final and binding. In the context of water, the provinces had little authority, with the exception of some autonomy regarding irrigation, under the 1919 Act.[32]

Source: https://factly.in/wp-content/uploads//2016/09/inter-state-water-disputes-in-india-featured-image.jpg

[28] *Harish Salve, "Interstate River Water Disputes," in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of The Indian Constitution (New York: Oxford University Press, 2016).*

[29] *Pyaralal Raghavan, "There has not been a final settlement on any interstate river water dispute since 1980," The Times of India, 7 September, 2016.*

[30] *Ashok Swain, "Fight for the last drop: interstate river disputes in India," Contemporary South Asia, Vol. 7 (2) (1998), 167-180.*

[31] *K.K. Lahiri, "Indian River and River Systems- The Genesis of Article 262 of the Constitution of India and the Interstate River Water Disputes Act, 1956- Developments till 1949"*

[32] *Ibid*

In independent India, legislative powers concerning water were distributed between the Centre and the states. Schedule 7 of the Constitution distinguished between the use of water within a state and the purpose of regulating interstate waters. It gave the Union the power to formulate laws and mechanisms for regulating interstate, while the states retained autonomy regarding water utilisation for purposes such as water supply, irrigation, drainage, water storage and water power.[33] This approach towards constitutional mechanism regarding interstate water disputes resulted in an imprecise distribution of power between the Centre and the states.

Further, independence resulted in the fusion of 571 disjointed states.[34] Thereafter, states were carved out and federated to form the Union of India. While the states were initially organised on the basis of political and historical considerations, the States Reorganisation Act (1956) finally resulted in 14 states and six union territories.[35] Since then, the boundaries of Indian states have continued to evolve based on cultural and political factors, with little focus ecological factors of these regions.[36]

The changing borders have further complicated the existing resource-sharing agreements and have become sources of interstate river disputes. Forseeing the possibility of river disputes arising out of the state reorganization act, in the same year the Union government enacted two other important acts to create a framework for governing and managing interstate rivers: the Interstate (River) Water Disputes Act, 1956 (ISRWDA) and the River Boards Act, 1956.[37]

4.1 Constitutional and statutory provisions for dispute resolution

i.) Article 246:

Article 246 of the Indian Constitution deals with the allocation of legislative power between the Parliament and the State Legislatures.[38] As per this Article, the allocation of responsibilities between the Centre and the States with respect to laws to be made fall into three categories: the Union List (List I), the State List (List II) and the Concurrent List (List III). The subject of water is a matter of Entry 17 of List II, i.e. State List. This Entry is subject to the provisions of Entry 56 of List I, the Union List.

Entry 17 of List II includes water sources, irrigation and canals, drainage and oak, reservoir and hydropower. Most cross-border disputes over rivers are related to these issues. The State government has the right to adopt laws on these issues. However, this competence of the government is subject to the provisions of Entry 56 of List I. Entry 56 of List I gives the Parliament the right to adopt laws on the regulation and development of the river and valleys to the extent that these regulations and development are in the public interest. Since water resources are a national responsibility, Parliament has considerable legislative powers in this area.

ii.) Article 262:

Article 262 of the Constitution deals with the adjudication of water disputes.[39] The provisions in this regard are:

- 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." Thus, this Article provides that Parliament with the power to adopt legislation for the settlement of disputes or complaints concerning the use, distribution or control of transboundary waters in a river or river valley.

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[33] *Harish Salve, "Interstate River Water Disputes," in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of The Indian Constitution," (New York: Oxford University Press, 2016).*

[34] *L. Koshi, "Explainer: The reorganization of states in India and why it happened," The News Minute, November 2, 2016.*

[35] *Ibid*

[36] *https://classic.iclrs.org/content/blurb/files/krishna%20belbase.pdf*

[37] *Harish Salve, "Interstate River Water Disputes," in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of The Indian Constitution," (New York: Oxford University Press, 2016).*

[38] *Article 246 of the Indian Constitution*

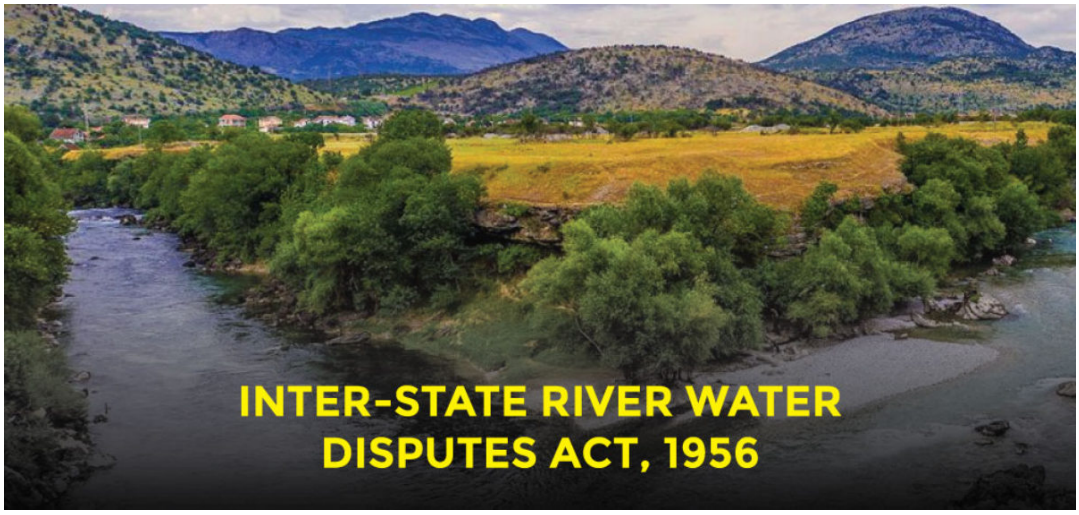
[39] *Article 262 of the Indian Constitution*

- Article 262(2): "Notwithstanding anything in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1)." This Article allows the Parliament to adopt a law to restrict the jurisdiction of the Supreme Court or of any other court in relation to the dispute/appeal referred to in Article 262 (1). Article 262(2) begins with the phrase "Notwithstanding anything in this constitution …", which means that other provisions of the Constitution that violate Article 262(2) are not applicable.

