Contemporary Issues - 5 Governance/National

26 Frequent disruptions of Parliament and its impact

The broad outline of parliamentary democracy is widely known. People elect representatives to parliament. These members of parliament debate the appropriateness of legislation to accomplish societal goals. For that debate to lead to useful legislation that has popular support, sets of procedures have been adopted to assure fair and thorough discussion by all. In theory, parliaments translate popular wishes into public laws. Anything which interferes with that translation, interferes with democracy.

In parliamentary form of government, MPs are required to keep the government in check and oversee its functioning. One of the ways in which they do so is by asking ministers questions about the work done by their ministries. Ministers respond to such questions during the first hour of Parliament, which is known as question hour. During this hour, 20 questions are slotted for oral responses by ministers. Based on the response, MPs can cross-question and corner the minister by asking supplementary questions. On certain occasions, they are also able to extract assurances from the minister to take action on certain issues. When question hour is disrupted, not only are these opportunities lost, it also leads to ineffective scrutiny of the work done by the various ministries of the government. In 2012, out of the 146 hours allocated for question hour in both Houses of Parliament, roughly only 57 hours were utilized.

Adjournments caused by disruptions and pandemonium, holding of dharnas by members rushing to the well of the House and unwillingness to participate in discussions are some of the concerns impacting the functioning of the Parliament.

When Parliament is disrupted regularly, its capacity to make laws is affected. Disruptions in Parliament also eat into the time available for discussing a bill in the house. In Lok Sabha, roughly 35 per cent of bills were passed with an hour or less of debate, a case being the sexual harassment bill, which was passed by Lok Sabha in just 16 minutes. Some would argue that since parliamentary committees scrutinise most bills in detail, there is no harm done if the bills are not debated in the House. However scrutiny of a bill behind closed doors is hardly a substitute for spirited debates on the merits and demerits of a bill on the floor of the House.

A variety of specific problems that adversely affect democracy are said to arise out of the disruptions.

- **It prevents action on important legislation**
- **It forces the adoption of critical legislation without debate**
- **It has empowered parliamentarians who lack appropriate skills**

- **It undermines the credibility of party leaders**
- **It undermines respect for the MPs and MLAs**

Economic loss

There have been some estimates of loss caused by Parliament being disrupted, based on the annual budget of Parliament. This is an incorrect way of judging the cost. The actual cost is the economic loss caused by the delay in passing important bills and by the insufficient oversight of government functioning. It is difficult to quantify the loss ensuing from the delay in passing various pieces of legislation. However, it is obvious that not implementing many of the above bills would have significant costs for various stakeholders — students and farmers, for instance. If the delay results in slower economic growth, it would also have implications for tax collection. Here's a sampler: a 1 per cent slowdown in GDP growth amounts to a loss of about Rs 90,000 crore to the economy and about Rs 15,000 crore in tax collections. It is important that Parliament focuses on discussing key bills and passing them with the appropriate amendments, rather than stalling them indefinitely.

Steps needed

One way forward would be to address the root causes that deter Parliament from working in a smooth manner.

The way Parliament decides its daily agenda gives an indication of what can be done. There is a weekly meeting of the all-party Business Advisory Committee to decide the agenda for the following week, and this committee also meets every day to fix next day's plan. The decision is made through consensus. This means that every party has a veto on any topic suggested for inclusion in the list of business. Even if the process is modified to a majority decision, the government can block any topic as it has the highest number of MPs. This leads to an interesting conundrum: Parliament has the role of holding the government to account, but the government can control what topics may be taken up for discussion. As this process is used to decide whether a discussion will be followed by a vote, the government can control that decision too. This contradiction highlights Mr Jaitley's point that parliamentary accountability may be subverted by the government and in such cases, the opposition has no other choice but to resort to disruption unless the government agrees to discuss certain topics. We have seen this behaviour several times in the last few years, for example, when the entire winter session of 2010 was disrupted until the government agreed to the formation of a Joint Parliamentary Committee to inquire into the process by which 2G telecom spectrum was allocated.

Several steps can be taken to address this problem. One way is to say that any motion or discussion has to be taken up if a certain number of MPs gives a written notice. The noconfidence motion requires just 50 MPs (slightly less than 10% of the strength of the House) to be admitted. The threshold can be increased, and suitable thresholds fixed for discussions without a vote and voting motions. For example, there could be a new rule for discussion if a certain percentage of the strength of the House (say 20%) asks for it, and a voting motion if a certain percentage of MPs (say 30%) gives a written notice.

Another approach is to guarantee some time for the opposition. The British Parliament allocates 20 days a year when the agenda is decided by the opposition. It also requires Parliament to meet more frequently. In the 1950s, the Indian Parliament met for 120-140 days every year; now the number ranges between 60 and 70 days. Also, the parliamentary schedule is decided by the government, which means it can postpone or curtail a session if faced with uncomfortable issues. It can be fixed in two ways. First, a calendar of sittings should be announced at the beginning of each year for limited flexibility. Second, the rules should be amended to ensure that House is summoned if a significant minority (say 25% or 33%) of members gives a written notice.

Methods of strengthening institutional mechanisms within Parliament

- **Strengthening the legislative process**

With time available for debating and passing legislation shrinking, there is a need to strengthen the legislative process to make it more rigorous and time bound. Currently there is no institutional mechanism to ensure that stakeholders give their feedback on a law before it is introduced in Parliament. Public participation and feedback in the pre-legislative process would strengthen a draft Bill by ensuring that differences in viewpoints are addressed before its introduction. This would make it easier for Parliamentarians to resolve conflicting objectives while considering it in Parliament. In its 2002 Report, the National Commission to Review the Working of the Constitution also recommended that, "all major social and economic legislation should be circulated for public discussion to professional bodies, business organisations, trade unions, academics and other interested persons."

Recently the National Advisory Council also recommended measures through which the government could ensure proactive, wider and transparent pre-legislative scrutiny of laws.

Typically, the practice in Parliament is to pass legislation by voice vote and not recorded vote. If an MP requests for a recorded vote, the Speaker or Chair must call for a 'division' which requires every MPs' vote to be recorded. During the 15th Lok Sabha, there were 19 instances of recorded voting while other Bills were passed by voice vote. The absence of recorded voting makes it difficult for citizens to know how their MP voted on a particular law or issue in Parliament.

