

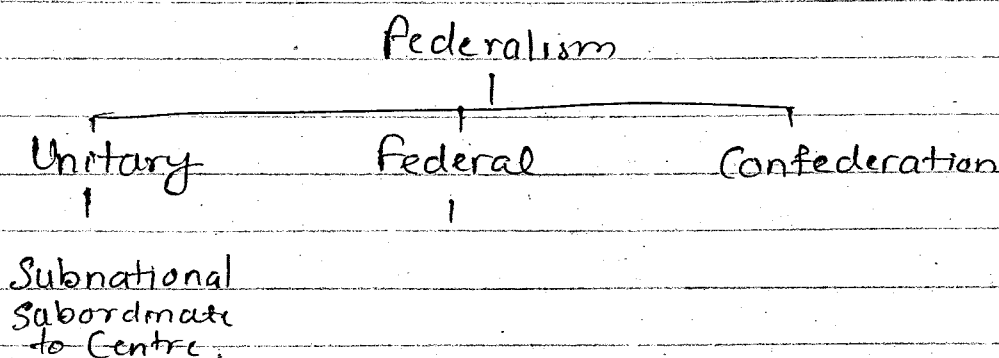
17/12/14

Federalism

- Explain the nature of federalism as given in Indian Constitution & how Indian model differs from U.S. model.
- Discuss the trends in Central & State relations in legislative, administrative & financial sphere.
- Explain the impact of coalition politics and globalisation on the functioning of federalism in India.
- Give suggestions w.r.t. the improvement in Centre & State relations.
- What changes you suggest should be done in India's federal system so that it meets the aspirations of present generation without compromising the basic structure of the Constitution.
- Inter-state relations.
- Inter state water disputes.
- Regionalism in India. Problems, challenges
- Zonal councils, inter-state councils. Short note.
- Short note: Smaller states

Punchhi Commission reports.

What is federalism?



73, 74 not decentralisation
but attempts devolution. halfhearted attempt to devolution

good gov. need decentralisation
given devolution.

delegation, devolution, decentralisation, deconcentration

Deconcentration of Power

Separation of powers.

Delegation of Powers.

Delegation of power is a temporary transfer
Reg. power. Can be done by executive act alone.

(In unitary form, ~~st~~ Centre delegates power to state.)

In unitary form of govt. the powers of
subnational govts are delegated powers.

Uill 73rd & 74th amendment, Panchayats were
having delegated power of state govt.

↑ weakest

Devolution of powers

It is a statutory transfer of power.

Centre will make law & it will delegate power.

Decentralisation of power

Centre loses its significance.

Real transfer of power. Not dependent on centre for your power.

e.g. Panchayat - a unit of govt. in itself.

Federal form of govt.

Subnational govts or provincial govts are not
subordinates of Central govt. Both Centre & provinces
draw their power from the Constitution.

fed
foedus - contract.

delegating power
from state to centre.
state can't secede
state loses its sovereignty.

Diff. betⁿ federation & confederation

- In Confederation, units form the Centre.

Confederation is opposite to unitary form of govt.
confederation is a temporary union whereas
federation is permanent union.

As per U.S. Supreme Court, federation is indestructible union. Units once joining the federation cannot secede from the federation. In Confederation, units retain external sovereignty. They are free to conduct their foreign relations but it is not permissible in federation. Art. 253 of Indian Constitution confirms this principle.

not applicable
for
treaty &
agreements

- Federation comes from latin word foedus

+ foedus - means contract.

So it is govt. by contract. Units coming together by contract. Constitution - contract paper.

∴ federation need written Constitution

② Independent Judiciary

- Essential prerequisites for federation.

• Written Constitution

• Independent Judiciary

• Distribution of powers according to Constitution.

Why Reasons for formation for of federation

- Security

- Economic (A big market)

Distinctive features of Indian federation &

should India be called as quasi-federal

Since beginning the nature of Indian federalism has been a matter of academic debate.