For example, when examining Article 262(2), Article 131 does not apply, which provides for the primary jurisdiction of the Supreme Court in disputes between two or more States.[40] If the Parliament has not enacted any legislation under Article 262(2), it may refer to the Supreme Court or higher court. The term "may" used here means that the introduction of such a law depends on the Parliament's discretion.

iii.) Central Laws:

Four Acts, three under Entry 56 of List I namely, the "River Boards Act 1956",[41] "Betwa River Board Act 1976"[42] and "Brahmaputra Board Act 1980"[43] and the fourth one under Article 262, namely, the "Inter-State River Water Disputes Act, 1956"[44] are the legislations so far enacted by the Indian Parliament under the above Constitutional provisions.



Source: https://educratias.com/wp-content/uploads/2022/01/Inter-state-River-Water-Disputes-Act-1956-1200x565.jpg

a.) Inter State River Water Disputes Act, 1956:

This Act is to provide for the adjudication of disputes relating to waters of Inter-State Rivers and River Valleys.[45] The Act came into effect on 28 August 1956 and has been modified from time to time to achieve the objectives set forth. When any request is received from the state government in respect to any water dispute and the central government is of the opinion that the water dispute cannot be settled by negotiations, the central government is empowered to constitute a water disputes tribunal for the adjudication of the dispute by notifying in the official gazette. The tribunal thus set up then has to investigate the matters referred to it and forward a report setting out the facts and giving its decision on the same within a period of three years. The above Act has been used to set up several Tribunals to settle the Inter-State Water disputes.

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[40] *Article 131 of the Indian Constitution*
[41] *http://www.mowr.gov.in/sites/default/files/A1956-49.pdf*
[42] *https://legislative.gov.in/sites/default/files/A1976-63_0.pdf*
[43] *https://legislative.gov.in/sites/default/files/A1980-46.pdf*
[44] *https://www.indiacode.nic.in/bitstream/123456789/1664/3/A1956-33.pdf*
[45] *Ibid*

b.) River Boards Act, 1956:

This act made provisions for setting up of river boards or advisory bodies by the central government at the request of the interested parties.[46] These boards were to have two functions:

- They would help to bring about proper and optimum utilization of the water resources of inter- state rivers.
- They would promote and operate schemes for irrigation, water supply, drainage, development of hydroelectric power and flood control.

iv.) Agreements on Inter-State rivers:

Efforts are always made to resolve the dispute through mutual discussions and negotiations between the party States. Such a settlement is most preferred since it fosters a spirit of involvement for the party States concerned. As a result of such negotiations, a number of inter-State agreements have been reached so far[47] (A substantive number of these agreements reached before and after independence have been superseded by fresh agreements/decision of Tribunals).

4.2 Water Tribunals

Under the Inter-State River Water Disputes Act, the State or States can approach the Central Government for resolution of water disputes, who in turn, may refer the dispute to a "Water Disputes Tribunal."[48] The decision of this tribunal shall be final and binding,[49] and is beyond the purview of being reopened and reviewed.[50] However, if the State Government is of the opinion that anything contained in the Tribunal's decision requires explanation or that guidance is needed upon any point not originally referred to the Tribunal, the State may, within three months from the date of the decision, again refer the matter to the Tribunal for further consideration.[51]

It is important to note that before the aforementioned reference is made to a tribunal by the Central Government, the Central Government may attempt to facilitate negotiations. However, if it is "of the opinion" that such a dispute cannot be settled through negotiation, it may refer the dispute to a tribunal.[52] But historically, the Centre has directly referred the disputes to the Tribunal with putting little effort for facilitating negotiations and attempting to amicably settle these disputes. Table 1 below shows the various water dispute tribunals since independence.

Source: https://images.indianexpress.com/2016/08/mahadayi-759.jpg

[46] http://www.mowr.gov.in/sites/default/files/A1956-49.pdf
[47] http://www.cwc.gov.in/sites/default/files/legalinst-Vol-III(Part1).pdf
[48] *The Inter-State River Water Disputes Act, 1956, Sec. 4*
[49] *Ibid, Sec. 6*
[50] *Ibid, Sec. 4*
[51] *Ibid, Sec. 5(3)*
[52] *Ibid, Sec. 4*

It is possible for the States to challenge the decisions of a tribunal in the Supreme Court under Article 136 of the Indian Constitution which grants discretionary power to the court to hear such appeals.[53] It is also possible for any private persons to approach the Supreme Court under Article 32 and link the water dispute issues and/or tribunal's decision with violation of fundamental rights.[54]

