Question

• Discuss the features of Indian model of federalism. To what extent Indian model can be called as Quasi federal?
Question

- What Is the principle of subsidiarity?
It is universally accepted and acknowledged principle of good governance.
It implies that if something can be done at individual level government should not be doing, what can be done at local level. State should not be doing and what can be done at State level Centre would not do.
Principle of Subsidiarity

- Individual
- Family, friends, business associations
- Neighbourhoods, civic action & interest groups
- Regional & local governments
- National & federal governments
Principle of Subsidiarity

The general aim of the principle of subsidiarity is to guarantee a degree of independence for:

- lower authority in relation to a higher body
- local authority in respect of a central authority

It involves the sharing of powers between several levels of authority
Question

- What is delegation?
Union can delegate its power

1. Executive Act
   - Devolution
   - Legislative Act
2. No demand from civil societies to give more powers at local level.
   - Decentralization
   - By Constitution
Question

• What is federalism?
Federalism

The term comes from the Latin word ‘Foedus' means contract.

Thus federalism is government by contract.

Constitution is contract document.

USA is the first example of federal form of government.
Views Of Scholars
Views Of Scholars

1. William H. Riker

2. AV Dicey
it is that form of organization of government where at least some areas will be there with respect to which either Union government or provincial government have ultimate powers.
According to AV Dicey, federalism is a political arrangement where units desire union without uniformity.
Federations are formed with following objectives

1. In a vast and diverse country, to accommodate diversity
2. To achieve good governance by division of powers normally on subsidiarity principles.
3. For the purpose of Security
4. Common Market
According to Alfred Stephan,
There are 3 Models of the Formation of Federation
There are 3 models of the formation of Federation:

- I Model: Coming together Model
- II Model: Holding together Model
- III Model: Putting together model by Coercion

- USA
- India
- USSR.
3 Models of the formation of Federation

I Model (Coming together Model)

II Model (Holding together Model)

III Model (Putting together model by Coercion)
Comparison between Federal, Unitary and Confederation
Comparison

Unitary (UK)

Confederation (EU, SAARC)

Federation (INDIA)
Comparison between Federal, Unitary and Confederation

Unitary System
- National Government
  - States
  - Authority is concentrated in the central government.
  - Examples: United Kingdom, Japan, Sweden

Federation
- People
  - States
  - Authority is divided between central and state governments and is derived from the people.
  - Examples: Canada, India, United States under the Constitution

Confederation
- States
  - National Government
  - Authority is concentrated in states.
  - Example: United States under the Articles of Confederation
Comparison between Federal, Unitary and Confederation

Unitary System:
- National Government
- State Government

Federal System:
- People
- State Government
- National Government

Confederation:
- State Government
- National Government

Concentrated Power
Centralized Authority

Divided Power
Authority with the People

Decentralized Power
Concentrated Authority
UNITARY (UK)

- (UK) The powers of sub National government are either delegated or devolved by Centre.
- It means they do not have original powers.
- Thus they are subordinate to central government.
Comparison between Federal, Unitary and Confederation

CONFEDERATION (EU, SAARC)

- (EU, SAARC) exact opposite unitary form of government.

- In confederation, units delegate or devolve powers to the Union or common authority.
Comparison between Federal, Unitary and Confederation

FEDERATION (INDIA)

- If compared with unitary form of government, the powers of sub National government are original.
- They are not subordinate to Union government wether federal or provincial government both derive their powers from the Constitution.
- Thus there is principle of Constitutional Supremacy
Difference in Federation and Confederation

As declared by USA Supreme Court, Federation is Indestructible Union, There are 3 essential Features of a Federation

1. Division of Powers
2. Written Constitution
3. Independent Judiciary
Difference in Federation and Confederation

CASE OF INDIA

- It Fulfill all 3

- Article 131 - Original jurisdiction of SC on center State relations.
But when there is a dispute which arises between the States of India or between the State Government and the Union Government then it is the jurisdiction of the Supreme Court under Article 131 of the Constitution that gives it the power to resolve these kinds of disputes.
Question

- Is India Quasi Federal?
Kenneth Clinton Wheare called India Quasi Federal. There has been the emergence of more centralized federal model because of the increase in the powers of federal govt.
• Because of civil war of USA and increase role of USA in international politics.

• Supreme government of USA has increased the powers of Federal government by using the doctrine of implied powers
CASE OF INDIA

- Even Indian Federation has not been static.
- Since 1990’s there has been considerable increase in the bargaining powers of the State government.
In the S. R. Bomai Case (1994), S. C. Held that federalism is the basic structure of the Constitution.

There is not one model of federalism, there can be multiple models, it is not necessary for all countries to follow US model.
Unique feature of Indian Model

USA is an example of dual federalism,

India is example of cooperative federalism.
What Is Dual Federalism?
What Is Dual Federalism?

When the two governments are like 2 watertight compartments completely independent of each other, it implies dual government.
What is Co-operative Federalism?
Co-operative Federalism

If dual federalism is based on concept of Independence. Cooperative federalism is based on interdependence or interlocking.

In Cooperative federalism, Union acts as big brother, it is adopted for the countries which suffer from:

A) Secessionist Challenge
b) Regional Imbalance
Federalism Defined

American Federalism

Marble Cake Federalism or Layer Cake Federalism?

Cooperative Federalism  Dual Federalism

Marble Cake Federalism is based on a pragmatic mixing of authority and programs among the national, state, and local governments.

Layer Cake Federalism is based on a clear delineation of authority and programs among the levels of government.
The Other Unique Feature of Indian Federalism are.

1. India is executive Federation, where is USA is a legislative Federation.
   
   It implies that in India importance of State is at executive level or administrative level. (Use of State machinery for Union laws).
The Other Unique Feature of Indian Federalism are.

2. India is an example of asymmetrical (each State is not equal representation in RS) model and USA is symmetrical model.

Asymmetrical model is more democratic.
The Other Unique Feature of Indian Federalism are.

3. Alfred Stephen calls USA model as demo constraining model and Indian model as Demos enabling model.
Granville Austin calls Indian model as cooperative federalism and rejects K. C. Wheare’s point of view and suggest that Constitutions are either Federal or unitary. There is nothing called Quasi Federal.
Moris Jones called India combination of cooperative and bargaining with some States as a Cooperative Federation and with some states are bargaining.
Present PM Modi has coined a new term known as Cooperative competitive model. As a part of his vision of good governance and development. The competitive cooperative model is based on vision of team India Sabka Saath Sabka Vikas.
Niti Aayog is based on the idea of competitive Cooperative federalism.
Question

• Q1- Discuss the process of State formation in India as mentioned in Article 3. also Elaborate on the politics of State formation in India.