- K.C. Wheare held that India is quasi-federal, federal in form but unitary in spirit. A constitution with unitary features & subsidiary federal features.

- It is not correct to call India as quasi-federal. According to Alexandrowicz, Constitution is either federal or unitary, there is nothing like quasi-federal.

According to Supreme Court of India, federalism is a basic structure of Indian Constitution.

According to Paul Appleby, India is a federation & it is not appropriate to call states in India as glorified municipalities. Though Union enjoys dominance, yet states are not insignificant.

Granville Austin held that India is cooperative federalism.

K.C. Wheare's arguments take U.S. ^{federation} as an ideal type.

His approach is now considered as ethnocentric.

His approach is also legalistic. There are many models of federalism. Federalism in itself is a very dynamic concept. Different countries have adopted

different models as per their requirements. So long ^{Ans (3)} country has the essential features, it is sufficient to consider the country as federation.

Distinctive features of Indian Constitution

India is a cooperative federation

What is cooperative federalism?

U.S. is known as dual federalism. (The two sets of govts are completely independent of each other.)

In dual federalism, centre & state are independent of each other.

What indiv can do local bods should not do.

What local bods can do, state should not lack of balanced regional development.

What state can do, centre should not do.

∴ centre collects taxes & distributes among states.

In India, party-party conflict, not centre-state conflict.

There are 2 different sets of govts like 2 watertight compartments. e.g. states in U.S.A. are not dependent on centre for resources, etc. they are self sufficient.

Cooperative federalism:

It is based on interdependence. There is no watertight compartment betn 2 sets of govts. Centre acts as a big brother. In India, states are dependent on centre for finances & centre is dependent on states for execution of given Union Laws.

- U.S.A. is a symmetrical federation whereas India is asymmetrical.

- U.S.A. is a legislative federation & India is a executive federation. In India federation is adopted for administrative convenience considering the continental size & immense diversity.

U.S.A.
all states same status
India
not same status to states

Reason for treating India as quasi federal.

- Predominance of Union in administrative, legislative & financial sphere

- Dependence of states on Union.

- Single citizenship

- Except J & K, no other state has its own Constitution

- Emergency provisions.

(Federation to Unitary)

Federation is a dynamic concept. In U.S.A.

we see shift of power in favour of Centre

because of Civil War & involvement of U.S.A. in global affairs.

U.S. -
implied
power
Doctrine.

The so called "New federalism" has emerged.

In India, because of rise of regional parties, coalition govt, judicial activism, presidential activism, new economic policy, power has shifted in favour of states. We are also observing contradictory trends, because of rise of terrorism, leftwing extremism, requirements of global economy, power of centre are also increasing. e.g. New institutions like NIA (Nati Investigation, Agency), if NCTC (Nat. Counter-terrorism) comes into existence, GST comes into existence powers of centre are going to increase.

Changing trends in centre & state relations

→ In Legislative sphere

- Original design

Original distribution of power is tilted towards centre. The Constitution has 3 lists

- Union List

At present there are 101 subjects. Originally there were 97 subjects. entry.

4 new subjects have been added by amendments.

> Entry no. 2A (Deployment of Central forces)

> Entry no 92A

> Entry 92B

> Entry 92C

- State List

At present 61 subjects. Originally 66 subjects.

5 subjects were shifted out of state list to concurrent list.

No addition in state list.

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249 temporary
252 permanent

positive list
restricted.

• Concurrent List

Centre has dominance. In case of conflict betn centre & state law, the law made by Centre shall prevail. In some situations, state law may prevail but it is possible only with the consent of the Centre.

Originally there were 47 subjects but now 52.

Residuary power lies with Centre

Analysis

- Original constitution already tilted in favour of centre, got further tilted in favour of Centre.
- However, since coalition era we see not much shift taking place. Since coalition era only one entry has been added in the Union List, i.e., 92C dealing with taxes on services added by 88th C.A. Act 2003.