- **Revisiting the anti-defection law**

Currently, the anti-defection law ensures that when a whip is issued by political parties, MPs vote on debates and motions in Parliament based on their party whip. This limits MPs' freedom to vote on a Bill or motion according to their choice or beliefs. An MP voting against a party whip can be disqualified from his parliamentary seat. In 2009, the Chairman of the Rajya Sabha recommended that, "we need to build a political consensus so that the room for political and policy expression in Parliament for an individual member is expanded. This could take many forms. For example, the issuance of a whip could be limited to only those Bills that could threaten the survival of a government, such as money Bills or no-confidence motions. In other legislative and deliberative business of Parliament, this would enable members to exercise their judgment and articulate their opinion."

- **Convening of Parliament and fixing an annual calendar of sittings**

The decrease in the number of sittings of Parliament reflects poorly on its image as the highest law making body. However, Parliament does not have the power to convene itself, as the government decides if and when Parliament should convene, subject to the constitutional requirement that a session must be held at least once in six months. Parliament is convened by the President upon the advice of the government. Effectively, this provision gives the government the power to decide when Parliament shall meet to oversee its functioning. It is important that an independent Parliament meets often, and is able to convene itself without the permission of the government.

While a fixed number of parliamentary sittings per year have been recommended, it might be useful to consider the practice in other countries, like the UK and Australia, where an annual calendar of sittings is announced in advance. This will allow better scheduling of business and reduce the scope for the government to postpone a session if it wants to defer parliamentary scrutiny on some emergent issue.

- **Institutional research support for MPs**

MPs have to routinely debate technical legislation, discuss budgets and hold the ministers accountable for different policies and programmes. However, they do not have institutional mechanisms by way of high-quality research staff or office space to perform their parliamentary duties. They get an office allowance of Rs 45,000 per month. This includes Rs 28,000 for staff costs, and the balance to cover costs associated with running their office. This can be combined with some support from the Parliament library, are the only resources they have to scrutinise the work and proposals of ministers who have the entire bureaucratic machinery of the government at their disposal.

In other democracies like the USA, each Senator is provided office space next to Congress, has a total office allowance of about $4 million per year, of which staff salaries are $3 million per year.

Similarly in the UK, MPs are allotted office space, and the salary of staff members are reimbursed to the tune of £87,000 per year.

- **Strengthening the committee system**

Parliamentary standing committees were established to strengthen the expertise of Parliament when examining legislative, financial and policy matters of the government. The effectiveness of these committees is constrained by various factors. The technical support available to parliamentary committees are very limited and only include a secretariat that enables scheduling of meetings, note-taking etc. The reports of standing committees are not deliberated in Parliament and their recommendations are not binding on the government. Further, government ministers are not required to state reasons for rejecting recommendations made by the standing committee. As per current practice, ministers do not depose before a parliamentary committee even if an issue under examination falls under his purview. Most of the inquiries that committees conduct are directed towards officials in the ministry, even if the minister is responsible for making the relevant policy decision. This practice differs from countries such as the UK, where ministers are required to depose before parliamentary committees.

The Chairman of the Rajya Sabha had suggested, "the committee system can be strengthened by having a higher attendance requirement and by the induction of experts in an advisory capacity. The present practice of exempting ministers from appearance before the committees should be reviewed. As in other parliamentary democracies, the examination of witnesses (but not the finalisation of reports) should be open to the public. This would make the public better aware of this important aspect of the work of legislatures."

27 Impact of dismissing Planning Commission

Planning Commission was set up in March, 1950. It laid emphasis on the need of planned development to raise the standard of living of the people and to reduce the strain on the economy caused due to conditions created by the war and the influx into India of the several million persons displaced from their homes and occupations. It then draws attention to the fundamental rights guaranteed to the citizens in the constitution and the directive principles of the State Policy which lay down the broad lines of the new social order which the State should seek to secure.

The main functions of the Planning Commission were:

- **Assessment of the Material, Capital and Human Resources and their Conservation and Augmentation:**

The first place is given to human resources. The fundamental aim of all Planning is to raise the quality of life of men and women. There should be well knit education system, facilities for technical education, natural resources should be studied quantitatively and qualitatively and the best methods for conserving them and utilizing them should be introduced. There should be regular studies of financial resources, price levels and consumption patterns that can be made available from time to time.

- **Balanced Utilization of Resources:**

The plans should suggest the use of available resources for securing the maximum rate of growth in the economy with largest measure of social justice attainable.

- **Social change:**

Studies should be made to introduce changes in the social order which are essential for the success of the plans. There should be studies of changes that have to be brought about in attitudes and outlooks.

- **Policy Reviews:**

The broad strategy of the plan should be worked out along with the economic, fiscal and other policies on which it should be based. The chapters in Planning Commission's reports dealing with individual sectors of the economy and with the problem of administration should include statements of the policies to be pursued. These have to be reviewed and the changes considered necessary placed before the Cabinet.

- **Planning Techniques:**

These should be continuously studied and improved. They included perspective planning and patterns of development etc.

- **Settlement of Priorities:**

Criteria should be evolved for the fixation of priorities and for the reconciliation of competing claims on the Country's resources. For this there should be critical scrutiny of projects and programs from the economic and financial point of view.

- **Public Co-operation:**

Continuous studies should be made of the steps which should be taken for making the people feel a sense of proprietorship in the plans so that efforts on a national scale might be made for their successful implementation.

- **Appraisal of Progress:**

There should be appraisal of projects from time to time with an analysis of the factors which hinder development. Based on such analysis, the Commission should recommend such adjustments of policy and improvements in administration as may be needed to secure successful implementation.

- **Evaluation and Research:**

There should be evaluation of results from time to time; and research should be organized to study social and economic results of legislative measures and for other connected purposes.

There is a need to evaluate and restructure every organisation as circumstances change and the Planning Commission is no exception.