• Q2. Do you think Article 3 is the non Federal feature of Indian Constitution. Do you support smaller a State give arguments in support of your point of view? Amendment of Constitution no provision of joint sitting.
PROCESS OF STATE FORMATION IN INDIA

• The internal political map of India is still changing and not fixed and internal changes keep on happening.

• In 2014, the 29th State (Telangana) was added and many demands remain pending.

• One of the most prominent demand is Gorkhland and Bodoland.

• Article 3 of the Constitution provides the process of State formation and State in India can be created by
Formation of new States and alteration of areas, boundaries or names of existing States: Parliament may by Law.

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State
State formation in India
State formation in India has happened in 3 Waves.

I Wave

II Wave

III Wave
I WAVE

- 1960 and 1970 (Linguistic Reorganization)
II WAVE

- 1970 and 1980 (Reorganization of N. E. At that time ethnicity and National security was a factor).
III WAVE

- 2000 onwards (Reorganization of Hindi heartland)
- Logic ➔ Good governance and Development
Theories of State Formation

Louise Tillin
• Louise Tillin in her recent book *REMAPPING INDIA* has given four perspectives on State formation.
Theories of State Formation

Louise Tillin’s Four Perspectives on State Formation.

1. Sociological Explanation
2. Political Economy
3. Good Governance
4. Political Reasons
1. Sociological Explanation
(Yogendra Yadav and Ramachandran Guha)

- State formation reflects the aspirations of marginalized sections of the society.
2. Political Economy

(Atul Kohli)

• Economic policies determines the decision

• For example the formation of Chhattisgarh and Jharkhand was as per demand of neoliberal economic policies.
3. Good Governance

(LK Advani and Mayawati)
4. Political Reasons

(Louis Tillin and Christopher Jefferlot)

• The only factor that determines State formation is political which State will be formed will be determined by interest of ruling party and Union level.
To conclude it can be said that there may be multiple factors playing role in State formation Yet. The prominent factor has been political. whether it is linguistic reorganization for reorganization of Hindi Heartland.
According to Tillin whether a new State is to be created or not and when will depend primarily on the electoral arithmetic's of Union government.
Conclusion

One of the fear of the Pandit Nehru was that linguistic reorganization will challenge the Hegemony of the congress during its own life time.
Consequences of linguistic division of states

- Regionalism
- Exploitation of people by Politicians
- Erosion of national feeling
- Emergence of regional Political Parties
- Demand for separate states
- Threat to sovereignty
Que 2. Do you support the creation of smaller states?
• The creation of smaller State is the matter of debate.

• Leaders like L K Advani and Mayawati and scholar like Ramchandra Guha and the bibek debroy support smallest states on the logic of good governance and development, greater participation of people in governance.
According to Vivek Debroy, India's population is 4 times more than USA population. Yet USA has 50 State and in India has at present 29 State.
If we take the case of UP alone had been a country, it would have been the fifth largest country of world in terms of population.
Arguments Against By

Professor MP Singh

Sudha Pai
Arguments Against (By Professor MP Singh and Sudha Pai)

1. No relation between size and governance. TN is comparatively largest State but better governed in comparison to smallest State like Jharkhand.
Arguments Against (By Professor MP Singh and Sudha Pai)

2. No relation between size and development. Punjab's growth story is over and Chhattisgarh "Shines on Minds"
3. Smaller states are politically unstable as it is easy to bring the fall of government just by few defection. Example Goa.
Arguments Against (By Professor MP Singh and Sudha Pai)

Arguments Against (By Professor MP Singh and Sudha Pai)

5. The economic viability of the State has to be seen because they end up becoming like Union territories completely dependent on Union example Uttarakhand.
Arguments Against (By Professor MP Singh and Sudha Pai)

6. Economic viability of the mother State has to be seen.
7. New states means new inter State water disputes.
Arguments Against (By Professor MP Singh and Sudha Pai)

8. Some demands may have strategic dimensions like demand of Gorkhaland
What is the Way Forward?

1. Decentralization
2. New State can open Pandora Box
1. Decentralization

- Once 73rd and 74th amendment have been introduced, the demand for smaller State have become redundant, subject to the condition.
- There is an adequate devolution or decentralization.
- Besides empowerment of Panchayat and municipalities e-governance can also bring governance to doorsteps.
Way forward

Implication of Panchayati Raj/ Municipalities as the Third Tier of Governance on India’s Federal structure

- Union
- State

- Panchayati Raj
  - 3. Zila Parshad
  - 2. Block Taluk Panchayat
  - 1. Village Panchayat

- Municipality
  - 3. Municipal corporation
  - 2. Municipal Council
  - 1. Nagar Panchayat

Gram Sabha (Village Assembly)  Ward Meetings (For Municipal Areas)

Autonomous Councils for Tribal areas

- These 2 amendments were introduced in 1989, after the recommendations of the P.K. Thungon committee
- 73rd amendment - Rural local bodies
- 74th amendment - Urban local bodies
- Both of these come under the State List
2. New State can open Pandora box

- We cannot say where this demand will end.

- Hence, there is no need of II SRC, the guidelines of SRC 1956 continuous to be relevant.
2. New State can open Pandora box

- Each demand to be deal on case to case basis where there is a genuine aspiration of the people and after cost and benefit analysis, its seems viable only in that context create new State.

- Only electronic calculus and political ambitions of few person should not determine such strategic choice.
The States Reorganization Act, 1956 came into effect on November 1.

**REORGANISING INDIA**

Changed the boundaries of India’s states, organising them along **linguistic lines**.

- Andhra Pradesh, Kerala & Madhya Pradesh were **formed**.
- Single most extensive change in state boundaries since India’s independence.

- Himachal Pradesh, Andaman & Nicobar Islands, Delhi, Laccadive, Minicoy & Aminidivi Islands, Manipur, & Tripura—Union Territories were **created**.
Inter-State Water Dispute
Inter-State Water Dispute
Question

- Que. 1 Critically examine the efficiency of the existing mechanism of inter-state water disputes in India and give suggestions to improve the system?

- Que. 2 Explain the politics of inter-state water disputes with the help of at least 2 case studies. One from South India and Other from North?
Importance Of Water

- India is a primarily dependent on agriculture and has disputes over Water with neighbor as well as within in India.
- South Asia is water deficit, this is the only special interstate dispute for which there is a specific provision in the Constitution.
Introduction

Mark Twin
"Whisky Is To Drink, Water Is To Fight"
Water is a State subject under the State list Entry 17. It deals with the use of water, construction of dams, maintenance etc with respect to the rivers in the State.

B. Entry 56 of the Union list the development, maintenance regulation of Interstate rivers, and rivers Valley is a Union subject.
Analysis

It appears as if water is a State subject despite the fact interstate river and river valleys are under the jurisdiction of Union.

