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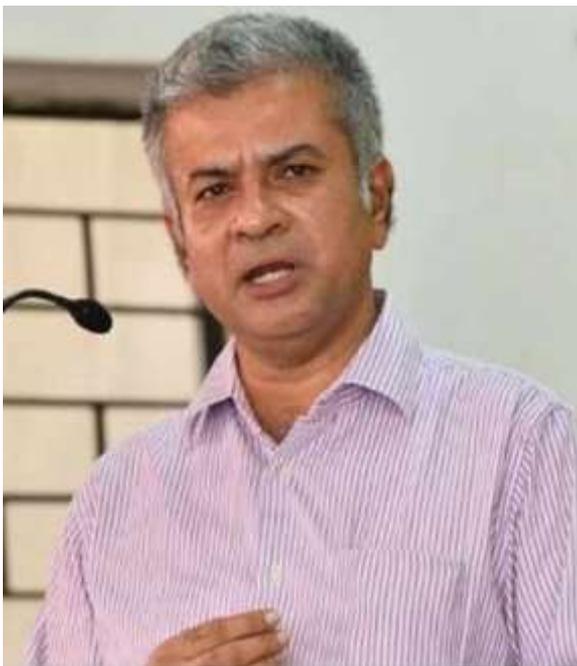
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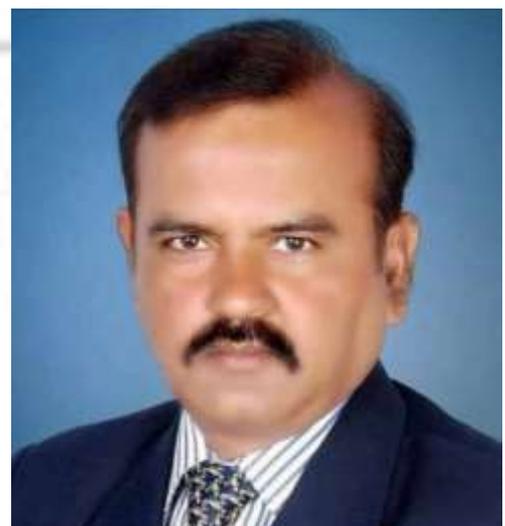
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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL ANALYSIS OF THE INTER-STATE COUNCILS **IN CONSTITUTIONAL PROVISIONS**

AUTHORED BY - ARUTHRA R

ABSTRACT

Inter-State Councils (ISCs) play a crucial role in fostering cooperation and coordination among the states in a federal system. This paper provides a comprehensive legal analysis of the Inter-State Councils as enshrined in constitutional provisions. It explores the constitutional framework governing the establishment, composition, powers, and functions of Inter-State Councils in various federal democracies worldwide, with a particular focus on India.

The analysis begins with an examination of the historical background and evolution of Inter-State Councils, tracing their origins and development within the constitutional framework of federal governance. It delves into the pertinent constitutional provisions in different jurisdictions, highlighting the nuances in the structure and mandate of these councils.

Furthermore, the paper scrutinizes the powers and functions vested in Inter-State Councils, including their role in resolving inter-state disputes, facilitating intergovernmental cooperation, and addressing issues of national importance. It assesses the extent of autonomy and authority granted to these councils vis-à-vis the central and state governments, as well as their effectiveness in promoting cooperative federalism and harmonizing intergovernmental relations.

Additionally, the paper explores the mechanisms for the establishment and operation of Inter-State Councils, examining procedural requirements, decision-making processes, and the role of stakeholders therein. It evaluates the adequacy of existing constitutional provisions in ensuring the functional autonomy, institutional integrity, and accountability of Inter-State Councils.

Moreover, the analysis examines the challenges and limitations faced by Inter-State Councils in fulfilling their constitutional mandates, including issues related to resource constraints, political dynamics, and institutional capacity. It also considers potential avenues for reform and

enhancement to strengthen the role and effectiveness of these councils in addressing contemporary governance challenges.

This paper offers insights into the legal framework governing Inter-State Councils within constitutional provisions, highlighting their significance in promoting cooperative federalism and facilitating intergovernmental cooperation. It underscores the importance of continual evaluation and refinement of these constitutional mechanisms to adapt to evolving governance needs and ensure the effective functioning of federal systems.