Areas of dispute in legislative

- Dominance of centre in legislative sphere as per 7th Schedule.
- Power of Union in legislative sphere can further be increased in both normal & emergency situations.

Situations in normal times.

- Art 249 by which RS can authorise centre to make law. ^{on state subject}
Debatable issue is RS is not a federal chamber.
- Art. 252

Transfer of power to Union govt. with the consent of the states. (2 or more states)

With the consent of at least 2 states, Parliament can make law on a particular subject in the state list. †

Debatable issue: Unlike Art 251 the transfer of power u/A 252 is permanent. Now even amendment in the law can be made only by the Union. It limits the options of the new govt. in the state.

- Art. 253

It is an universal principle in all federations that distribution of power shall not be relevant in context of intⁿ treaties & commitments/agreements.

Art 253 has become a serious concern because of increasing transgression by Union on the subjects of state list to fulfil intⁿ obligations.

In above case the right approach is Central govt. should go for effective consultation with state govt. before accepting any intⁿ obligation.

- Art 200 201

Reservation of bill by Governor for President's consideration.

It undermines Parliamentary democracy at state level. It comes under discretionary power of Governor.

There is no time limit within which President has to take decision. No conventions have been set up.

The exercise of power is absolutely arbitrary.

IN

In Emergency situation

- Art. 250 Power of Parliament to legislate cent. any matter in State List when proclamation of emergency is in operation (Art. 352).

- Art. 356 In case of constitutional breakdown in the state, legislative powers of the state comes under Union Parliament which can delegate it to the President.

Centre - State Administrative & Executive relations

- Union has executive power on the subject of Union list, state has executive power on subject of state list. Ordinarily executive power on the subject of concurrent list lies with state govt. until & unless the law specifically prescribes union to exercise power.

Limitations on executive powers of the state

- Art. 256 Executive power to be used to ensure the compliance of the law made by Union Parliament or any other law existing w.r.t. the state.
- U/A 257 State has to exercise its executive power in such a manner that it does not impede or prejudice the exercise of executive power of Union.

Power of Union govt.

- It has power to issue directions & power to punish in case of non-compliance.
- Power of punishment: • U/A 256 & 257, Union can give directions to the state govt.
- U/A 365, Union can punish state govt if state govt. fails to comply with the directions of Union govt. It is lawful for President to ascertain that govt. in the state cannot run in accordance to the Constitution.
- Art. 355: It is the duty of the Union to ensure that govt. of every state is run in accordance to the Constitution.
- Art. 356: Constitutional breakdown & imposition of President's rule.

Trend in above context:

- Frequent use of art. 356 has been a cause of controversy. It is a unique feature of Indian Constitution. Federal structure is transformed into unitary. As per Ambedkar, it was introduced as a precaution. Ambedkar expected this provision to become a dead letter. However it didn't happen that way. It has been used more than 100 times. However there has been decrease in the use of Art. 356 since the beginning of coalition era, judicial & presidential activism.

Supreme Court's Guidelines in S.R. Bommai case

- ~ Federalism is a basic structure of the Constitution.
- The exercise of art 356 is not beyond the scope of Judicial review.
- Though court cannot inquire what advice has been tendered by the ministers to the President, but court can get the material on the basis of which President has issued proclamation.
- This material has to be 'speaking document'. *[Self evident]*
In case court finds material irrelevant, it can declare proclamation invalid & restore the dissolved assembly & govt.
- Assembly not to be dissolved immediately so that it can be reactivated.

Suggestions by Punchhi Commission

- Warning to be issued to state govt.
- State govt. should be allowed course correction.
- Not to be used as first option & the only option.
- To be used only in a situation when not taking action

may result into disastrous consequences for the people living in the state or unity & integrity of India.

2. Deployment of Union Armed forces

As per entry 2a of Union list, Union can send its armed forces or any other force in aid of the civilian power of the state.

Basis :

U/A 355, it is the constitutional obligation of Union to protect each state from external aggression & internal disturbance.