The Commission is supposed to be only an advisory body. Its recommendations are not necessarily accepted by the Cabinet, despite the fact that the Prime Minister and some of his

colleagues holding key portfolios are also members of the Commission. The task of implementation is left to the Union Ministries and the State Governments. Much of the criticism against planning falls in this field. The experience of years shows that the effective implementation has been the weakest link in the Planning Process. It was the outspoken Prime Minister, Rajiv Gandhi, who said that only 15 paise out of every rupee spent on the plan implementation reaches to the people, particularly in rural areas where the vast majority of our people live. A close examination of the situation reveals that five factors are involved in it, namely, "lack of enlightment on the part of the people; character of official personnel, insufficient and ineffective supervision, want of adequate communication among the officials and the absence of any correct criterion of evaluation. It is in this field that efforts have been made to introduce the two concepts: Democratic Decentralization and Popular Participation, particularly after the introduction of the Panchayati Raj in the Country.

The planning process has many ups and downs. Under Nehru, it was followed with enthusiasm. Nehru was thus not only a creator of the Commission but also its mentor and took lot of interest in the working of the National Plan. Under his successor Indira Gandhi, there emerged the phenomenon of giving up planning and taking resort to Annual Plans. She was also compelled to impose Emergency for about two years. Her successor, Rajiv Gandhi, perhaps did not have much idea of economics and had to take resort to large scale borrowing from foreign and indigenous sources. The economy of the Country was adversely affected. His two successors had to face the dilemma and a stage was reached when Chandra Shekher's Government had to pawn the country's gold reserves to get a paltry loan of 400 crores. It was in these circumstances that P.V.Narsima Rao assumed reins of office. He and his Finance Minister had thus no alternative except to embark upon a new policy arising out of economic compulsions dictated by the creditors, the World Bank and the International Monetary Fund. Others took natural advantage of the plight and imposed certain conditionalities. This change in policy has been described in official circles as "Continuity with Change". In practice, it meant a revolutionary change leading to demolition of various forms of controls and making the economy free and competitive, thus bringing back the dominance of the private sector. The new changed policy has proved effective and successful. There is more money in the kitty so far as foreign exchange is concerned; the pledged gold has been got back; hundreds of crores of rupees have been got by loan.

In the post-liberalisation period, the concept of planning itself has undergone a change. We have moved, at best, to an era of indicative planning. The blend of public and private investment has tilted in favour of the private sector.

During the approval of Eighth Five Year Plan at the meeting of National Development Council, the Prime Minister emphasized the need for continuing planning and said that the market mechanism could not be the sole vehicle of development and had to be dovetailed(convenient) with planning. Planning was necessary to take care of the poor and downtrodden.

The working of the Planning Commission has been criticized on many accounts. The position of the Planning Commission in reality depends upon the attitude of the Prime Minister towards the Commission. If the Prime Minister wants to use the Planning Commission as the pivot of economic planning and development, it will acquire a lot of importance. If he does not want to use it, the Commission becomes useless. The Administrative Reforms Commission, therefore, recommended to discontinue with the practice of Prime Minister's formal and mandatory association with the Planning Commission, though acceding to the view that he should be invariably kept informed of the important decisions taken by the Commission and when he deems fit, may also attend the meetings of the Commission and chair it.

Further the overcrowding of the Planning Commission with the Central Cabinet Ministers has also militated against the expert nature and functional autonomy of the Commission. Indeed, the objective of the creation of Planning Commission was to have a body, outside the normal hierarchy of the Government, consisting of professionals to objectively assess and augment the resources of the country in order to formulate a feasible plan within the broad policy guidelines of the Government. Over the Years, the Commission appears to have turned out to be no less than a Government Department with the usual bureaucratic structure and functions, engaged in routine matters, instead of acting as a staff agency to suggest initiative and feasible policy alternatives to the Government. The need, therefore, is to restore the professional autonomy of the Commission by fine-tuning its structure through the reduction in the overbearing political component in order to keep its relevance intact.

The most strident criticism of the working of the Planning Commission during its existence is that the Planning Commission, instead of confining itself to the formulation of the perspective of Five Year and Annual Plans, bothered itself more with execution and evaluation of the Plans, which need to have been the responsibility of the Development Administration of the Country. As Jawaharlal Nehru pointed out so succinctly, "The Commission, which was a small body of serious thinkers, had turned into a Government Department having a large number of Secretaries, directors and of course, a big building.

In a nutshell, the concentration of the power of allocating plan grants in the hands of the Planning Commission without any corresponding responsibility to the Parliament or other elected bodies has prevented the vision of founding Fathers of the Constitution so much that they have emerged as one of the most formidable irritants in Centre-State Relations in India. Though, experts have opined against the consideration of the Central Grants to be a subversion of the Federal System, what has gone against the spirit of smooth Centre-State Relations is the tendency on the part of the Planning Commission to examine in details not only the total state plans but also the sectoral plans. Moreover, the tied grants disbursed by the Planning Commission at its discretion were not liked by the states. The states demanded using these resources as per the priorities of individual States. Moreover, in its enthusiasm to plan for the whole Country, the Commission betrayed an utter ignorance of the immense diversities prevailing in the Country and went ahead to work on the basis that nationally there should be practical uniformity. Naturally, hence the planning for development of the Country practically superseded the Federal Constitution with the result that it was functioning almost like a unitary system in many respects.

Nature and scope of the functioning of the Planning Commission has also impacted adversely on the scale and context of the functioning of certain constitutional bodies like Finance Commission, which have been designed to act as the fulcrum of the efficient and cordial Centre-State Financial Relations in the Country. Indeed, it appears to be a fraud on the Constitution to allow the executive-decreed bodies like the Planning Commission to take charge of the vital subjects of the governance in the Country, more so, by subordinating the Constitutional bodies. Though the apprehensions on the potentiality of the Planning Commission to 'become sort of the Super Body over the Cabinet' did not prove to be true, its overbearing impact on National Economic Policy making could not escape the attention of the scholars who found the Cabinet to be 'relegated to the fringe' by the Commission in this regard going a step ahead, in exposing the levitation called Planning Commission. Ashok Chandra pointed out that the Commission's undefined position and wide terms of reference had catapulted it into a position of 'the Economic Cabinet, not merely for the Union but also for the States'.

It has also earned the dubious distinction of being a parking lot for cronies of the erstwhile UPA Government. In 2012, it was criticised for spending 50,000 to renovate two office toilets and then for suggesting that citizens who consumed goods worth Rs 27 or more were not poor. The Planning Commission has been plagued by red-tapism and other controversies which have affect its functioning.