INTRODUCTION

In 1988, the government appointed a panel headed by Justice R.S. Sarkaria to evaluate the performance of the existing agreements between the Union and the States. One of the main suggestions of the Sarkaria Commission was to establish a permanent Inter-State Council as an objective national forum for discussion with a well-defined purpose in accordance with Article 263 of the Indian Constitution. The inter-state council is a consultative body with the authority to look into and have discussions about issues of mutual interest between the Union and a state or states. Additionally, it conducts discussions on issues of broad concern to the states that may be brought to it by its chairman and provides suggestions for better policy and active cooperation on these topics. Additionally, it considers any additional issues of general concern to the states that the chairman may bring to the council. At least three times a year, the Council may convene. Moreover, the Council has a Standing Committee. As a consultative body, the inter-state council has the power to investigate and hold talks about matters of mutual interest involving the Union and one or more states. Furthermore, it holds talks on matters of general state concern that its chairman may bring before it, and it offers recommendations for improved policy and proactive collaboration on these subjects. It also takes into account any other matters that the chairman may bring before the council that are generally important to the states. The Council may meet three times a year minimum. Moreover, there is also a Standing Committee within the Council. Established under Article 263 of the Constitution, the ISC is a consensus-building and advising body tasked with looking into, debating, and making recommendations on "subjects in which some or all of the States or the Centre and one or more of the States have common interest." There are six Ministers of Cabinet rank in the Union Council of Ministers, to be nominated by the Prime Minister. It is composed of the following: (a) the Prime Minister as Chairperson; (b) Chief Ministers of all States; (c) Chief Ministers of Union Territories

having a Legislative Assembly and Administrators of Union Territories not having a Legislative Assembly; and Furthermore, the Chairperson may designate other Ministers with independent charge within the Central Government as permanent invitees or call them to a meeting whenever a matter pertaining to a subject under their purview needs to be discussed. As a result, this body offers each State, Union Territory, and the Centre complete representation.

RESEARCH OBJECTIVE

1. Analyze the evolution of Centre-State coordination and cooperation in India:

By focusing on the shift from single-party rule to diverse multi-party and coalition governments. And examining how this shift impacted issues of coordination, constitutional governance, and inter-state relationships. Also, the aspects of identifying specific challenges and opportunities that arose in this new political landscape are looked at.

2. Explore the role of inter-state councils in the context of the changed political circumstances:

By understanding the constitutional provisions and legal frameworks governing inter-state councils and analyzing relevant precedents and cases that shaped the functioning and effectiveness of these councils. Also by evaluating the potential of inter-state councils as tools for addressing contemporary challenges in Centre-State relations and promoting cooperative federalism. In essence, the research seeks to assess the adaptability of Centre-State relations and inter-state collaboration mechanisms in the face of India's evolving political landscape. It aims to identify key historical turning points, current challenges, and potential solutions by focusing on the role of inter-state councils as outlined in the constitution and established precedents.

RESEARCH PROBLEM

The constitutional arrangements of Centre-State and inter-State coordination and cooperation functioned smoothly during the first twenty-five years of the working of the Constitution of India due largely to single-party rule at the Centre and in almost all the States and presence of stalwart national leaders like Pandit Jawaharlal Nehru who played a prominent role in the drafting the Constitution. The end of the era of single-party rule since the late sixties and the emergence of regional parties and coalition governments with diverse ideologies, priorities and

programmes brought into sharp focus various coordination issues in Centre-State relations and constitute governance. Understanding the inter-state councils with the provisions of the constitution of India and the various precedents that followed.

RESEARCH QUESTION

The main research objective in the aforementioned text about the Inter-State Council (ISC) is to critically analyze the legal and constitutional implications of its existence and functioning.

This analysis will delve into various aspects, including:

1. Does the ISC's advisory nature and Prime Minister-chaired composition tilt the power dynamics towards the Centre, potentially undermining federalism principles?
2. Can its broad mandate encompassing "common interest" subjects encroach upon state legislative competence? How are its investigative and deliberative powers defined and enforced?
3. How does the ISC compare to similar bodies in other countries like Australia and Germany? Can lessons be learned to improve its effectiveness in India?

LITERATURE REVIEW

1. States' Equality v States' Power: The Euro-crisis, Inter-state Relations and the Paradox of Domination

a. Author: Federico FABBRINI

b. Year: 2015

This article examines how the Euro-crisis and responses to it have affected the horizontal relations of power between the EU Member States. It is argued that, whereas the EU institutional system had been designed since its foundation to strike a balance between state equality and state power, the Euro-crisis, and the responses to it have increasingly upset this balance.