Issues of dispute :

- Suo motu deployment of Union armed forces
However according to SC, centre can go for suo motu deployment.
- When these forces work in a particular state, the state govt. has no say w.r.t power, privileges, jurisdiction & liabilities of these forces.
- States have an objection over the continuation of term 'internal disturbance' in art 355 whereas it has been replaced by armed rebellion U/A 352.

3. All India Services

Its a colonial legacy. It is unique to Indian federation.

Ideally there should be only 2 cadres.

• Central Services for subjects under Centre

• State services — " — State

However in India all AIS undermine Federalism

State govt can only suspend the official. It cannot dismise the official from the parl. In most of the situations officials act as agent of the Centre.

4. Position of Governor

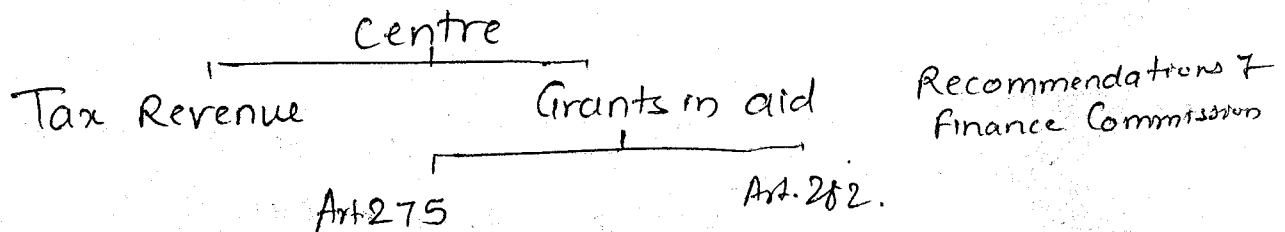
Centre - State Financial Relations

Most dynamic area of Centre & state relations and has been changing since beginning.

Guiding Philosophy / approach

- Cooperative federalism, not only between Union & states but among states also.
- scheme is designed with an objective to deal with regional disparities & to ensure that throughout the country some min. living standard is achieved & disparity can be tackled.

One of the major objectives behind the federal distribution of financial powers was to check the imbalance. But we have not been able to achieve this objective. New economic policy has further increased the imbalance.



Concerns of state

- At present there exists horizontal & vertical imbalances. (s-s) (c-s)
- States are dependent on centre. There is a mismatch betⁿ expenditure & resources of the states.
- The pattern of distribution of taxes is such that taxes with greater returns & which are more elastic in nature come under Union List. The taxes in the state list have lesser yield & are also rigid.

- Sales Tax is the major tax by which states can have greater revenue. However there has been a continuous change in sales tax regime which has increased the powers of Union.
- Since state taxes are not sufficient, constitution provides for
 - Distribution of Union taxes betⁿ Union & states
This is determined as per the formula decided by Finance Commission.
 - In aid of revenue, constitution also provides grants in aid.

There are 2 types of grants

i) Disbursed / Given u/A 275

- They are known as statutory grants, given on the recommendations of Finance Commission. Parliament may by law determine the grant to be given.

ii) Discretionary grants u/A 282

These are called discretionary grants because they are given at the discretion of executive. Both Union & state executive can give this grant. However in practice the provision is used only by the Union govt.

no sufficient resources with states

At present discretionary grants are given on the recommendations of Planning Commission.

States' concerns

- Regarding Finance Commission (F.C.)

- There is greater trust for F.C. than P.C. The reason being F.C. is a constitutional body & it is

expected to be more neutral. Still system is not satisfactory. System of appointments of members of F.C. is not transparent. There is no role of states in appointment of members of F.C.

At least in p.c. states are involved through NDC (National Development Council) But there is no such involvement of states in F.C.

- Regarding Planning Commission (P.C.)