The need of the hour is that the very techniques and objectives of Planning should undergo a radical change so as to enthuse the people and create confidence in them that the plans are meant to achieve prosperity. Restructuring an organisation can be of two types. One approach takes the functions of the organisation as a given and proceeds to restructure it to make it more effective to fulfil those functions. The second approach is more fundamental. It questions the very basis of the organisation and focusses on the relevance of the basic functions it has been performing.

Features to be incorporated in new body

If the Planning Commission is to be replaced by a serious research think tank, then it must have skilled experts, not unskilled political appointees or unaccountable bureaucrats. Domain expertise and competence rather than political loyalty and bureaucratic seniority should be the eligibility criteria for recruitment. The search process should be transparent and open to all experts - global and domestic. Creating artificial barriers to entry will restrict the talent pool and withhold the institution from realising its full potential. Given how difficult it is to attract high-quality experts, their appointment must also be done strictly independent of the Ministries and the bureaucracy. High-quality scholars will drive the agenda of high-quality research such that this institution becomes a producer and repository of knowledge and serves as the "go-to" place for all government ministries. Given the diversity of performance and experiences of different State government, this think tank can also serve as a crucial platform for knowledge sharing between different States.

The objective of new body should be to prepare blueprints, help design action programmes, and monitor and evaluate outcomes to achieve the goals. New body will define what 'Vikas' will mean for India of the 21st Century. The goal should be that India, with the largest number of people in the world in 2050, will also be number one country in the world.

It should bring long-term perspectives which are generally missing in operating ministries fighting day-to-day battles. Such long-term perspectives are important because in many areas (such as human capital formation) gestation lag is long. The second area where it will contribute is to take fully into account the connectivity between sectoral programmes. It is well-known that different operating ministries operate as silos (and even jagirs as the Prime Minister mentioned in his Independence Day speech) while in real life their operations are connected. For highlighting these links and achieve "optimum utilisation of resources" a central economic agency is needed.

- **Co-ordination**

New body should be the agency to co-ordinate policy issues where different ministries are working with their own imperatives and mindsets. Energy policy, transport policy, urbanisation policy, water policy, land policy all require inter-ministerial co-ordination. In addition to preparing national long-term blueprint, it will help each State and Union Territory to prepare its own long-term blueprints. The task will be managed by States and UTs but will provide financial and intellectual support as needed.

By producing blueprints on which there can be a national consensus, it may help in making development a mass movement similar to what was done at the time of freedom struggle. All individuals at different levels will understand what the nation is trying to achieve and how it is in the interest of all and requires support of all. This will help in ensuring that steps of 1.25 billion people are in the same direction and not cancelling each other's efforts. In the light of nationally agreed long-term blueprints, operating ministries will prepare detailed annual action programmes/budgets in consultation with the Ministry of Finance and with right to comment by NDC. The Prime Minister's Office (PMO) will decide in cases of conflicting views.

- **Allocation of resources**

The allocation of financial resources between States and the Centre will be the function of the Finance Commission. However, there would be many central projects (for example, in Railways, Ports, Shipping, Education and Health) where the allocation of resources by the Centre will have an obvious spatial pattern and thus impinge on States' development. For these expenditure by the Centre, it will be a forum for ensuring inter-State balance with full participation of the States.

Monitoring and evaluation of the programmes will be an important function of new body. This will focus not on auditing functions but on effectiveness and efficiency of the operations in achieving the objectives. It will report to PMO for follow-up and necessary actions.

It will also prepare the Annual Economic Survey which is now done by the Ministry of Finance. It will be in a more objective position to monitor annual outcomes of all ministries, including the Ministry of Finance and submit its report to the PMO and Parliament.

It is desirable that it reflects the views of all partners in development, people, private sector, public sector and workers. In choosing the members of it, the Prime Minister will select persons with domain knowledge of the various segments of the economy and society but not beholden to these segments. Creativity and readiness to think 'out of the box' will be an important criterion in selecting the members of the NDC With these characteristics, NDC will be an important agency for India's Vikas in the new avatar of planning.

The other two functions performed by the Planning Commission now can be delegated to other authorities in the government. The allocation function can go to the Finance Commission and project evaluation can be taken care of by strengthening the Ministries. Thus, a National Development Commission or Growth Commission, which is charged with a mandate to prepare a blueprint with goals and objectives to be achieved over a defined period, may still be the need of the hour.

Conclusions

The new institution that replaces the Planning Commission will need to play each one of these crucial roles. However, it is also important that the negative roles of the Planning Commission, such as approving the Annual Plans of the states, should be done away with. The so-called "regulatory" role of being able to veto EFC notes must also be eliminated. Each one of the positive functions we have described earlier implies a think-tank role. But these functions cannot be performed by just any other toothless think-tank. Their effective performance demands that the institution be empowered in a way that enables it to make a difference at the cutting edge of implementation. Otherwise the "new" Planning Commission, whatever it may be named, will be reduced to a shadow of its former self.

GS SCORE
An Initiative by - S. K. Mishra, IAS (Retd.) & Manoj K. Jha
IAS 2015
Under the expert guidance of
S. K. Mishra, IAS (Retd.) & Team.
GS Mains 2015
✓ 300 Hrs. / 80 Days Comprehensive Courses
✓ Full coverage of all four Papers
✓ Tests & Answer Writing Sessions
✓ Complete Study Material
Batch Starting: 20th January, 2015
Ethics Integrity & Aptitude
✓ By S. K. Mishra, IAS (Retd.)
✓ Complete Coverage of Syllabus
✓ 45 Days Comprehensive Course
✓ 4 Tests Including Model Answer
✓ Comprehensive Study Material
✓ 100 Case Studies
Batch Starting: 5th January, 2015
Essay Writing
10 comprehensive classes that emphasises on Writing Skill, Building Conceptual Clarity & Developing Analytical Ability to handle essays on diverge topics.
Batch Starting: 9th January, 2015
Ist Floor, Apsara Arcade, Karol Bagh, New Delhi-5, Karol Bagh Metro Gate No. 5
9953607114, 9953595114
www.iasscore.in

28 Issues in centre state relation in India

The Constitution provides a federal system of government in the country even though it describes India as 'a Union of States'. The term implies that firstly, the Indian federation is not the result of an agreement between independent units, and secondly, the units of Indian federation cannot leave the federation. The Indian Constitution contains both federal and non- federal features.