However, for Political purposes Union has always thrown the ball in the court of states.
Analysis

Had Union fulfilled its obligation, it would not have been such a politicized issue.

If you see the example of Australia, Federal government in Australia has adopted all inter State rivers.
Constitutional provisions for resolution of disputes.

Constitutional Provisions

- According to the article 246’s seventh schedule of the constitution consists of three lists of subject matters.
  1) Union List
  2) Concurrent List
  3) State List

- Water as entry 17 is in State List: Water, irrigation and canal, water development and Storage are a state subject.
Interstate Water Disputes

- 262 Parliament's Law
- 263 Inter State Council
- 136 Special Leave petition
- 131 Judiciary
| Article 262 | • Adjudication of disputes relating to waters of inter State rivers or river valleys |
| Article 263 | • The Inter-State Council is a non-permanent constitutional body set up by a presidential order on the basis of provisions in Article 263. |
| Article 136 | • Vests the Supreme Court with a special power to grant special leave, to appeal Against any judgment or order or decree in any matter or cause, passed or made by any Court/tribunal |
| Article 131 | • Gives it the power to resolve these kinds of disputes. |
Article 262

- Parliament may by law create special mechanism for resolution of water disputes and if parliament desires it can even exclude Such disputes from the jurisdiction of SC.
- Parliament brought interstate Water Dispute Act 1956.
- Why - Massive State reorganization and the probability of emergence of many disputes.
What was the mechanism available before 1956?

- Article 131 - State could approach to supreme court even on interstate water disputes like any other interstate disputes.

Is there any other mechanism in Constitution?

- In other mechanism is interstate council under Article 263.
- Constituent assembly would have preferred Article 263.
How interstate councils was to be created?

- As per Article 263 by Presidential order

Why the ease with which council can be created?

- It is to be noted that legal route would have been the least preferred because judiciary approach is rigid.
- However, Article 263 platform have never been used despite the fact it would have been the main platform not just for the resolution of water disputes but for all other matters considering India as a cooperative federation.
Zonal Councils

- It is a brainchild of Pandit Nehru.

- Why- To offset the disadvantages of linguistic reorganization and to develop the habit of cooperation.
Eastern Zone: Bihar, Orissa, West Bengal, Sikkim.

Western Zone: Gujarat, Maharashtra, Goa, Daman Diu and Dadra and Nagar Haveli.

Northern Zone: Panjab, Haryana, Himachal Pradesh, Jammu & Kashmir, Rajasthan, Chandigarh and Delhi.

Southern Zone: Andhra Pradesh, Kerala, Karnataka, Tamil Nadu and Pondicherry.

Central Zone: Uttar Pradesh and Madhya Pradesh

North Eastern Council: Assam, Meghalaya, Nagaland, Manipur, Tripura, Mizoram, Arunachal Pradesh.
Zonal Councils

- One of the main purpose was to address the water disputes and as then home minister G V Panth, held that water knows no linguistic boundary.

- Even this platform was never used.
• Besides interstate Water Dispute Act 1956 parliament brought one more act known as River Boards Act 1956.
A proactive approach so that dispute does not arise.

The idea was to create river boards with the representatives from co-riparian states. They will go for joint planning, development and management of interstate rivers.

Not a single river board has been created till date under the Act.
1. Inter-state Water Disputes

Art. 262
Parliament man by law provide for adjudication of any dispute (for use, distribution & control of waters)

Parliament May provide that S.C or any other courts NOT to exercise any jurisdiction.

a. River Boards Act 1956
b. Inter-State Water Dispute Act 1956
Role of Supreme Court

- Though interstate water dispute Act exclude the jurisdiction of supreme court.
- Yet SC continues its activism by accepting the position under Article 136 (special leave petition).
- It results into the wastage of entire exercise and crores of rupees.
The Constitution of India under Article 136 vests the Supreme Court of India, the apex court of the country, with a special power to grant special leave, to appeal against any judgment or order or decree in any matter or cause, passed or made by any Court/tribunal in the territory of India.
Constitution and Jurisdiction

The Judiciary is one of the three branches of government in Singapore, the other two being the Executive and Legislature.

JUDICIARY is headed by Chief Justice who oversees THE SUPREME COURT.
Role of Supreme Court

- S.C. should not have entertained such petition.
- If you look at the example of USA though the only method available in USA is the legal route.
- Yet SC of USA does not encourage such petitions and direct State governments to resolve the problems on their own.
Role of Supreme Court

• In India so far, 8 tribunals have been constituted which have given their awards.

• However, only the awards of 3 tribunals have been accepted.
3 Tribunals

1. Godavari Water Case
2. Narmada Water Case
3. Krishna Water Case
1. Godavari Water

- Only happened because of constructive role played by Union government.
A lifeline for two States

The Odisha government had moved the SC in December, 2016, for an order asking Chhattisgarh to stop construction of barrages upstream of Mahanadi. A look at the drainage area of the Mahanadi

TOTAL DRAINAGE AREA OF THE BASIN (KM²): 141,589

- 75,136
- 65,580
- 635
- 238

CHHATTISGARH  ODISHA  MAHARASHTRA  JHARKHAND

- The Mahanadi originates in the Sihawa mountain in the Dhantari district of Chhattisgarh and terminates in the Bay of Bengal

Mahanadi ranks second to the Godavari among peninsular rivers in respect of water potential

- 851 km Total length of the river
- 494 km in Odisha
- 357 km lies in Chhattisgarh

Source: National Institute of Hydrology, IIT Roorkee
2. Narmada Water

- Again because of constructive role of Union government and the parties themselves resolved the matter and communicated the formula to the Tribunal.
GIFT TO GUJARAT

NARMADA CONTROL AUTHORITY GIVES CLEARANCE TO RAISE HEIGHT OF DAM

- Narmada Water Disputes Tribunal constituted in October 1969 to adjudicate on sharing of Narmada waters between Gujarat, Madhya Pradesh and Maharashtra
- NWDT gave award in Dec. 1979
- Tribunal assessed water dependability in Narmada as 28 Million Acre Feet (MAF)

Welcome the news of the clearance given by the Central government to put up the gates on the Sardar Sarovar Dam, the lifeline of Gujarat... - GUJARAT CM ANANDIBEN PATEL ON TWITTER
3. Krishna Water

- Tribunal has to be set up twice, none of the party accepted first award.
NO PROVISION for deficit sharing with Mahara-shtra and Karnataka where most yield is gen-
erated. Yield generated in TS will form part of operational protocol between TS and AP.

THE VERDICT increases chances of a conflict between Krishna Water Decision Implementation Board and Krishna River Management Board.