Table 1: Water Tribunals

Tribunal	States Concerned	Date of Constitution	Current Status
Godavari Water Disputes Tribunal	Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh, Orissa	April 1969	Report and decision given in July 1980.
Krishna WaterDisputes Tribunal – I	Maharashtra,Andhra Pradesh, Karnataka,	April 1969	Report and decision given in May 1976.
Narmada Water Disputes Tribunal	Rajasthan, Madhya Pradesh, Gujarat, Maharashtra	October 1969	Report and decision given in December 1979. Narmada Control Authority (NCA) was constituted to implement the decision.
Ravi & BeasWater Tribunal	Punjab, Haryana, Rajasthan	April1986	Report and decision given in April1987. Further Report is pending.
Cauvery Water Disputes Tribunal	Kerala, Karnataka, Tamil Nadu, Puducherry	June 1990	Report and Decision given on 5 February 2007. Supreme Court modified the decision on 16 February 2018. The Cauvery Water Management Authority (CWMA) and Cauvery Water Regulation Committee (CWRC) were constituted to implement the modified decision.
Krishna Water Disputes Tribunal -II	Karnataka, Andhra Pradesh, Maharashtra, Telangana	April 2004	Report and decision given on 30 December 2010. SLPs filed pending in the Court. The term of the Tribunal has been extended after the bifurcation of Andhra Pradesh. The matter is under adjudication in the Tribunal.
Vansadhara Water DisputesTribunal	Andhra Pradesh, Odisha	February 2010	Report and decision submitted on 13 September 2017. Further Report is pending.
Mahadayi Water DisputesTribunal	Goa, Karnataka, Maharashtra	November 2010	Report and decision submitted on 14 August 2018. Further Report is pending.
Mahanadi WaterDisputes Tribunal	Chhattisgarh, Odisha	March 2018	Under adjudication by the Tribunal. Report and decision are awaited.

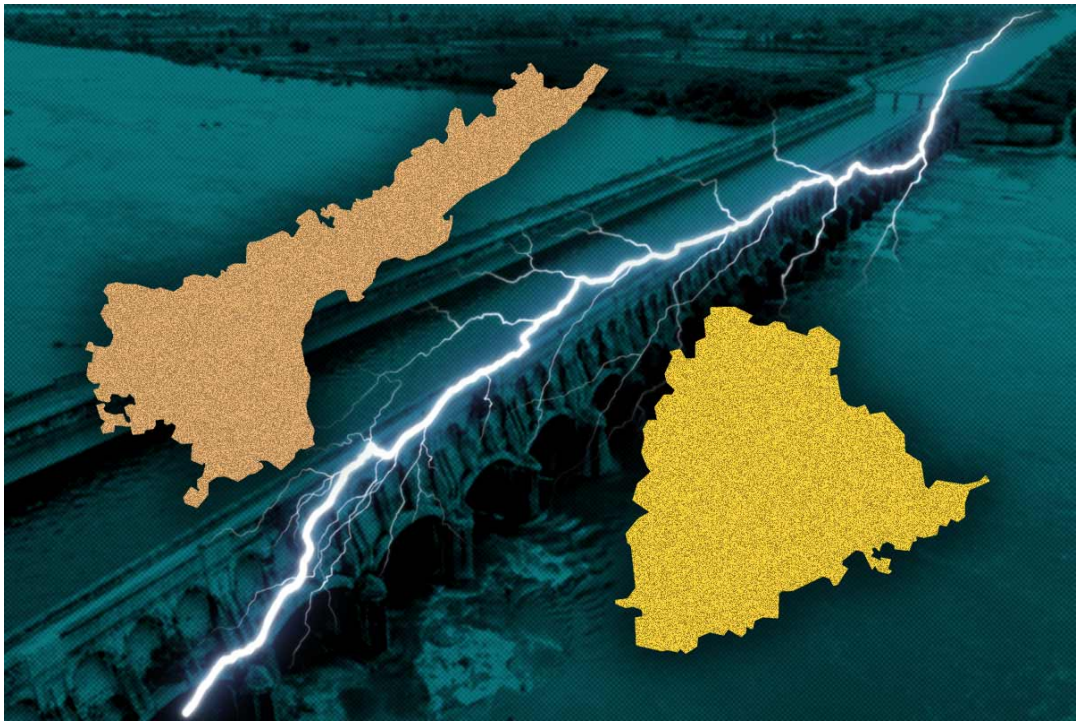
Source: Central Water Commission

[53] *Article 136 of the Indian Constitution*
[54] *Article 32 of the Indian Constitution*

i.) Some major water disputes

a.) Krishna-Godavari Water Dispute

In the early 1950s, the Indian government adopted the First Five Year Plan, which outlined a path for economic development. At the time the Planning Commission of India wanted to include some major schemes for irrigation and hydroelectric power on the rivers Krishna and Godavari.[55] The commission had asked the states of Bombay, Hyderabad, Madras and Mysore to suggest certain viable projects. In 1951, an inter-state conference was convened to discuss the allocation and utilization of water in the rivers, and to assess the merits of the various projects suggested which led to an agreement. However, Karnataka (then Mysore) did not ratify the agreement relating to the Krishna waters. Thereafter in 1956, the states were reorganized on a linguistic basis. Hence the 1951 agreement needed to be revised. However, prolonged negotiations did not lead to a new agreement.[56]



Source: https://www.thenewsminute.com/sites/default/files/Telangana_AndhraPradesh_KrishnaRiver_28062021_1200_1.jpg

The main issue in the Krishna-Godavari dispute was the validity of the inter-state agreement of 1951. It was also questioned whether Maharashtra could divert the water westward for generating cheap hydroelectric power on the slopes of the Western Ghats.[57] After prolonged negotiations a tribunal was formed in 1969. The tribunal reached its decision in 1973, and the award was published in 1976. The tribunal relied on the principle of equitable apportionment for the actual allocation of the water.[58] Based on the annual availability of 2,060 TMC (thousand million cubic feet) of water in the basin, the Tribunal allocated this water to the States of Andhra Pradesh, Karnataka and Maharashtra.