The federal features of the Constitution include:

(1) A written constitution which defines the structure, organization and powers of the central as well as state governments

(2) A rigid constitution which can be amended only with the consent of the states

(3) An independent judiciary which acts as the guardian of the constitution.

(4) A clear division of powers between the Center and the States through three lists- Union list, State list and Concurrent list

(5) The creation of an Upper House (Rajya Sabha) which gives representation to the states, etc.

The Constitution also contains a number of unitary features:

(1) The creation of a very strong centre

(2) The absence of separate constitutions for the states

(3) The right of Parliament to amend major portions of the constitution by itself

(4) A single citizenship for all

(5) Unequal representation to the states in the Rajya Sabha

(6) The right of Parliament to change the name, territory or boundary of states without their consent

(7) The presence of All- India Services which hold key positions in the Centre as well as the States appointment of the Governor by the President

(8) The granting of extensive powers to the President to deal with various kinds of emergencies

(9) The right of Parliament to legislate on state subjects on the recommendation of the Rajya Sabha

(10) The presence of a single judiciary with the Supreme Court of India at the apex

(11) The residuary powers under the Indian Constitution are assigned to the Union and not to the States.

(12) The exclusive right of Parliament to propose amendments to the Constitution.

(13) On account of the presence of a large number of non- federal features in the Indian Constitution India is often described as a 'quasi-federal 'country.

Constitutional features in centre state relations

- Article I defines India as a Union of states.

GS SCORE

- Article 2 & 3 empower the Parliament to admit new states or establish new states by uniting territories of two states or changing the boundaries or names of states. However, the bill to alter name, boundary and territory of any state shall not be introduced in the Parliament unless the same has been sent to the concerned state legislature for expressing its views.
- Article 153-155 provide that there shall be a Governor in each state who shall be appointed by the President. The executive power of the Government shall vest in the Governor.
- Article 169 empowers the Parliament to create or abolish Legislative Councils in a State if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.
- Article 200 provides that any bill, which in the opinion of the Governor would endanger the constitutional position of High Court, shall be sent to the President for his assent.
- Article 246 provides that Parliament can make laws on the subjects under the Union List and Concurrent List. Similarly, state legislature can legislate on the subjects in the State list and Concurrent List.
- Article 249-250 empower the Parliament to legislate on the subjects enumerated in the State list in certain specific circumstances and during the period of national emergency.
- Article 252 also provides that if legislatures of two or more states ask the Parliament to make a law on such matters over which it does not have any power to legislate, the Parliament can legislate on such subject.
- Under Article 253, the Parliament can pass laws for implementation of an international treaty or agreement.
- Under Article 254, if there is an inconsistency between the law passed by the Parliament and that by a State legislature on a subject enumerated in the Concurrent list, law passed by the Parliament will prevail.
- Article 256 and 257 provide that the States shall exercise their executive powers in accordance with the laws made by the Parliament and the Union shall have the power to give necessary directions to the States on subject it may consider necessary including those for the construction and maintenance of means of communication and railways. However, any sum incurred in this regard will have to be paid by the Union.
- As per Article 258 and 258A, the Union can confer certain powers on states while states can transfer some of its functions to Union by mutual consent.
- Article 262 provides that Parliament can make laws for adjudication of disputes relating to use, control and distribution of waters in interstate rivers or river valleys.
- Article 263 empowers the President to set up an Inter State Council.
- Article 268 provides for certain duties to be levied by the Union but collected and appropriated by the States, while Article 269 provides for certain taxes levied and collected by the Union but assigned to the states. Article 270 provides for certain taxes levied and to be distributed between the Union and the States.
- Article 275 provides for such grant-in-aids to the states as the Parliament may determine.
- Article 280 provides for setting up a Finance Commission every five years to decide the modalities of revenue sharing between the Union and the States.

- Article 312 provides for establishment of All India services while Article 315 provides for establishment of Union and State Public Service Commissions.
- Article 352-355 empower the Government to proclaim emergency in times of threat to the country by war, external aggression or armed rebellion. During this period, the Union will have powers to give directions to the State or make appropriate legislation.
- Article 356 empowers the President to take up the functions of the State Government and authorize the Parliament to take up the functions of state legislature if the Governor of the State submits a report regarding failure of constitutional machinery in the state.
- As per Article 263 of the Constitution, the President is empowered to form an Inter State Council. The Council is chaired by the Prime Minister and includes Chief Ministers or Heads of Government of State and Union Territories and six Cabinet Ministers nominated by the Chairman as members. Standing Committee of the Council was constituted in the year 1996 for continuous consultation and processing of matters for the consideration of the Council. Standing Council is chaired by the Union Home Minister and presently has six Union Ministers and nine Chief Ministers as members.
- Article 280 of the Constitution provides for setting up of a Finance Commission every five years which shall comprise of a Chairman and four members. Recently 14th Finance Commission was set up for making recommendations for distribution of tax proceeds between the Union and the States, the principles which should govern grant-in-aid and the measures needed to augment the Consolidated Fund of the State for next five years commencing from 1st April, 2015. The 13th Finance Commission recommended that State share in the net proceeds of shareable central taxes shall be 32%. Apart from this the Commission also recommended grant-in-aid to various states amounting to Rs.3,18,581 crores.

Issues between centre and state

Issues in the administrative and legislative spheres

(a) Misuse of Article 356:

Under Article 356, the President can dismiss a State Government or dissolve a State Assembly or keep it under suspended animation in the event of a failure of the constitutional machinery in that State. The Article owes its genesis to Section 93 of the Government of India Act 1935, a section which essentially dealt with the "taking over of the Provincial Government by the Governor."