KWDT-2 FAILED to recognise the fact that interests of Telangana region were not fairly placed before the Tribunal by the erstwhile state of AP.

NO CORRELATION between primary reasons for separation of Telangana (inequi-
table and faulty allo-
cation) and statement of objects and reasons of the AP Reorga-

isation Act, 2014.

MATHS OF KRISHNA RIVER WATER

Share decided by BACHAWAT TRIBUNAL

- **Telangana:** 41.61%
- **Andhra:** 58.39%

THIS YEAR’S SHARE

- **Telangana:** 229 TMC
- **Andhra:** 321 TMC

CURRENT ROW:

- Telangana claims Andhra has used its allotted 321 TMC and is demanding more.

Nagarjuna Sagar dam

TRIBUNAL OBSERVATION: Section 89 of Act No. 6 of 2014 does not show that it has anything to do with distribution of water much less among the four states or to withdraw allocations made for utilisation outside the basin.
Role of Supreme Court

- However, all three parties Maharashtra, Andhra and Karnataka accepted II award which is valid till 2050.
- However, creation of Telangana has created new disputes on the formula of water sharing.
- At present 5 tribunal are working for different disputes.
<table>
<thead>
<tr>
<th>No</th>
<th>Name of Tribunal</th>
<th>States concerned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Godavari Water Disputes Tribunal</td>
<td>Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh &amp; Odisha</td>
</tr>
<tr>
<td>2</td>
<td>Krishna Water Disputes Tribunal -I</td>
<td>Maharashtra, Andhra Pradesh, Karnataka,</td>
</tr>
<tr>
<td>3</td>
<td>Narmada Water Disputes Tribunal</td>
<td>Rajasthan, Madhya Pradesh, Gujarat and Maharashtra</td>
</tr>
<tr>
<td>4</td>
<td>Ravi &amp; Beas Water Tribunal</td>
<td>Punjab, Haryana and Rajasthan</td>
</tr>
<tr>
<td>5</td>
<td>Cauvery Water Disputes Tribunal</td>
<td>Kerala, Karnataka, Tamil Nadu and Puducherry</td>
</tr>
<tr>
<td>6</td>
<td>Krishna Water Disputes Tribunal -II</td>
<td>Karnataka, Telangana, Andhra Pradesh and Maharashtra</td>
</tr>
<tr>
<td>7</td>
<td>Vansadhara Water Disputes Tribunal</td>
<td>Andhra Pradesh &amp; Odisha</td>
</tr>
<tr>
<td>8</td>
<td>Mahadayi Water Disputes Tribunal</td>
<td>Goa, Karnataka and Maharashtra</td>
</tr>
</tbody>
</table>
Questions

• Examine the salient features of **Interstate Water Dispute Act 1956**.

Solution

• 1. Certain categories of disputes mentioned in the Act to be treated as water disputes.
• 2. In case any water dispute arises, parties can approach to the Union government.
Questions

• What are obligations of Union Government?

Solution

• 1. Union government will take steps to resolve the matter amicably.
• 2. In case such efforts fail, it will constitute the tribunal.
Case Study ➔ Cauvery Dispute

- Not Only Kaveri but others matters also, there has been extra ordinary delay.

- Tamil Nadu approached Union government in 1970 as the agreement of 1924 between Karnataka and Tamil Nadu to expire in 1974.
Case Study ➔ Cauvery Dispute

• However, tribunal could be constituted only after 20 years in 1990 and that too on the direction of SC.
Amendments in 2002

- It made it mandatory to constitute the Tribunal in one year.

- The Amendment Bill introduced in 2017 in Lok Sabha, mentions that when Union government will receive the complaint it will settle dispute redressal committee.
Amendments in 2002

- It will have members from different department as Central Government deems fit to resolve the matter amicably.

- If it is not able to resolve the matter in the given time the matter will be referred to the Tribunal.
Composition of Tribunal

- As per new Bill, commission will comprise of chairperson, vice chairperson and not more than 6 judges of supreme court or high court as recommended by CJI plus two assessors (officers of the rank of chief engineer which help in assessment and technical details).
Composition of Tribunal

Chairperson

Vice Chairperson

Not more than of 6 Judges of Supreme Court or High Court as recommended by CJI

Two Assessors (officers of the Rank of Chief Engineer which help in assessment and technical details).
Note - Punchhi Commission had recommended the creation of interdisciplinary tribunal.
Awards of the Tribunal

- As per the new Bill, a Permanent Tribunal will be constituted, an existing Tribunal will be merged.
- Permanent Tribunal will help in speedy disposal of disputes.
Awards of the Tribunal

• 1. 1956 Act, no time limit, Kaveri Tribunal took 17 years.

• It gave award in 2007.
Awards of the Tribunal

- 2. Amendment in 2002 it has to give award within 3 years and at the maximum.

- It can take 2 more extra years.
Awards of the Tribunal

3. Present Bill ➔ It mentions the time period of one year earlier State could ask the Tribunals for further clarification and there was no time limit as to when Tribunal will come back with clarification.

Present Bill limits it to 6 months.
1. Initially it was not clear whether the tribunal can give interim award. With the intervention of supreme court it has been clear that even the interim award has to be implemented.

2. It was not clear since when Award will be treated as implementable, Supreme court clarified that it is to be implemented from the date of publication in the official gazette.
Present Bill

- It removes the condition of publication in the gazette.
- **Interstate Water Dispute Act 1956**, as well as then new will clearly mentioned that Award be treated at par with the order or decree of SC and it is the responsibility of the Union government to ensure the award is implemented.
Status Of Cauvery Award?

Cauvery Water dispute: Supreme Court orders formation of Cauvery management board.
Award came in 2007, there have been unnecessary delayed Supreme Court intervened in the Cauvery case directed Union government to set the Cauvery Management Board to see the implementation, despite the existence of the authority till date it has not been implemented.

At present TN has filed the contempt of court petition against Government of Karnataka.
Case Study From The North Indian State.

Case of Sutlej Yamuna Link (SYL) Canal
Case of Sutlej Yamuna Link (SYL) Canal

• 01. 1960 Indus Water Treaty with Pakistan has considerably decreased the share of India in the water of Indus water system. Pakistan gets 80% India get 20%.

• 02. Punjab being dependent on agriculture had suffered because of the Treaty.

• 03. In 1966, Haryana was carved out of Punjab.
Case of Sutlej Yamuna Link (SYL) Canal

- 04. Punjab denied the Sharing Water of Sutlej River as Haryana is not a co-riparian State.

- 05. Haryana claims the share, as it was earlier part of Punjab State.

- 06. Water issue became one of the major issue in the Khalistan Movement.
Case of Sutlej Yamuna Link (SYL) Canal

- 07. There have been occasions when **Union Government** intervened.