- It is an extraconstitutional body.
- It has achieved the status of 'supercabinet'.
- There is no role of states in appointment of members of P.C.
- Discretionary grants by Union are disbursed on the recommendations of P.C.
- System has come into existence where F.C. grants are for revenue expenditure & P.C. grants are for developmental expenditure.
- Outlay of discretionary grants is many times more than the outlay of recommendations of F.C.
- P.C. has introduced the system of matching grant under which states have to arrange / mobilise their own resources & they get matching grant from the Union. The developmental issues come under state list. States are unable to formulate their own policies. They are forced to mobilize funds for the policies designed by Union govt. Ideally state should be made free to design their own policies as per local needs & funds to be distributed accordingly.

Borrowing

States can also borrow from market to fulfil their expenditure requirement. Both Union and state can borrow. However borrowing powers of state govts are limited.

- States can borrow only from the domestic market.
- In case state has taken loan from Central govt & a part of loan remains outstanding, states cannot borrow fresh loan from the market without the consent of Union govt.
- Similarly if Union govt. has given any counter guarantee to the loan taken by state govt, no fresh loan without the consent of Union govt.
- Concerns w.r.t. profession tax
- * States feel that the constitutional limit of ₹ 2500 /yr on profession tax ^{is} ~~are~~ too less to fulfil their revenue needs.
- Constitution also restrict states from imposing tax on Union on the sale of electricity to be used by Union govt, Railways or any Railway company.
- They cannot impose taxes on water used by any authority prescribed by Parliament for developing any inter-state river or river valley.
- Constitution provides mutual exemption in case of property of Union & states from taxation.

Scheme of distribution of taxes & concerns of states

(Art. 268 - 271)

- Art. 268

These are duties levied by Union but collected & appropriated by the states.

For
uniform
rate of
taxation

- Stamp duties on items mentioned in Union list
- Duties on medicinal & toilet preparations as mentioned in Union list.

States' concern: They expect duties to be enhanced to increase the revenues of the states.

- Art 268 A

Introduced by 88th C.A. Act. Deals with service tax. At present tax is levied by Union. They are collected & appropriated by both Union & states as per the formula decided by Parliament by law.

Introduction of this tax has been because of new economic policy (service sector jumped a lot). In case GST comes into existence, the provision has to be further amended & states shall also get power to levy taxes on services.

- Art 269

It is tax levied by Union, collected by Union but assigned to the states. It is meant for interstate trade & commerce.

- States feel that there is a scope to enhance the rate of tax. This provision provides scope for Union to encroach in sphere of sales tax.

except
newspapers

entry tax - octroi

- Art. 270

The content of Art. 270 has been changed on the recommendations of 10th F.C. by 80th C.A. Act 2000.

All taxes excluding under 268, 268A, 269 & Surcharge u/A 271 Levied by the Centre are made divisible between Union & states as a part of alternative devolution scheme.

States' concerns:

- The percentage of shareable revenue should be increased.
- ~~Inter~~states should also be given share in the surcharge.

Impact of new economic policy on the financial economic situations of the states.

- Mixed impact
- Because of rolling back of the state & primary given to the private sector, there is some reduction in the developmental expenditure by the states.
- Private investment have reduced the dependency on Union govt.
- However new economic policy has enhanced interstate disparities. Much of the investment goes to better off states
- Acts like Financial Regulatory Budgetary Management Act to impose fiscal discipline has impacted developmental expenditure. This fiscal responsibility act has forced states to borrow more from markets to carry developmental programmes, thus increasing the debt burden of the states.

Introduction of GST

Many states are apprehensive of the loss of revenue. Earlier they were also apprehensive of encroachment

in their jurisdiction of taxation.

Purpose of introduction

- To transform India into a single market
- To enhance the competitiveness of Indian industry
- Reduce the burden of taxation on consumers,
- make it easier for intⁿ business & investor community to do business & investment in India.
- To check tax evasion.
- More than 100 countries in the world have already gone for GST.
- At present in India there is no clear classification of goods & services. Even when a good is manufactured services are used. Many taxes will go once GST is introduced.
- In India, because of states' apprehensions following approach is adopted
 - Concurrent taxation
Both Union & state will have power to levy tax.
 - For the time being petroleum has been kept out
 - Statutory guarantee to states to make compensation for revenue loss.
 - Exceptions to local self govts to impose octroi or entry tax.