Since the coming into force of the Constitution on 26 January 1950, article 356 and analogous provisions have been invoked 111 times. According to a Lok Sabha Secretariat study, on 13 occasions the analogous provision namely section 51 of the Government of Union Territories Act 1963 was applied to Union Territories of which only Pondicherry had a legislative assembly until the occasion when it was last applied. In the remaining 98 instances the article was applied 10 times technically due to the mechanics of the Constitution in circumstances like reorganisation of the States, delay in completion of the process of elections, for revision of proclamation and there being no party with clear majority at the end of an election. In the remaining 88 instances a close scrutiny of records would show that in as many as 54 cases there were apparent circumstances to warrant invocation of article 356. These were instances of large scale defections leading to reduction of the ruling party into minority, withdrawal of support of coalition partners, voluntary resignation by the government in view of widespread agitations, large scale militancy, judicial disqualification of some members of the ruling party causing loss of majority in the House and there being no alternate party capable of forming a Government. About 13

GS SCORE

cases of possible misuse are such in which defections and dissensions could have been alleged to be result of political manoeuvre or cases in which floor tests could have finally proved loss of support but were not resorted to. In 18 cases common perception is that of clear misuse. These involved the dismissal of 9 State Governments in April 1977 and an equal number in February 1980. This analysis shows that number of cases of imposition of President's Rule out of 111, which could be considered as a misuse for dealing with political problems or considerations irrelevant for the purposes in that article such as mal-administration in the State are a little over 20. Clearly in many cases including those arising out of States Reorganisation it would appear that the President's Rule was inevitable. However, in view of the fact that article 356 represents a giant instrument of constitutional control of one tier of the constitutional structure over the other raises strong misapprehensions.

However, in 1994, a Bench of the Supreme Court consisting of nine Judges gave its judgment in the case of "S.R. Bommai vs. Union of India," setting out in clear terms the limitations of Article 356. The Court said any Presidential order clamping Art. 356 had to be ratified by both the Houses of Parliament. In addition, the powers of the Judiciary to review the bona fide or mala fide nature of the Presidential order were reiterated.

Sarkaria Commission view

The Commission was not in favour of deletion of article 356.

In considering the issues raised regarding article 356 the Commission found that a great part of the remedy to prevent its misuse lies in the domain of creating safeguards and constitutional conventions governing its use. The ultimate protection against the misuse of article 356 lies in the character of the political process itself. The Commission is, therefore, for generating a constitutional culture that relies on conventions and treats them with same respect as a constitutional provision.

In case of political breakdown, the Commission recommends that before issuing a proclamation under article 356 the concerned State should be given an opportunity to explain its position and redress the situation, unless the situation is such, that following the above course would not be in the interest of security of State, or defence of the country, or for other reasons necessitating urgent action.

(b) Appointment of Governor

The provision for centrally appointed Governors for the States has remained as an anachronism, which is not in keeping with a federal democratic polity. If the post of Governor has to be retained, then the Governor should be appointed by the President from a list of three eminent persons suggested by the Chief Minister, satisfying the criteria mentioned by the Sarkaria Commission. The Sarkaria Commission approvingly quoted the eligibility criteria that Jawaharlal Nehru advocated and recommended its adoption in selecting Governors. These criteria are:

1. He should be eminent in some walk of life
2. He should be a person from outside the State
3. He should be a detached figure and not too intimately connected with the local politics of the States; and
4. He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

The words and phrases like "eminent", "detached figure", "not taken active part in politics" are susceptible to varying interpretations and parties in power at the Centre seem to have given

scant attention to such criteria. The result has been politicization of Governorship and sometimes people unworthy of holding such high Constitutional positions getting appointed. This has led to some parties demanding the abolition of the office itself and public demonstration against some Governors in some States. This trend not only undermines Constitutional governance but also leads to unhealthy developments in Centre-State relations.

M.M Punchi Commission view:

Given the status and importance conferred by the Constitution on the office of the Governor and taking into account his key role in maintaining Constitutional governance in the State, it is important that the Constitution lays down explicitly the qualifications or eligibility for being considered for appointment. Presently Article 157 only says that the person should be a citizen of India and has completed 35 years of age.

The Commission is of the view that the Central Government should adopt strict guidelines as recommended in the Sarkaria report and follow its mandate in letter and spirit lest appointments to the high Constitutional office should become a constant irritant in Centre-State relations and sometimes embarrassment to the Government itself.

Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre. The phrase "during the pleasure of the President" in Article 156(i) should be substituted by an appropriate procedure under which a Governor who is to be reprimanded or removed for whatever reasons is given an opportunity to defend his position and the decision is taken in a fair and dignified manner befitting a Constitutional office.

It is necessary to provide for impeachment of the Governor on the same lines as provided for impeachment of the President in Article 61 of the Constitution. The dignity and independence of the office warrants such a procedure. The "pleasure doctrine" coupled with the lack of an appropriate procedure for the removal of Governors is inimical to the idea of Constitutionalism and fairness.

(c) Central Intrusion into the State List

Not only have the earlier transfer of State subjects, such as education, to the Concurrent List been left unreversed, but further intrusions have also been made into the State List in terms of proliferation of the so-called Centrally Sponsored Schemes. These Central schemes on the State subjects, which contain rigid guidelines imposed by the Centre, besides having implications in the financial sphere, also impair the autonomy of the States and affect their development priorities.

There is an urgent need to review the impact of the transfer of legislative items from the State to the Union/Concurrent List. The Union Government has so far ignored the demand of the States to place at least the residuary powers of legislation in the State List. The residuary power of taxation in the sphere of services is being pre-emptorily used by the Union Government to the total exclusion of the States. Despite discussions in the Inter-State Council, the proposal for a Constitutional amendment to set definite time-limits for receiving the assent of Governors or the President in the case of bills passed by the State Assemblies has so far been ignored. Moreover, there is no formal institutional structure that requires mandatory consultation between the Centre and the States in areas of legislation under the Concurrent List.

M.M Punchi Commision views:

Given the joint responsibility of the Centre and the States it is imperative that legislation on matters of concurrent jurisdiction generally and transferred items from the State List in particular, should be managed through consultative processes on a continuing basis. The Commission recommends a continuing auditing role for the Inter-State Council in the management of matters in Concurrent or overlapping jurisdiction.

(d) Treaty-making Powers

The present Constitutional scheme with regard to treaty making power being exclusively in the domain of the Union Executive needs to be urgently reviewed. The Constitution should be amended to make legislative sanction mandatory for any international treaty. Besides, several international treaties like the WTO agreement have serious implications for the States, especially with respect to State subjects like agriculture. In all such cases, consultation with the States and concurrence of the Inter-State Council must also be made mandatory.