- Union government has proposed link canal.
- The other two States **Rajasthan** and **Delhi** were also involved.
- It has further decreased the share of Punjab.
Case of Sutlej Yamuna Link (SYL) Canal

- 08. In 1985, Rajiv Longowal Agreement (Punjab Accord) led to the establishment of the Tribunal.

- Punjab didn't accept the award of the Tribunal.

- Award has not been notified in the gazette till date.
Case of Sutlej Yamuna Link (SYL) Canal

• 09. The plan use to link Sutlej and Yamuna.
• 10. Haryana Has completed the construction of its side of canal.
• 11. Haryana has even gave cheque to the government of Punjab for earliest completion of the project.
Case of Sutlej Yamuna Link (SYL) Canal

- 12. In 2004 **Punjab Legislative Assembly** took an unprecedented step.
- It bought a resolution and terminated all previous agreements with all states.
Case of Sutlej Yamuna Link (SYL) Canal

- 13. Union Government has referred to the Constitutional validity of Act to Supreme court under Article 143 in 2016, Supreme Court gave its decision that Act of the government of Punjab is unconstitutional.
- 14. In 2016 there was election in Punjab. Hence, all parties were competing with each other and took extreme position.
Article 143 of the Indian Constitution confers upon the Supreme Court advisory jurisdiction. The President may seek the opinion of the Supreme Court on any question of law or fact of public importance on which he thinks it expedient to obtain such an opinion.
Case of Sutlej Yamuna Link (SYL) Canal

- 15. Then Government of Punjab brought an Act to denotify the Acquired land meant for the construction of link of canal.
- It started returning the acquired land.

- 16. Despite repeated direction of Supreme Court judges, the actions of Punjab Government have not been stopped.
Suggestions

.Use interstate councils, zonal councils and involvement of members of civil society and all stakeholders.
There are other disputes besides water disputes between states for example territorial disputes. There is a dispute over Belgaum district between Maharashtra and Karnataka.
2. Chandigarh and abhor, Fazilka town between Punjab and Haryana.

3. There are many disputes among NE states.

4. There are also disputes between developed and bimaru states bihar Madhya Pradesh Rajasthan, UP Ashish Bose.
Centre-State Disputes
<table>
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<tr>
<th>Questions</th>
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<tr>
<td>• Question 1- Discuss the changing trends in the center and States relation.</td>
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<td>• Question 2- Discuss the major areas of disputes.</td>
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<td>• Question 3 -Discuss the controversy associated with the post of Governor.</td>
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<td>• Question 4- How party system influenced the working of the Federation.</td>
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</table>
• Question 4- How party system influenced the working of the Federation.
• Ideally **Parliamentary System** should not be adopted in a federal system.
• Why- Parliamentary system is based on party system party system.
• Party system distorts the functioning of Federal system.
In India we have adopted **Parliamentary System** even at State level.

The working of Federation is smooth when there is a same party at Union and the State.

However, when there are different parties at Union and State Level.
It starts showing the friction.

- It is not said that Indian Federation will work ideal under one party dominant system.
- **Cooperative Federalism** was first formed for keeping in mind the Congress system.
- There have been many disputes between centre and State.
Union government has set up commissions like ARC, Sarkaria Commission, NCRWRC and Punchhi Commission.

- None of the Commission suggested any structural or fundamental change.
- It has been acknowledged that in India there are no center and State disputes but there are party to party disputes.
Changing Trends

• Constitutions or Federations do not exist in vacuum, they operate in a system.
• They influence the environment and get influenced by environment.

• Indian Federal System has also not being Static.
Changing Trends

- It has been influenced by the nature of the **Party System**.

- The nature of economic policies, internal and external developments.
Questions

• What Was The Original System?

Answer

• System was tilted towards center, got tilted further in 70s and 80s.
• Since 1990 the position of State started becoming strong.
1. Emergence of powerful Regional Parties

2. Instable center government

3. Judicial activism (Prevented the misuse of Article 356)

4. Presidential (Activism also prevented misuse).
• Under Article 356 of the Constitution of India, in the event that a state government is unable to function according to constitutional provisions, the Central government can take direct control of the state machinery.

• The state's governor issues the proclamation, after obtaining the consent of the President of India.
• On one hand position of State have become stronger because it has not been a zero Sum game.

• In certain context the position of Union has also that strengthened.
For example **Globalization** made it necessary to go for indirect tax reforms GST and it has impacted States autonomy with respect to sales tax.

Along with **Globalization** Came transnational terrorism which has been increased the role of Union government in law and order situation.
• New Institutions like **National Investigation Agency (NIA)** has been created.
• Thus internal law and order, security is no more the exclusive domain of State.
Centre and State Legislative Relations
Question

• What are the major grievances of State?
I. India is executive federalism rather than legislature. In terms of distribution of legislative powers the system is tilted towards Union.

- 1. **Union List** original entries 97, it was increased to 101
- 2. **State List** originally 66 Subject reduce to 61
- 3. **Concurrent List** original 47 became 52.
- 4. **Residuary Powers** with the Union.
II. Not only in emergency situation but also in normal situations Union has power to legislate on State Subject.

• 1. Article 249 - By RS resolution
• Power of Parliament to legislate with respect to a matter in the State List in the National interest.
What Is The Safeguard For Federalism?

1. Can be done only by resolution passed by RS that too by special majority.

2. It will remain valid only for the limited time.
What Is The Grievance?

1. Rajya Sabha is not a federal chamber in real sense as voting is on party lines.
What Is The Grievance?

• **2. Article 252** - with the consent of at least 2 States.

• **Grievances of States** -
  • State permanently lose powers to make law on the subject and even amendment can be done only by the Union.
What Is The Grievance?

• 3. **Article 253- International Agreements** or obligations.
• It is very regular Feature because Federation implies because States transferring their external Sovereignty.
• **Grievances of States**- When Union government make agreements on the areas which are of the core concerns of the State or in the State list at least Union government should go for prior consultations with States Government.
What Is The Grievance?

- 4. Article 201, Power of Governor to reserve the bill for consideration of President.
- **Grievances of States**
  - 1. The manner of exercise of power has been arbitrary. Same Bill of one State has been passed got an assent but that of the other State has been reserved.
What Is The Grievance?

- 4. Article 201, Power of Governor to reserve the bill for consideration of President.
- **Grievances of States**
  - 2. There is no time frame in which President will take decision.
  - It is like undermining the parliamentary democracy at the State level.
What Is The Grievance?

5. Besides above, in **Emergency** situations Federal System cease to operate, unitary system comes into existence.
Centre and State Administrative Issues

There are more disputes in Administrative Issues.
What are the Grievances?