The Tribunal further allocated the surplus to the State of Andhra Pradesh, but the state did not acquire a permanent (vested) right to those waters. On the issue of the agreement the Tribunal concluded that projects, which were in operation or under consideration before September 1960 should be preferred to any contemplated use except by special consent of the parties.[59]

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[55] *Shah, R.B, Inter-state River Water Disputes: A Historical Review, 175-189, (1994)*
[56] *Ibid*
[57] *Ibid*
[58] *http://117.252.14.242/rbis/India_information/Krishna%20Water%20Dispute%20Tribunal.html*
[59] *Ibid*

On the issue of water use, the tribunal ruled that the use of water for irrigation was to be preferred over the production of hydroelectric power giving the following two reasons:[60] a. Water is the only source of irrigation whereas coal, oil and other natural resources can be used for generating power, and b. the socio-economic needs of the population and their dependence on the Krishna water for irrigation. Lastly, the Tribunal allowed the States to re-open the issue of water allocations after May, 2000.

The subsequent round of adjudication was re-opened in 2004 with the formation of a second Krishna River Tribunal and its decision was given in 2010. The Krishna II Tribunal increased the amount of annual allocable water to 2,578 TMC, but made those additional allocations less dependable than the base allocations in 1976.[61] The second Tribunal also called for the creation of a Krishna Water Decision Implementation Board to administer its findings.[62]

Finally, the Tribunal said the States could re-open this order after May 31, 2050. Since then, two of the States, Karnataka and Andhra Pradesh, have filed petitions in the Supreme Court, challenging the award of the tribunal.[63]

b.) Cauvery River Dispute

The Cauvery River is essentially an inter-State basin that has its origins in Karnataka and flows through Tamil Nadu and Puducherry. This dispute is rooted in an agreement which was signed in 1924, which gave Tamil Nadu and Puducherry seventy-five per cent of the surplus water share from the Cauvery River, while Karnataka got twenty-three per cent, and the remaining went to Kerala.[64] The agreement placed no restrictions on how much land could be irrigated.

Source: https://img.etimg.com/thumb/msid-70721923,width-640,height-480,imgsize-619265,resizemode-4/the-bitter-feud.jpg

[60] *Ibid*
[61] https://irrigationap.cgg.gov.in/img/tribunaryDisputes/KWDT-II%20Report.pdf
[62] *Ibid*
[63] https://www.downtoearth.org.in/news/andhra-to-challenge-krishna-tribunal-award-in-supreme-court-42903
[64] *Guhan, S., The CauveryDispute:Towards Conciliation,(Madras:Kasturi & Sons,1993)*

In 1970, the Cauvery Fact-Finding Committee found that the irrigated lands in Tamil Nadu had grown while Karnataka's lands showed little to no growth.[65] Consequently, Tamil Nadu had made a proposal for an increased need for water supply which was rejected by Karnataka. Thereafter, Tamil Nadu made a request for setting up of a tribunal which was finally formed in 1990, after almost twenty years.

As per the Tribunal's final decision in 2007, which was in concurrence to multiple advices by the Supreme Court, Karnataka was ordered to release water from Cauvery.[66] However, Karnataka did not comply contending that they did not have sufficient water to cater to its own needs. This water dispute still remains sub-judice in the Supreme Court.[67] It is important to note that the centre has made no effort in facilitating negotiations between the States.

c.) Sutlej Yamuna Link Dispute

Source: https://i.filecdn.in/2empr/punjab-full-1597837494363.png

The Sutlej Yamuna Link (SYL) Canal is a project proposed to connect the Sutlej River in Punjab with Yamuna Canal in Haryana. In 1966, after the Indus Waters Treaty 1960, India received the unrestricted right to three rivers: Ravi, Beas, and Sutlej.[68] They were shared among Punjab, Delhi and Jammu & Kashmir. In 1966, Haryana was created from Punjab's territory. Post bifurcation water rights became one of the dispute points as Haryana, being a successor State, had the water rights to Punjab's Sutlej River.

Thereafter, in 1976, the then Prime Minister Indira Gandhi divided the water between Punjab, Haryana and Rajasthan.[69] But this division was not complied by the Punjab Government. This non-compliance led to the formation of a tribunal in 1986, which passed an order in 1987 dividing Sutlej River's water between Punjab and Haryana.[70] However, the Punjab Government challenged this order and contended that Sutlej River's capacity has been overestimated.