M.M Punchi Commission view:

Entering into treaties and agreements with foreign countries and implementation of treaties, agreements and conventions with foreign countries are items left to the Union Government. Article 253 confers exclusive power on Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. In view of the vastness and plenary nature of the treaty making powers with the Union Government notwithstanding the scheme of legislative relations between the Union and States (Article 253), the Commission recommends that Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers. Several states have expressed concern and wanted the Commission to recommend appropriate measures to protect States' interests in this regard. The Commission recommends that the following aspects may be incorporated in the Central law proposed on the subject of Entry 14 of List I:

1. In view of the fact that treaties, conventions or agreements may relate to all types of issues within or outside the States' concern, there cannot be a uniform procedure for exercise of the power. Furthermore, since treaty making involves complex, prolonged, multi-level negotiations wherein adjustments, compromises and give and take arrangements constitute the essence, it is not possible to bind down the negotiating team with all the details that should go into it. Nonetheless, the Constitutional mandates on federal governance cannot be ignored; nor the rights of persons living in different regions or involved in different occupations compromised. Therefore there is need for a legislation to regulate the treaty making powers of the Union Executive.

2. Agreements which largely relate to defense, foreign relations etc. which have no bearing on individual rights or rights of States of the Indian Union can be 220 Report of the Commission on Centre-State Relations put in a separate category on which the Union may act on its own volition independent of prior discussion in Parliament. However, it is prudent to refer such agreements to a Parliamentary Committee concerned with the particular Ministry of the Union Government before it is ratified.

3. Other treaties which affect the rights and obligations of citizens as well as those which directly impinge on subjects in State List should be negotiated with greater involvement of States and representatives in Parliament. This can assume a two-fold procedure. Firstly, a note on the subject of the proposed treaty and the national interests involved may be prepared by the concerned Union Ministry and circulated to States for their views and suggestions to brief the negotiating team.

4. There may be treaties or agreements which, when implemented, put obligations on particular States affecting its financial and administrative capacities. In such situations, in principle, the Centre should underwrite the additional liability of concerned States according to an agreed formula between the Centre and States.

5. The Commission is also of the view that financial obligations and its implications on State finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time. The Commission may be asked to recommend compensatory formulae to neutralize the additional financial burden that might arise on States while implementing the treaty/agreement.

(e) Article 3

As per the Article 3 of the constitution, only the Centre has the final authority to reorganize the boundaries of the states. As a matter of fact there are frequent demands for state reorganization by various political parties and regional pressure groups. These demands for the smaller states could be heard in the political echelons. Support of the demands of this kind by the Central Government or any kind of promise for the future might antagonize the incumbent state government.

The recent decision of bifurcation of Andhara Pradesh by the UPA II government is a case in point. This decision of the Central government has opened the Pandora 's Box. The central government was under the intense pressure of regional party Telangana Rashtriya Samiti (TRS), which is also a coalition partner of UPA II. Nonetheless the incumbent state government of Andhara Pradesh has openly criticized the decision.

Issues related to financial relations

The central government in India is the government at a distance whereas the state governments are the governments at hand to the people. But the most productive sources of revenue in every federation are with the centre while the most expensive heads of expenditure are with the states. For the State Governments are directly responsible for the maintenance of law and order and are charged with the responsibility of carrying on welfare activities such as education, health care, etc. consequently the states have less revenue incomes than they need. This makes the states financially dependent on the centre which the ruling party at the centre may use to serve its political ends.

To relieve this dependence, the constitution provides for grants-in-aid to the states. Parliament decides which states are in need of grants-in-aid. Art. 275 of the constitution provides for grants-in-aid to some states for the promotion of welfare of the tribal people. States also receive grants-in-aid in cases of natural calamities like floods or draughts.

The constitution provides for constitution of a Finance Commission to advice the President on distribution of financial resources between the Union and the States. A Finance Commission is appointed every five years. The first Finance Commission submitted its report in 1952. The Finance Commission advises the President, what percentage of the income tax should be retained by the centre, and what principles should be adopted to distribute the divisible pool of the income tax among the states. The commission also advises the President on the question of grants-in-aid to be given to the states.

The scheme of division of financial resources adopted in India is certainly very complicated. It also has the effect of making the states financially dependent on the centre. This has given rise to some issues such as:

(a) Inadequate Central Transfers

This mismatch between the greater responsibilities for undertaking development expenditure lying with the States on the one hand, with greater powers of revenue mobilisation lying with the Centre on the other, has not been met through commensurate resource transfers from the Centre to the States. The devolution of Central taxes and grants as was envisaged in Chapter-I of Part XII and Article 275 of the Constitution have remained grossly inadequate.

(b) Restrictions on Borrowing by States

The share of total market borrowing to which the States may be entitled is also dictated by them Centre. While in the 1950s, the shares of market borrowing of the States and the Centre in the total market borrowing by the Government were approximately equal in proportion, the share of market borrowing of the States has now fallen sharply to around 15%, with more than 85% of the market borrowing being cornered by the Centre. Consistent with the development responsibilities of the States, the share of market borrowing of the States should be increased from the absurdly low proportion of about 15% per cent currently to 50%. Moreover, Article 293 of the Constitution should be amended to provide more flexibility and autonomy to the States in regard to market borrowing.

The Reserve Bank of India restrains the State Governments' flexibility in market borrowing in a number of ways. It denies access to the market for resources beyond limits, ranging from 5% to 35% of gross borrowings, depending on the fiscal indicators of the State. The most restrictive condition imposed by the RBI is that market borrowings cannot be used to finance revenue deficits. This ignores the fact that State finances are in doldrums largely on account of high interest-debt from the Central Government. Another perverse condition makes the amount that can be borrowed inversely proportional to the need, i.e. the size of the deficit. Furthermore, the RBI has undermined State Government guarantees by stating that these should not be a key consideration in loans to the public sector. These constraints, which adversely affect the public borrowing of the States, need to be removed.

(c) Special category states

Generally, population and geography are considered as the most important criteria for tax devolution as it is perceived to be the most important indicator of the general need of a state. This approach is justified when there are very insignificant differences in area, distribution of population and per capita income among states.