1. Power of Union to issue directions and power to punish the State Government
3. All India services
4. Deployment of Para/Armed Military Forces
5. Institution of Governor.
• Under Article 356 of the Constitution of India, in the event that a state government is unable to function according to constitutional provisions, the Central government can take direct control of the state machinery.
• The state's governor issues the proclamation, after obtaining the consent of the President of India.
1) Power to issue Directions.

- Article 256, 257 as well as other Articles like dealing with promotion of Hindi give Union power to issue directions.
Question

- What happens when State does not follow the directions?
<table>
<thead>
<tr>
<th>Article 365</th>
<th>• It will be sufficient for President to ascertain that the government of the State cannot run according to the provisions of the Constitution.</th>
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</table>
| Article 355 | • Responsibility of duty of Union to ensure that government of Every State runs in accordance to the Constitution.  
• It also mentions Union duty to prevent State from external aggression or internal disturbance. |
| Article 356 | • In case Governor or otherwise Union ascertains that government of State cannot Run according to the Constitution it can impose President's rule. |
Write short note on Article 356

• One of the most controversial provisions in center and State relation and have been one of the factors behind Secessionist movement.

• Article 356 is a unique provision of Indian Constitution not found in any other federation, it is a colonial legacy.
Write short note on Article 356

- Member of constituent assembly raised concern with respect to the provisions in the Constitution.
- Ambedkar ensured that the provisions included only as a precaution, He Assured that it will become "Dead Letter".
• It did not remain the Dead Letter rather the most sounding letter.

• In less than 70 years of the existence of the Republic, it has been used for more than hundred times (115) most of the time it has been used before 1990s.
What Is The Problem?

- It has been used in most of the occasions in the interest of ruling party at the Union besides being used in an arbitrary manner.
- Example- In 1977 when Janta Party came to power at Union, it dissolved the government and the legislative assemblies of the Nine State ruled by congress in a single stroke.
What Was The Ground?

On the grounds that since people have not favored Congress to rule at the Union, it means that they do not want Congress government in the State.

In 1980’s when Indira Gandhi come to power at Union, she also dissolved the State government and assemblies of 9 State in single stroke ruled by non Congress government on same grounds.
What Is The Present Situation?

- There has been considerable decline though not the end of misuse.

- Very recently Article 356 has been misused in Uttarakhand and Arunachal Pradesh.
Some Factors due to which misuse has been reduced

1. Coalition Politics
2. Presidential Activism
3. Judicial Activism
Example- Judicial Activism ➔

- **S. R. Bomai Case (1994)** - The Supreme Court held that federalism and secularism are the basic structures of the Constitution.
- The misuse of Article 356 in an arbitrary manner will disturb the Constitutional balance, has a latent capacity to emasculate the Constitution of the two basic features.
Judicial Activism

- Its powers is used frequently, CM of every State will be under the permanent fear of "axe" falling on him anytime.

- It will undermine the faith in parliamentary system and will give rise to insurgency.
Judicial Activism

- Supreme Court held that it is an obligation of President to preserve the Constitutional government in the states.

- Any misuse will cause havoc.
- "Saw a wind and reap a whirlwind"
Judicial Activism

- It can lead to even insurgency, Supreme Court has also issued guidelines with respect to the use of Article 356.
Judicial Activism

• Though Judiciary cannot make enquiry what advise has been given by ministers to the President but it can get the material evidence on the basis of which any rational person will take such decision.

• It should be speaking document.

• Still it should not be the 1st option.
Judicial Activism

- Assembly shall not be dissolved with immediate effect, shall be kept suspended till Parliament does not approve the resolution even then the decision of Executive is subjected to Judicial review on the grounds of "Malafide Intention".
Arunachal Pradesh became the first case where Judiciary has reinstated the dissolved assembly 2016.
President Activism

• K.R. Narayan became the first President to return the advice of Council of Ministers with respect to imposition of Article 356 in Bihar.

• Since Then convention has been developed that in such scenario, ministry will not send advice back to the President.

• However, convention has been broken also.
All India Services

1. Unique Features of Indian Federalism

2. Colonial Legacy

3. Since the Members of AIS are appointed by President, they cannot be dismissed by lower authority including the CM. (CM at the maximum suspended.)
There have been occasions where Union has reinstated the suspended official in the same position ultimate disciplinary power in the hands of Union, the members of AIS Acts as "agent of Union".
Supreme Court has instructed Union government to constitute civil services board to prevent the politicization of bureaucracy, the board should have powers to recommend transfer, promotion and other disciplinary issues.
1. Law and order is a State Subject.

2. Article 355 Mentions Union’s responsibility to prevent State from external aggression and internal threats.

3. 42nd Amendment Act added entry 2A in Union list.

4. According to 2A Union can deploy armed forces and Paramilitary forces in aid of State administration.
Article 355 of the Constitution Explained. Article 355 entrusts the duty upon Union to protect the states against “external aggression” and “internal disturbance” to ensure that the government of every State is carried on in accordance with the provisions of Constitution.
Question

• Que. What Is The Grievance Of State?

Answer

• 1. **Suo Moto Deployment** of forces without States consent.
• 2. The power jurisdiction, responsibilities liabilities, are all determined by Union government.
According to Supreme Court, above amendment is not unconstitutional and it is not necessary for Union to go for prior consultations in above situations.
Governor
Questions

• Question 1. Discuss the controversies associated with the office of Governor, do you support the abolition of the post?

• Question 2. Discuss the prominent judgement of supreme court w.r.t. The office of Governor?
Institution of Governor Article 153

- Governor is the head of the State, All executive actions of the State are to be done in the name of Governor.
- He can execute the actions Either directly or indirectly in accordance to the Constitution.
India is a federal form of Constitution, Hence there are 2 levels of government.

If President is the head of Union executive.

Governor is the head of State executive.

Both President and Governor are Constitutional offices of dignity.
We have adopted parliamentary form of government even at the State level which requires Two Heads

1. Nominal Head
   President or Governor

2. Real Head
   PM or CM
However, neither that the situation of Governor is exactly at par with that of President nor the situation of CM is exactly at par with PM.

1. In relative terms governor is more powerful vis a vis CM.
2. President is more like a rubber stamp vis a vis PM.
Why Such A Unique Position In Indian Context?

- The very specific type of federation of India that is **Cooperative Federalism**.
- In **Cooperative Federalism** center Act as **Big Brother**
- according to Sarkaria Commission.

- Governor is "**Lynchpin of the Federation.**"
Why Governor Lynch Pin?

• 1. Communication Channel.

• A) To keep Union informed about that was happening in the states.

• B) To bring Unions perspective at the State level and to bring states aspiration at the Union level.
Why Governor Lynch Pin?