Inter-state relations

The principle of cooperative federalism has been applied.

Constitutional provisions.

Art 261

Public acts, records & judicial proceedings of one state shall be given full faith & credit throughout the territory of India.

- Part ~~XIII~~ XIII dealing with trade, commerce & intercourse within the territory of India.

The idea is to develop a common market, remove internal barriers & to ensure that there is no discrimination against any state either by Union or by states.

- Art. 131

Original Jurisdiction of SC for federal disputes.

- Art. 262

Deals with specific category of disputes, i.e., inter-state water disputes.

- Art. 263

Deals with interstate council.

- Zonal Council created by State Reorganisation Act 1956

- NDC

Inter-state water dispute

- Importance of the issue.

In the coming years, there is a possibility of increase in water disputes.

Reasons:

- Increase in demand
- Climate change
- Creation of new states

- India has around 16% of the world population & just 4% water resources. 80% of Indian territory is in interstate river basin. Major rivers are interstate.

→ M = Water Resource
case study.
· Kaveri water dispute
timelax.
Hondel website
· Narmada water dispute

- Constitutional provisions

- Water is a state subject. However under entry 56 of Union list, Union has powers w.r.t. interstate
 - > Rivers
 - > River valleys
- Powers of Union w.r.t. interstate river, river valleys.
 - > Power to regulate
 - > Power to develop
- Scope of the power
Very wide scope. It has power to regulate to the extent Parliament declares by law that it is expedient in public interest.

Analysis

Constitution gives enough scope to the Union govt w.r.t. inter-state rivers & river valleys. However Union has always treated water as if it is purely a state subject and has not played a role more than a reluctant mediator.

- Mechanism available for resolution of inter-state water disputes.

• U/A 131

States can approach to SC. This was the only method used upto 1956.

- In 1956, Parliament enacted Inter-state Water Dispute Act. as per provisions of Art. 262.
- Despite inter state water dispute Act which excludes jurisdiction of SC & which makes decision

of tribunal final, states continue to approach SC under special leave petition. Hence it has been suggested to end the tribunal system & restore pre-1956 position.

Constitution of a tribunal is an unnecessary burden on exchequer.

Should pre-1956 be restored?

- No. Reasons
- Constituent Assembly provided alternative routes u/A 262 & 263. So it means that was not the most favoured option.
- Litigation is not the best approach because it does not have flexibility.
- Problems need to be resolved politically.
- Priority should be given to Inter-state Councils & Zonal Councils.

Tribunal system can continue subject to the condition there is a reform in its composition & its working.

As per Punchhi Commission, tribunals can also have members from ~~non~~ non-judicial background.

There have been efforts to improve its working but needs further reforms.

Provisions of Inter-state Water Dispute Act

- It list category of disputes to be treated as water dispute.

The list is narrow, does not include dispute or issues related to environmental degradation, human rights for which, parties are free to approach SC. So there is no total exclusion of judiciary.

• In the original Act, Union govt has to constitute the tribunal once the request is made by the state govt. However before tribunal it should mediate & explore the possibility of resolution.

In the absence of timeframe central govt has done extraordinary delay. e.g. In case of Cauvery water dispute, T.N. govt. requested in 1970.

Central govt. established tribunal only after T.N. govt approached to S.C., got SC's order to force Central govt to set up the tribunal.

Tribunal was set up in ~~1970~~ 1990.

Uptill 2002, there was no time limit within which tribunal had to be constituted.

Impact: Extraordinary delays.

e.g., In case of Cauvery water dispute, request...

> In case of dispute related to Narmada, request was made in 1963.

Central govt. wasted 6 yrs in fruitless negotiations.

Tribunal was constituted in 1969.

Award published in 1974.