But, there are significant differences in these indicators among the States in India. Keeping this problem in view, more weightage has been given to distance and inverse formula in last few UFCs but population has been used as the scale factor. This high weightage given to population may not result in more transfers to states which are underdeveloped and having low population. The central plan assistance is being given on the basis of Gadgil formula (changes have been made since nineties), which takes population, per capita income, tax efforts and special problems

into account. The criteria such as fiscal performance, tax efforts, prudent fiscal management, and elimination of illiteracy and successful implementation of land reforms etc over the time have not helped states with differential fiscal and administrative capabilities.

(d) Problems with Centrally Sponsored Schemes

The proliferation of Centrally Sponsored Schemes, whose design and implementation are totally determined by the Centre without adequate consultation with the State Governments, is another serious problem. These excessively centralised and rigid formats of these schemes often make them ill suited for the specific needs of the States. Since the State Governments have to bear a part of the expenditure behind such schemes in most cases, the States find it difficult to make proper allocation of their own resources keeping their own priorities in view. Moreover, conditionalities are often imposed through these schemes, which impinge upon the autonomy of the States.

For instance, the centrally sponsored JNNURM requires the State Governments to bring down the stamp duty rate within five years to a level not exceeding 5% and also impose user charges for various utilities and necessary services. This is a direct intrusion into the power of the States, since with respect to taxes in the State list like the stamp duty, the Legislative Assembly has full powers to prescribe rates. Recently, the Union Government has accepted the recommendations of the Vaidyanathan Committee on revival of the co-operative credit structure.

In this case too, the power of the States in regard to the co-operatives has been curtailed and the flow of funds linked up with the acceptance of the attached conditionalities. In some of the schemes, the share of the States' financial burden has also been unilaterally increased. For instance, despite repeated objections by all the Chief Ministers, the share of the States in the Sarva Shiksha Abhiyan will be increased from 25% to reach 50% by the end of the Eleventh Plan period. The inflexibility of the design and the manner of provision of funds for the SSA also leads to significant under-utilisation of funds. Similarly, the rigidity in the schedule of work under the NREGA also precludes its effective implementation in several States. At the Conference of the Chief Ministers convened by the then Prime Minister on May 4, 1996, it was resolved that all Centrally Sponsored Schemes pertaining to the State subjects would be transferred to the States with funds. Since then, although several exercises have been carried out in this regard from time to time, there has been no effective resolution of the issue. Rather, more and more Centrally Sponsored Schemes, with attached conditionalities, have been introduced by the Central Government. While Central transfers to the States as a proportion of the Centre's revenue receipt have fallen over the years, the proportion of transfer of funds with conditionalities in the form of Grants-in-Aid has increased from 40.9% in 1980-81 to 49.3% in 2005-06.

All Centrally Sponsored Schemes under the State subject, as well as those under panchayats and municipalities, should be transferred to the States with funds. Broad guidelines can be worked out on the basis of discussions between the Centre and the States and also an appropriately periodic joint Centre-State review. However, the formulation and implementation of the schemes should be left to the States along with transfer of funds. Besides ensuring decentralisation, transfer of the Central schemes to the States would also reduce the cost of programme implementation and save Central resources.

Centre state relation and foreign policy

Foreign policy is a central subject in India. The states do not have jurisdiction in determining India's external relations. That is an area to be handled exclusively by the government at the centre. But given the steady rise of regional parties and the increasing dependence of governments in New Delhi on their state allies, the impact is being felt in the area of foreign policy as well. The decision by West Bengal Chief Minister Mamata Banerjee, to oppose the signing of the Teesta water accord between India and Bangladesh, at virtually the last moment, made headlines

and mired Prime Minister Manmohan Singh's visit to Dhaka in deep controversy. By opting out, despite high-level efforts to persuade her, Ms Banerjee catapulted herself onto the centre stage of foreign policy in the making and went on to announce an expert committee to "review the entire situation". By truncating the agreement singlehandedly, at great cost to India-Bangladesh relations, Ms Banerjee despite being just a state leader, has established herself as a player in bilateral relations between the two countries.

The second instance, defying an early resolution, is the strong response of Tamil Nadu to worldwide reports of the annihilation of innocent Tamils in Sri Lanka's military operations against the Liberation Tigers of Tamil Eelam. The anger in Tamil Nadu compelled the two main parties, the ruling All-India Anna Dravida Munnetra Kazhagam and the Dravida Munnetra Kazhagam (DMK), to issue strong statements against Sri Lanka, urging New Delhi to treat that country as an unfriendly nation.

GS SCORE

An initiative by: S. K. Mishra, IAS (Retd.) & Manoj K. Jha

IAS 2015

IAS Exam is persistently undergoing a change, being brought to ensemble the contemporary aptness. In the midst of this transition GS SCORE is starting GS Mains 2015 Programme under the expert guidance of S. K. Mishra & Team.

Batch Starts 5th January, 2015

GS Mains 2015

- ✓ 300 Hrs. Comprehensive Courses
- ✓ From 20th January to 10th April, 2015
- ✓ Full coverage of all four Papers
- ✓ Complete Study Material

Selective Learning Programme

Ethics Integrity & Aptitude
- ✓ By S. K. Mishra
- ✓ Complete Coverage of Syllabus
- ✓ 100 Case Studies
- ✓ 45 Days Comprehensive Course
- ✓ 4 Tests Including Model Answer
- ✓ Comprehensive Study Material

Essay Writing

10 comprehensive classes that emphasises on Writing Skill, Building Conceptual Clarity & Developing Analytical Ability to handle essay on diverge topics.

GS Mains 2015 Test Series
- ✓ 14 Tests
- ✓ 4 Full Tests
- ✓ Model Answer Hints
- ✓ Detailed Discussion
- ✓ Study Material for Current Affairs
- ✓ Start: 1st February, 2015

Distance Learning Programme IAS 2015-16

- In depth analysis of each subject
- Complete coverage of all topics
- Separate test for each subject area
- Comprehensive Tests for GS Mains & PT
- Separate module for Ethics Paper is also available
- Current Affairs • Essay • 24x7 Online Support

www.iasscore.in
Self Study Partner

For more information, Call
011 - 47058253

Head Office: Rajender Nagar
Off. No. 6, I st Floor, Apsara Arcade, Karol Bagh, New Delhi-5, (Karol Bagh Metro Gate No. 5)

9953607114, 9953595114

www.facebook.com/iasscore