In the midst of this, SYL Canal's foundation stones were laid in 1980s but its construction had to be halted for multiple reasons, including militancy in Punjab.[71] In 2002, the Supreme Court ordered the Punjab Government to complete the construction of the SYL Canal within 12 months.[72] Then, in 2004, Punjab passed the Punjab Termination of Agreement Act, 2004 which scrapped all the water sharing agreements signed with other States and required the Punjab Government to restore the land to the farmers free of cost.[73]

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64 *Guhan, S., The CauveryDispute:Towards Conciliation,(Madras:Kasturi & Sons,1993).*
65 *Ibid*
66 http://jalshakti-dowr.gov.in/sites/default/files/Volume-I1920752696.pdf
67 *(2018) 4 SCC 1.*
68 https://www.worldbank.org/en/region/sar/brief/fact-sheet-the-indus-waters-treaty-1960-and-the-world-bank

However, this was declared as unconstitutional by the Supreme Court.[74] It also directed both the Governments of Punjab and Haryana to maintain status quo i.e. complete the construction of the SYL Canal.[75] It is important to note that only after years of constant tussle, the Centre agreed to mediate between Punjab and Haryana on 18th August 2020.[76] This delayed cognizance has proven to be detrimental as years of litigation not only led to resource drainage but also affected farmers' irrigation needs and the creation of hydro electric projects.

ii.) Key issues with water tribunals

Interstate water disputes in India often prolong over long periods and tend to recur. The Cauvery dispute tribunal was constituted in 1990 and the final award was given in 2007, after 17 years. The 2nd Krishna water dispute tribunal, constituted in 2004, gave its final award in December 2010. These long delays are partly due to elaborate judicial proceedings and deliberations, but there are a number of other issues which affect water tribunals and lead to these prolonged delays. Some of the key issues are listed below:

- Protracted proceedings and extreme delays in dispute resolution.[77] This is primarily because of procedural complexities involving multiple stakeholders across governments and agencies.
- Opacity in the institutional framework and guidelines that define the proceedings of the tribunal. [78]
- The composition of tribunals is not multidisciplinary. It consists of persons only from the judiciary.[79]
- The lack of authoritative water data makes it difficult to even set up a baseline for adjudication.[80]
- The growing nexus between water and politics have transformed the disputes into turfs of vote bank politics. This politicization has also led to an increasing defiance by states, extended litigations and subversion of resolution mechanisms.[81]

Current Indian water-dispute settlement mechanisms are ambiguous and opaque. The Centre has also failed to provide an effective way to facilitate mediation and negotiations to deal with these disputes. Consequently, delayed agreements over water have prompted ineffective, non- cooperative investments in dams, irrigation, agriculture and industry, as well as inefficient use of water.

The problem is further compounded by the entanglement of inter-state water disputes with other Center-State conflicts. Considering the fact that multiple inter-State water disputes have resulted in heavy loss of resources, the need to consensually reach a common, harmonious ground becomes inevitable to avoid any future repercussions. Centre facilitated mediation between states offers the best chance at reconciliation and needs to be encouraged.

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69 https://sandrp.in/2016/11/18/sutlej-yamuna-link-row-chronology-of-events/
70 http://www.cwc.gov.in/sites/default/files/Ravi-%20Beas%20Waters%20Tribunal%20Report%201987.pdf
71 https://sandrp.in/2016/11/18/sutlej-yamuna-link-row-chronology-of-events/
72 *Ibid*
73 https://www.indiacode.nic.in/bitstream/123456789/7749/1/punjab_termination_of_agreement.pdf
74 *2016 SCC OnLine SC 1252*
75 *Ibid*
76 *Mallika Goel and Shreyashi Roy, 23rd August 2020, The Sutlej-Yamuna Link: State Skirmish or National Security Issue? The Quint*
77 https://cess.ac.in/wp-content/uploads/2019/10/CESS-Working-Paper-No.108.pdf
78 https://www.livemint.com/Opinion/JDRZ3dpZdFPes9qiULWUgO/Addressing-Indias-water-dispute-problem.html
79 *Inter-State River Water Disputes Act, 1956*
80 https://www.livemint.com/Opinion/JDRZ3dpZdFPes9qiULWUgO/Addressing-Indias-water-dispute-problem.html
81 https://cess.ac.in/wp-content/uploads/2019/10/CESS-Working-Paper-No.108.pdf

5 Inter-State Council

Article 263 of the Constitution empowers the President of India to establish a constitutional body, namely the Inter State Council (ISC), for inquiring into and advising upon inter-state disputes, and for better coordination of policy and action. This provision was borrowed from Section 135 of the Govt. of India Act, 1935,[82] and the article was adopted by the Constituent Assembly on 13 June 1949 unanimously. Article 263 reads as under: [83]

"263. Provisions with respect to an inter-State Council.

If at any time it appears to the President that the public interest 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 or 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 organisation and procedure".

Thus, the Inter State Council is primarily an advisory and consensus-seeking body with the powers to investigate, deliberate and recommend on "subjects in which some or all of the States or the Centre and one or more of the States have common interest".[84] The Presidential order for establishing the ISC can specify the scope of such a council as well as lay down its organization and procedure.[85]

The composition of the Council includes (a) the Prime Minister as the Chairperson; (b) Chief Ministers of all States; (c) Chief Ministers of Union Territories having a Legislative Assembly and Administrators of Union territories not having a Legislative Assembly; and (d) Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister.[86] In addition, other Ministers having independent charge in the Central Government can be included as permanent invitees by the nomination of the Chairperson or for a meeting, as and when any item relating to a subject under their charge is to be discussed.[87] Therefore, this is a body which provides full representation to each State, Union Territory and the Centre.

The Administrative Reforms Commission of 1968 in its 13th report had first recommended the setting up of an Inter State Council under article 263 (b) and (c) of the Constitution.[88] It did not recommend invoking the provisions of article 263 (a) which intended to give quasi-judicial powers to the council, which would complement the Supreme Court's jurisdiction under Article 131. The Sarkaria Commission also endorsed this view in 1987, and further recommended that the ISC should be constitutionally entrenched as a permanent and independent national forum for consultation.[89]

The Commission felt that the issues of Centre-State cooperation were being discussed in a number of different channels in an 'ad hoc and fragmented manner', and hence there was a need for a single high-level body that could make authoritative pronouncements on issues of national concern.[90] The Commission had observed that "there is no high-level coordinating forum other than the Inter-State Council envisaged in Article 263 of the Constitution",[91] and gave recommendations regarding the setting up of such a body, along with the composition and procedures to be adopted by it.