- However, in actual practice, governor is the long arm of the Union at the State.
- It acts as the eyes and ears of the Union at the State.
According to Paul Brass ➔ Constitution of India was born not in the atmosphere of Hope but in the atmosphere of fear and trepidation.

Why Required?

- Partition and secessionist challenges.
- Hence, the institution of Governor was supposed to be critical in keeping situation under control and check the secessionist trends.
However, later on Union Government irrespective of the parties have used the institution for partisan interest.
One of the major grievances in the State of Jammu and Kashmir has been the misuse of institutional Governor.
What Allows Union Government To Misuse Governor

1. The discretionary power enjoyed by the Government
2. The System of Appointment
3. The System of Removal
Discretionary Power of Governor

- Article 163, there shall be council of ministers headed by CM to aid and advice the Governor except in a situation, where Constitution required to Act in his discretion.
Discretionary Power of Governor

- It also mentions that the use of discretionary powers by the Governor shall not be challenged in the court of law on the ground that Governor should have used or should not have used his discretionary power.
- It shall be the sole discretion of the Governor.
What is Discretionary Power of Governor?

- Where Governor is not required to Act on aid and advice of the council of ministers.

Why Discretionary Power of Governor?

- It is not against the rule of law, subject to the condition that discretionary powers are used as per certain principles.
- It should not be used in an arbitrary manner.
- Such powers can be there in the Constitution as a safety valve but should be used with at most caution.
What are situations in the Constitution where Governor can use his discretion?

1. Article 174
2. Article 175
3. Article 200
4. Article 201
5. Article 356
6. Situational Discretionary Powers
1. **Article 174**
   - Summoning, prorogue and Dissolution of the Assembly.

2. **Article 175**
   - Sending Message

3. **Article 200**
   - Giving ascent to the Bills

4. **Article 201**
   - Reservation of Bills for President

5. **Article 356**
   - Recommendation for President's rule.

6. **Situational Discretionary Powers**
   - A) In case of Hung Assembly
   - B) In case Government loses the Majority
Example of Arbitrary Use

1. 1952
   - Governor of Tamil Nadu
2. 1957
   - Governor of Kerala
3. 1984
   - CM of Andhra Pradesh
4. 1988
   - Governor Uttar Pradesh
6. 2006  Governor of Bihar
7. 2016  Governor Arunachal Pradesh
8. 2016  Governor of Uttarakhand
9. 2017  Governor of Goa & Manipur
1. Tamil Nadu (1952)

- 1952 -
  - Governor of Tamil Nadu took personal initiative to stop communist coming to power
Example of Arbitrary Use

2. Kerala (1957)

- 1957 -
  - Governor of Kerala dissolved the assembly in an arbitrary manner.
  - (Dissolve the Communist Government)- 1st misuse of Article 356

- 1984-
  - CM of Andhra Pradesh NTR went abroad for medical treatment, Governor had dissolved the assembly.

- 1988 -
  - Governor Ramesh Bhandari of up sacked Kalyan Singh Government and made Jagdambika Pal as CM even without floor test.
  - this led to the involvement of judiciary in the internal working of legislature. Judiciary directed to hold composite floor test.

- 2006-
  - Governor Buta Singh of Bihar in 2006 dissolved the assembly formed after election.
  - Even before the first session, on the apprehension that there will be horse trading.
6. Arunachal Pradesh (2016)

- 2016-
  - Governor of Arunachal Pradesh preponed the session of assembly by one month.

- 2016-
  - Governor of Uttarakhand also arbitrarily dissolved assembly 2016.

- 2017-
  - Governor of Goa and Manipur 2017 did not observe the convention of inviting the single largest party, first to form the government.
How to reform the institutions?

- It has been realized that major problems lie in the system of appointment and system of removal.
Major Problems lie in

System of Appointment  System of Removal
1. Governor is appointed by the President, sole discretion of Union Executive

2. In Constitution only two qualifications are mentioned
   - A) Citizen of India
   - B) 35 years of age
Constituent Assembly Debate
Constituent Assembly Debate

- Member of constituent assembly live Pandit Thakur Das Bhargava warned Pandit Nehru about the casual approach towards the institution
Constituent Assembly Debate

Response of Pandit Nehru.

- Pandit Nehru made assurance to the assembly.
- Pandit Nehru assured that only eminent person with no active political or administrative backgrounds will be appointed.
Actual Practice (Spoil System).

- Party loyalists, rejected politicians, civil servants including judges have been appointed without cooling period.
Suggestions

1. Rajamannar Committee.
2. Punchhi Commission.
Rajamannar Committee

- Rajamannar Committee constituted by Government of TN recommended that Governor should be appointed only after consultation of CM and in each case CM is not comfortable he should not be appointed.
2. Punchhi Commission

- Punchhi Commission suggested to use the platform of interstate council, the list of eminent person can be prepared with Consultation and whenever vacancies arrive persons from the list can be appointed.
2. Punchhi Commission

- It has been suggested that instead of Leaving Qualifications like eminent person, no active political background on conventions.
- It is better if we put these in black and white in the Constitution.
Removal of Governor

• Governor is on the pleasure of President which means Union executive.
• Since appointment and removal is controlled by the Union government of India acts as a "Agent of Union".
• Case- B.P. Singhal vs Union of India 2010.
Removal of Governor

- Case- B.P. Singhal vs Union of India 2010.
- Supreme Court-
  - 1. There is no need to change pleasure doctrine.
  - 2. Governor can be removed and as when Indian government thinks.
Removal of Governor

• Case- B.P. Singhal vs Union of India 2010.

• Supreme Court-
  • 3. There is no need to give explanation to the Governor or give Governor an opportunity to present his case.
Removal of Governor

• However,
  • 1. Removal should not be on arbitrary grounds.
  • 2. Governor should be allowed to complete the term ordinarily, until and unless there were compelling reasons to do so.
Removal of Governor

• However,
  • Difference in ideology or Governor does not have the ideology which is similar to the ruling will not be the basis.
  • 3. Action of executive can be challenged on the ground of malafide intention.
Judgment of Supreme Court on office of Governor
Judgment of Supreme Court on office of Governor

1. Shamsher Singh Case
2. Ram Jawaya Case
3. Hargovind Pant versus Raghukul Tilak 1979
5. Nebam Rebia v/s UOI 2016
Judgment of Supreme Court on office of Governor

1. Shamsher Singh Case
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3. Hargovind Pant v/s Raghukul Tilak 1979
5. Nebam Rebia v/s UOI 2016
1. Shamsher Singh Case

- In both the cases supreme court held that like President, Governor is also Constitutional head, means no real powers only nominal power.
2. Ram Jawaya Case

- In both the cases supreme court held that like President Governor is also Constitutional head, means no real powers only nominal power.
3. Hargovind Pant versus Raghukul Tilak 1979

• Significance
  • Given by Constitutional bench with unanimity case explained the Constitutional status of Governor just because Governor is appointed and remove by Union executive.
  • It does not imply that Governor is subordinate to Union executive or employee of Union.
3. Hargovind Pant versus Raghukul Tilak 1979

- Significance
  - The office of Governor is a Constitutional office of dignity.
  - Governor is not answerable to Union for his acts governor’s discretion is Governor’s Discretion means that they are not discretion of Union Government.