> Godavari water tribunal &
Request in 1962.

Tribunal in 1968

Award in 1979

Publication of Award in 1980

Problem associated with delays.

• States invest resources to build infrastructure like dams, etc. to strengthen their claims and

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to tilt judgement in their favour.

- With passing of time, demand also increases & more difficult to achieve negotiated solutions.

- In 2002 another loophole was plugged.

Earlier there was no time limit within which tribunal has to give its judgement.

Now it is mandatory to give award within 3 years. & in exceptional situations can be extended to further 2 years.

- However 1 loophole has not been addressed.

States can seek clarification on tribunal's award within 3 months. but no time limit within which clarification ~~must~~ be provided.

Punchhi Commission has suggested to plug this loophole also.

- Neither Act nor amendments have clarified the status of interim award. & whether tribunal can give interim award or not.

As per SC, interim award can be given by tribunal and interim award are also binding subject to the condition they are published in the Gazette.

- Status of final award

In 2002, by amendment it was clarified

that the award of the tribunal is to be treated at par with an order or decree of SC, once published in Gazette.

According to Punchhi Commission, amendment has made no change in ground situation even if it is binding but still states approach to SC under special leave petition.

- Inter-state water dispute Act and the Resolution of Punjab Legislative Assembly

In 1986, tribunal was constituted to determine the distribution of water of Ravi & Beas. Tribunal gave report in 1987.

Against the award of tribunal, Punjab L.A. brought an enactment nullifying the award of tribunal. Matter has been referred to SC U/A 143 in 2005.

- Jurisdiction of SC w.r.t. interstate water disputes.

As per the Act, the jurisdiction of SC is excluded.

As per SC, SC can entertain the residuary disputes other than those mentioned in inter-state Water Dispute Act. SC shall not question the determination of tribunal. SC can review whether tribunal has followed the procedure established by law or the award reflects mala fide intentions.

Suggestions:

- Such problems can be resolved only by participatory & consiliatory approach.
- As per Punchhi Commission, there is a need to improve the working also. Tribunals need to deviate from the strict judicial format & go for more practical approach.
- Govt. should notify the award within 10 days.
- Award should be given statutory basis.
- According to Ramaswamy Iyer, he has suggested to establish a permanent tribunal.
- In 1956, along with Inter State Water Dispute Act, River Boards Act was also passed. Till now, no River Boards have been constituted. River Boards to be constituted, it will promote cooperation & consultation among the states sharing river basin; there can be better regional planning, joint efforts & should be the 1st platform for resolution of the conflicts.
- Other Suggestions
 - > Two very significant platforms Inter-State Councils & Zonal Councils
 - > It is suggested to involve stakeholders, Panchayats, Civil society to arrive at negotiated settlements.
- As in USA, original jurisdiction of Federal Court should be utilised. U.S. Supreme Court in Texas

Texas vs New Mexico 1983 case, ~~Oklahoma~~
Oklahoma vs Texas vs New Mexico 1991 case
directed states to resolve the conflicts among
themselves.

- In Australia, federal govt. has adopted
Inter-state rivers.
- SC in India directed govt. for inter-state
river linking project.

Other inter-state disputes

- territorial disputes

- e.g. Belgaon ^{bel} Maharashtra & Karnataka.

This is Marathi speaking area in Karnataka
& Marathi speaking population want integration
with Maharashtra as they feel discrimination
in education & jobs.

Belgaon dispute is a product of grand
bargain. Karnataka has to give some
Telugu speaking areas to A.P. In return
Karnataka got Marathi speaking areas.

- Views of Atul Kohli:

Karnataka claims on historical basis,
Maharashtra claims on linguistic basis &
Central govt. looks at it from political basis.

- As per Raiv Longowal Agreement, Chandigarh had to be given to Punjab. But agreement has not been implemented so far.
- Abohar Fazalka town. This is a Hindi speaking area in Punjab which Haryana demands to be integrated in Haryana.
- Many such territorial disputes in North-East.