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[82] *Sec. 135, The Government of India Act, 1935*
[83] *Article 263 of the Indian Constitution*
[84] *Commission on Centre State Relations, Chapter IX (January, 1988)*
[85] *Article 263 of the Indian Constitution*
[86] *Clauses 2 and 3, Inter-State Council Order, dated 28 May 1990.*
[87] *Clause 2, Inter-State Council Order, dated 28 May 1990; Inter-State Council (Amendment) Order, dated 24 December 1996.*
[88] http://interstatecouncil.nic.in/first-administrative-reforms-commission/
[89] http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERIX.pdf

Following the recommendations of the Commission, the ISC was ultimately established via a Presidential order dated 28th May 1990. It should be noted that the ISC was not constituted as a single standing body to which all issues of national importance can be referred. It was also not assigned the function envisaged in clause (a) of Article 263 of the Constitution.[92]

The scope of the ISC is broad and generic: as long as States have a common interest, it can be discussed in the ISC and recommendations can be made. In addition, the ISC has framed 'Guidelines for Identifying and Selecting Issues' to be brought up before it to refine its scope.[93] This excludes certain topics from discussion, such as topics which fall under the mandate of the NDC, the erstwhile Planning Commission, the Finance Commission etc.

It also excludes from discussion topics which relate to 'the discharge of any duty or special responsibility of the Union under the provisions of the Constitution or any law of Parliament' unless a majority of members, with the approval of the Chairman, feel it is important to include it.[94] Thus, the ISC has itself narrowed the scope of its deliberations considerably, which is at odds with the broad mandate it received under the Presidential Order.

Over the years different Commissions have recommended broadening the scope of the ISC. The Second Administrative Reform Commission (2005-09) had recommended that the Inter-State Council must be given the power to resolve inter-State and Union-State conflicts.[95] It also recommended that the Council need not exist in perpetuity. It should be constituted as and when the need arises. Thereafter, the Punchhi Commission on Centre-State Relations (2010), recommended functional independence and quasi judicial status for the Council.[96] It also recommended that the ISC should be made a vibrant negotiating forum for policy development and conflict resolution. Once this outcome was achieved, the Government could consider transferring the functions of the National Development Council to the ISC.

As per the ISC order, it is mandated to meet three times a year.[97] However, in practice, it has only met thirteen times since its inception in 1990. The meetings of the ISC are held in-camera and its proceedings are not made public.[98] The agenda of these meetings indicate that the chief topic of discussion in a majority of the meetings has been the recommendations of the Sarkaria Commission.[99] Over the years the Council has taken a view on all the 247 recommendations made by Commission, and all except 65 recommendations have been accepted. In addition, tax matters have also been discussed from time to time.[100]

Source: https://st.adda247.com/https://wpassets.adda247.com/wp-content/uploads/multisite/sites/2/2022/08/30150510/Inter-State-Council-01.png

[90] http://interstatecouncil.nic.in/formations.html#subnav1_2

[91] *Commission on Centre-State Relations at Chapter IX (January, 1988)*

[92] *Report of the Commission of Centre-State Relations, Vol. II (March 2010)*

[93] http://interstatecouncil.nic.in/guideline_identify_issues.htm

[94] *Ibid*

[95] http://interstatecouncil.nic.in/sarc/

[96] http://interstatecouncil.nic.in/wp-content/uploads/2015/06/volume2.pdf

[97] *Clause 5, Inter-State Council Order, dated 28 May 1990.*

Table 2: Meetings of the Inter State Council

Meeting	Date	Major Items of Discssion	Prime Minister
First	10th October, 1990	Sarkaria Commission Report, CST, special courts for speedy trial of economic offences	V.P. Singh
Second	15th October, 1996	Consideration of 179 recommendations of Sarkaria Commission	H.D. Deve Gowda
Third	17th July, 1997	Alternative Scheme of Devolution , Article 356, Centre-State Financial Relations	Inder Kumar Gujral
Fourth	28th November, 1997	Sarkaria Commission Report: Discussion on Chapters IV, X, XV, XVII	
Fifth	22nd January, 1999	Emergency Provisions, Economic and Social Planning	Atal Bihari Vajpayee
Sixth	20th May, 2000	Sarkaria Commission Report: Discussion on Chapters III, V, X, XII, XIV, XVI, XVIII	
Seventh	16th November, 2001	Sarkaria Commission Report: Discussion on Chapters II, IV, VIII, IX, XIII, XIX, XX	
Eighth	27th-28th March, 2003	Administrative Relations, Emergency Provisions	
Ninth	28th June, 2005	Action Plan on Good Governance	Manmohan Singh
Tenth	12th December, 2006	The Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989	
Eleventh	16th July, 2016	Consideration of the Recommendations of the Punchhi Commission on Centre-State Relations, Use of Aadhar and DBT for subsidies, Improving Quality of School Education, Internal Security and Intelligence Sharing	Narendra Modi
Twelfth	25th November, 2017	Recommendations contained in Volumes III, IV and V of the Punchhi Commission's Report relating to Centre-State Financial Relations, Local Self-Governments and Internal Security, Criminal Justice and Centre-State Relations.	
Thirteenth	25th May, 2018	Recommendations contained in Volumes VI and VII of the Punchhi Commission's Report relating to Environment, Natural Resources & Infrastructure and Socio-Economic Development, Pubic Policy & Good Governance.	