- Supreme Court observed that in recent years, there has been lot of attacks on the Institution of Governor, he is alleged to be an agent of center and acting with partition interest.
- It is a serious matter.

- Governor has been assigned the role of sentinel of the Constitution.

- Governor takes the oath to preserve, protect and Defend the Constitution and law.

- He takes oath to devote himself to the service and well being of the people of the State.
- He is a channel of communication between Union and State in matters of mutual interest and responsibility.
5. Nebam Rebia v/s UOI 2016

- Case of Arunachal Pradesh Governor
Case of Arunachal Pradesh Governor

1) **Governor has no discretionary powers to call the Assembly.** He can call assembly only when CM is not allowing the Session of Assembly
Case of Arunachal Pradesh Governor

2) **Governor is not the Ombudsman** of the Legislature nor mentor of the speaker.
3) Discretionary powers of the Governor has to be read by harmonious construction between Article 174 & 154. Exercise of power in accordance to Constitution.
Case of Arunachal Pradesh Governor

4) Court has referred the Sardar Patel in Constituent Assembly. Patel clarified that fundamental principles of Governance in India is the Cabinet form of Government. Governor is not a elected representative, he is just an Executive Nominee.
5) *Supreme Court* also directed that governors should act in impartial manner and should stay away from internal part politics and political horse trading.
Case of Arunachal Pradesh Governor

6) **Supreme Court** has also held the direction of NDA government is like thrashing the Constitution.
Soli Sorabji in his book "Governor - Sage or Saboteur" mentions that Governor can do great good if he is a good Governor.

He can do great harm if he is a bad Governor.
SHOULD GOVERNOR'S POSITION BE ABOLISHED

- **Sarkaria Commission** call Governor is lynch-pin of Cooperative Federalism.
SHOULD GOVERNOR'S POSITION BE ABOLISHED

- Punchhi Commission ➔ importance of Governor has increased because there has been growth in communal violence and internal security threats.
Way forward

• Former Prime Minister mms gave 4 mantra in Governors Conference.
1. You are the sole judge of what is right and what is wrong.

2. You have to see what is in the best interest of the country.

3. It is your judgment to understand the mandate of Constitution.

4. It is your obligation to understand what people Expect from you.
Center and State Financial Relations
What is the philosophy in the Distribution of Financial Powers?

Cooperative federalism, What does it imply?

Implies that center is a big brother.
Why Cooperative Federalism adopted two Goals?

1. Lack of balanced regional development
2. The need for planned development because of scarcity of resources.
What is the consequence of above approach?

Central position is strong, it results into horizontal imbalance and vertical imbalance.

Imbalance equal to expenditure - revenue.

States expenditure is more and revenue less than center.
What is the Constitutional Scheme.

- Most dynamic area in Center and State relation
1. Distribution of Taxes

- State List- taxes on this list are low yielding and rigid.
- Union List high yielding and more elastic.
- 101st Amendment Act has introduced concurrent power of taxation
101st Amendment Act

**GST Bills**

1. The Central Goods and Services Tax Bill 2017 (The CGST Bill)
2. The Integrated Goods and Services Tax Bill 2017 (The IGST Bill)
3. The Union Territory Goods and Services Tax Bill 2017 (The UTGST Bill)
4. The Goods and Services Tax (Compensation to the States) Bill 2017 (The Compensation Bill)
What is the impact of our above scheme?

- The imbalance and state's resources are sufficient.
HOW TO ADDRESS THE STATES NEED?

- State can address the need by three methods.
State can address the need by three methods:

A) They get share in Union tax revenue

B) Grants in aid (means of aid of revenue, if revenue remains less)

C) Borrowing from domestic market.
States

A. Share in Union Tax Revenue
B. Grants in Aid
C. Borrowing from Domestic Market
Borrowing

- States Grievance
There are restrictions on the borrowing power of the states.

1. Can't borrow outside of India.

2. In case they have taken any loan from the central government and amount is outstanding, they can't get Fresh loans from the market without Unions permissions.

3. In case they have taken any loan from the domestic market where Union government has given counter guarantee, they cannot seek fresh loans without Unions permission.
There are Two Types of Grant

1. Statutory Grant Article 275
2. Discretionary Grant Article 282
Why called Statutory Grant?

- They are given on recommendation of the Finance Commission.

- Parliament passes law on the Finance Commission recommendation.
Why called Statutory Grant?

- These are given in aid of revenue to the states which do not have sufficient revenue.

- Constitution also mention mandatory grants to be given to the states for the expenditure related to the administration in the areas of scheduled tribes.
Why called Discretionary Grants (Article 282)?

- It is called as Discretionary Grant.
- Because both Union and State executive can give grant for any public purpose or social good.
- For Example- Rural development, State subject trade.
- Yet Union can make grant on rural development
Discretionary Grants

Why it is a Matter of Dispute?

- Grants given under Article 282 were given on the recommendation of planning Commission.
What Was The Problem With Planning Commission?

1. Planning Commission has undermined Federalism.

2. It has undermined the role of Finance Commission.

3. It has undermined the role of Union Cabinet.
How it undermine Cabinet Principles?

• Planning Commission became supreme cabinet,

• The ultimate body to make public policy,

• The role of ministry was reduced to the implementation agencies.
How it undermine Finance Commission?

1. An artificial division has come up between the function of Planning Commission and Finance Commission.
How it undermine Finance Commission?

2. Grants under Article 275 were given on the recommendation of Finance Commission and Article 282 were given on the recommendation of planning Commission.

There was no need to be create a separate Commission even Finance Commission would have done the job.
How it undermine Finance Commission?

3. The outlays given by Finance Commission very small than to be given by planning Commission.
How it undermine Finance Commission?

4. The artificial distinction emerged between administrative expenditure and developmental. Finance Commission role Got reduced to make assessment of Administrative expenditure.
5. It has undermined the federal autonomy because restricted States from having their own policy. Planning Commission even introduced the system of conditiones for matching grants undermining the federal autonomy.
How it undermine Finance Commission?

India was in need of policy making institution and Hence, Niti Aayog has been established to transform India.