Source: http://interstatecouncil.nic.in/isc-meetings/

5.1 Key issues

i.) Non permanent body:

The ISC is not a permanent constitutional body; it only comes in to existence through a Presidential Order. The Order determines its composition, the number of times it is supposed to meet, and its procedure. It is therefore subject to unilateral alteration by the Central Government. To address this issue, the Second Commission of Centre-State Relations (Punchhi Commission) suggested that the ISC should be given either constitutional or statutory status, giving its actions greater authority and respect.[101] This would ensure that the ISC "is endowed with sufficient resources to carry out its functions effectively" [102]

ii.) Advisory in nature:

The language of clauses (b) and (c) of Article 263, which lay down the scope of the role of the ISC, envisage a recommendatory role for this body, using language such as "investigating and discussing subjects…" and "making recommendations upon any such subjects".[103] Further, while suggesting that the ISC should be formed, the Sarkaria Commission categorically stated that it should be a recommendatory and advisory body.[104]

While the recommendations of the ISC should not be made binding, it is important to ensure a positive duty is imposed upon the Centre and States to give due consideration to any recommendations. In this regard, the Punchhi Commission recommended strengthening consensus-building and voluntary settlement of disputes.[105]

iii.) Lack of technical expertise:

Currently, the ISC lacks expertise on technical matters. For the ISC to make relevant suggestions on complex matters such as grant-making, its policy research and investigation capacity must be significantly strengthened. This has been a longstanding suggestion by various commissions: for example the Sarkaria Commission suggested that the ISC and its standing committee should be given the power to set up ad hoc Sub-Committees to investigate special matters.[106]

The Punchhi Commission also recommended that the ISC should have expert advisory bodies or administrative tribunals with quasi-judicial authority to give recommendations to the ISC as and when needed.[107]

iv.) Infrequent meetings:

As per the ISC order it is supposed to meet three times a year. However, the Council has only held 13 meetings since its inception in 1990.[108] Further, there was a gap of ten years between the 10th meeting held in 2006 and the 11th meeting in 2016. The infrequent nature of meetings suggests a lack of seriousness on part of the Governments in focusing on issues intergovernmental cooperation.

Giving constitutional or statutory status to the ISC would ensure greater importance is given to the ISC by the Centre and State Governments. This may ensure that the ISC meets regularly and is given sufficient resources.[109] The meetings of the ISC need to be conducted more frequently with detailed preparation of the agenda by the Secretariat in consultation with the parties.[110] Further, such agenda papers should be circulated prior to the meeting to ensure adequate preparation and understanding of the different viewpoints and to promote consensus building in the meetings.[111]

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98 http://interstatecouncil.nic.in/meetings.html#subnav1_5

99 *Ibid*

100 *Ibid*

101 *Report of the Commission of Centre-State Relations, Vol. II.*

102 *Ibid*

103 *Article 263 of the Indian Constitution*

6 National Development Council

Source: Image

The National Development Council (NDC) is the apex body for deliberations on development matters in India. The idea of NDC as a coordinating mechanism was first mooted by the Planning Advisory Board set up in October 1946 under the chairmanship of K. C. Neogi.[112] The Planning Commission, established by a cabinet resolution of 15 March 1950, also stressed the need for a coordinating body for periodical evaluation of planning.[113] Accordingly, PM Nehru set up the NDC as an extra-constitutional and non statutory body by a cabinet resolution on 6 August 1952.[114]

The functions of the National Development Council (NDC) as laid down in the Government of India resolution are as follows:[115]

i. to review the working of the national plan from time to time;

ii. to consider important questions of social and economic policy affecting national development; and

iii. to recommend measures for the achievement of the aims and targets set out in the national plan, including measures to secure the active participation and cooperation of the people, improve the efficiency of the administrative services, ensure the fullest development of the less advanced regions and sections of the community and, through sacrifice borne equally by all citizens, build up resources for national development

The First Administrative Reforms Commission constituted by the Government of India in January 1966 made a number of recommendations regarding the organization and functions of the NDC which were then accepted by the Government with some modifications.[116] The NDC, as reconstituted in 1967, is composed of the Prime Minister as Chairman, all Union Cabinet Ministers, Chief Ministers of all States, Chief Ministers/administrators of all Union Territories and the Members of the Planning Commission.[117]

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[104] *Commission on Centre-State Relations at Chapter IX.*
[105] *Report of the Commission of Centre-State Relations, Vol. II.*
[106] *Commission on Centre-State Relations at Chapter IX.*
[107] *Report of the Commission of Centre-State Relations, Vol. II.*
[108] http://interstatecouncil.nic.in/isc-meetings-2/
[109] *Report of the Commission of Centre-State Relations, Vol. II.*
[110] *Ibid*
[111] *Ibid*
[112] *Saxena R. 2002. "Strengthening Federal Dialogue: Role of NDC & ISC". Contemporary India 1(3)*
[113] *Ibid*
[114] https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/50NDCs/vol1_1to14.pdf
[115] *Saxena R. 2002. "Strengthening Federal Dialogue: Role of NDC & ISC". Contemporary India 1(3)*
[116] https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/50NDCs/vol1_1to14.pdf
[117] *Ibid*

The Secretary of the Planning Commission acts as the Secretary to the NDC. On the basis of the recommendations of the ARC the functions of the NDC were redefined to include a few more functions. These were:[118]

a.) to prescribe guidelines for the formulation of the national plan;
b.) to consider the national plans as formulated by the Planning Commission;
c.) to assess resources required for implementing the plan and to suggest ways and means for raising them.

The functions assigned to the NDC are fairly general in nature. The NDC can take up almost any issue related to national development. In the past, the NDC has deliberated and decided on a number of diverse issues like regional disparities, panchayati raj, prohibition, as well as agrarian cooperation.[119] The NDC is required to meet at least twice a year though it has sometimes met more often.

The agenda for these meetings have generally included the approach paper to the Five Year Plan.[120] Other matters have formed a part of the agenda if raised by the Central or State governments. Though the NDC is an advisory body making recommendations to the central and state governments, the stature of the Council has ensured that these recommendations have had the prestige of directives which have usually been followed.[121]

Over the years the NDC has played a significant role in enhancing federalism by enabling policy coordination amongst states. However, the status of the NDC has largely been a function of the political currents of the time. Starting with the Nehruvian era, the NDC had a deeply federal character and the state leaders were allowed to influence the planning process.[122] At the time, the recommendations of the NDC had the backing of the chief ministers and were invariably accepted by the cabinet like policy directives.[123]

During this era the NDC emerged as a body which superceded the planning commission. Reflecting on the stature of NDC H. M. Patel had stated, "It is indeed a policy-making body and its recommendations may be regarded as policy decisions and not merely as advisory suggestions".[124] Post the Nehruvian era when Indira Gandhi came to power there was a tendency towards centralization which also affected the functioning of the NDC. During her 15 year rule the frequency of NDC meetings had reduced and the centre started having a greater impact on the policy directions given by it.[125] Consequently, the federal character of planning also got affected.

This trend continued during the Rajiv Gandhi era, as well as the post 90s period, in the era of coalition governments.[126] In its 1988 report, the Sarkaria Commission had lamented that the NDC had not been able to act as an effective instrument for developing consensus and commitment to national policies.[127] However, over the first 60 years, while the NDC did suffer from issues of excessive centralization which attracted criticism from opposition state governments, the general federal character of the Council remained intact. The state governments continued to have a voice and the ability to register differing opinions on policy.

The post 2014 era has seen a drastic shift on the position of the NDC. Having already abolished the Planning Commission, the Modi regime has moved to abolish the NDC, which has been defunct since 2014.[128] The government had announced that the governing council of the Niti Aayog, which had replaced the Planning Commission, will take the place of the National Development Council.[129]

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[118] *Commission on Centre-State Relations at Chapter IX.*
[119] *Report of the Commission of Centre-State Relations, Vol. II.*
[120] *Commission on Centre-State Relations at Chapter IX.*
[121] *Report of the Commission of Centre-State Relations, Vol. II.*
[122] http://interstatecouncil.nic.in/isc-meetings-2/
[123] *Report of the Commission of Centre-State Relations, Vol. II.*
[124] *Ibid*
[125] *Ibid*
[126] *Saxena R. 2002. "Strengthening Federal Dialogue: Role of NDC & ISC". Contemporary India 1(3)*

While this governing council also includes state chief ministers, it may not be expected to play the same role as the National Development Council, just as the Niti Aayog did not take over the functions of the planning commission.[130] The Planning Commission was entrusted with the task of national planning. It not only discussed state plans with the chief ministers but also was a conduit through which resources flowed from the Centre to the states as plan finance.

The Niti Aayog in contrast is merely an advisory body, which has no role in any transfer of resources from the centre to the states. Its governing council may also become a mere advisory body.[131] This move to abolish the NDC, thus, signifies the end of a platform where states had a chance to influence issues of development policy, which deeply affects the federal character of the planning process in India.

Niti Aayog
नीति आयोग
National Institution for Transforming India
सत्यमेव जयते

7 Conclusion

This paper has discussed the various constitutional and statutory mechanisms for inter-state cooperation and dispute resolution in India. While article 131 has provided for the judicial determination of disputes, article 262 has provided for the adjudication of inter-state water disputes by extrajudicial tribunals. Similarly various Inter-Governmental Agencies like the National Development Council and Inter-State Council have been created to promote mutual cooperation.

However, issues such as complex and protracted procedures, a lack of seriousness on part of the Central Governments, as well as growing politicization have reduced the effectiveness of these provisions. Further, a lack of effort by the central government in facilitating negotiations has resulted in prolonging many of the inter-state disputes. Thus, going forward, there is a need to further strengthen these provisions to ensure effective implementation.

A working centre-state and state-state relationship is the cornerstone for the successful implementation of many government schemes, and these provisions can go a long way in making this happen. If the policy makers are able to make best use of these mechanisms they can become a significant part of the newly emerging cooperative federalism in the country.

Source: https://www.dhyeyaias.com/sites/default/files/CenterState%20Relations%20in%20Fiscal%20Domain.jpg

[127] *Report of the Commission on Centre-State Relations (January, 1988).*
[128] https://www.thehindu.com/news/national/NDC-to-be-scrapped-NITI-Aayog-council-likely-to-get-its-powers/article13975094.ece
[129] *Ibid*
[130] https://www.macroscan.org/cur/jan16/pdf/NDC.pdf
[131] *Ibid*

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Rajiv Gandhi Institute for Contemporary Studies
Jawahar Bhawan, Dr Rajendra Prasad Road,
New Delhi 110 001 India
T- 011 2331 2456, 2375 5117 / 118

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