2. Inter-State Complaints Under Treaty Provisions – The Experience Under The European Convention On Human Rights

a. Author: Soren C. Prebensen

b. Year: 2015

This article explores how the interstate complaints under treaty provisions. The dynamic constitutes a worrying development, given the anti-hegemonic nature of the EU integration project, and shows how intergovernmentalism

paradoxically caters for powerful Member States.

3. Exploring Administrative Centre-State Relationships in India: A Comprehensive Analysis of the Constitution and Suggestions for Progressive Execution

a. Author: Tejaswini Kaushal

b. Year: 2023

This paper delves into the intricate administrative dynamics between India's central and state governments within its federal framework, scrutinizing constitutional provisions and proposing pragmatic solutions. Amidst India's nominally federal system, challenges persist due to the central government's fiscal dominance and states' financial reliance, leading to an imbalance in administrative relationships.

4. Explaining inter-state variation in aid for children at private religious schools in the United States, up to 2012

a. Author: Hackett

b. Year: 2014

This American Political Development research explains cross-state variation in aid for children at private religious schools in the United States up to the end of 2012. Using a mixed methods approach I examine how the institutional orderings of Federalism, Constitution, Church and Party affect policymaker decisions to instigate and sustain programmes of aid. By 'aid' I mean education vouchers and tax credits, transportation, textbook loans, equipment, nursing and food services, and tax.

5. Inter-State River Water Disputes in India: Institutions and Mechanisms

a. Author: Sulagna Maitra

b. Year: 2007

India is a large country with 29 states as constituents in its federal structure. The large and growing population imposes great pressure on available natural resources. This research deals with the disputes arising out of contested river water entitlements between states are common and often intractable. Laws conceived for settling such disputes were created for a particular socio-political environment characterized by strong Centre and relatively non-assertive states.

METHODOLOGY

Qualitative legal research (QLR), a distinct methodology within the legal landscape, employs interpretive techniques to explore and comprehend the law beyond the realm of statistics and data analysis. QLR, unlike its quantitative counterpart, delves into the subjective experiences, meanings, and interpretations attributed to legal phenomena by individuals and groups engaged within the legal system. Qualitative legal research delves into the subjective experiences and perspectives of individuals and groups involved in legal processes. Various methods to gather data, such as interviews, focus groups, observations, and document analysis, are used. Qualitative research typically follows an inductive approach, where researchers develop conclusions and theories based on the data they collect. A flexible and adaptable research methodology is used to investigate a wide range of legal topics. It is particularly well-suited for exploring complex and nuanced issues that cannot be easily captured using quantitative methods.

DISCUSSION

ISC's advisory nature and Prime Minister-chaired composition tilt the power dynamics towards the Centre, potentially undermining federalism principles

The implications of the ISC's advisory nature and its composition, particularly with the Prime Minister in a leadership role, on federalism principles would depend on various factors including the specific jurisdiction and the powers vested in the ISC.

In a federal system of governance, power is typically shared between the central government and regional or state governments. The presence of an advisory body like the ISC, chaired by the Prime Minister, could potentially raise concerns about the centralization of power and the potential undermining of federalism principles.

The advisory nature of the ISC suggests that its recommendations are not binding on either the central or regional governments. However, the influence and authority of the Prime Minister, who chairs the ISC, could lead to a situation where the recommendations carry significant weight, potentially influencing policy decisions at both the central and regional levels.

Depending on the relationship between the central and regional governments, the existence of the ISC could potentially lead to conflicts over jurisdictional issues and the balance of power

between different levels of government. If regional governments feel that their interests are not adequately represented or if they perceive the ISC as encroaching upon their powers, it could strain intergovernmental relations.

However, it's important to note that the impact of the ISC on federalism principles would depend on various mitigating factors such as the specific mandate and powers conferred upon it, the willingness of governments to collaborate and respect each other's jurisdiction, and the presence of mechanisms for meaningful dialogue and consultation between different levels of government.

The ISC's advisory nature and composition chaired by the Prime Minister could potentially influence power dynamics in favor of the center, its impact on federalism principles would depend on various contextual factors and how it operates in practice.

Common interest

In India, its mandate covering "common interest" subjects could potentially encroach upon state legislative competence if there is ambiguity or overlap between the subjects falling under the ISC's purview and those traditionally within the domain of state legislatures. This could lead to conflicts regarding jurisdiction and legislative authority. The ISC's investigative and deliberative powers are primarily defined and enforced through the resolutions and decisions taken by the council itself, as well as through the legal framework and guidelines governing its operations.

The ISC's mandate and objectives are defined in its establishing documents, which may include legislation, executive orders, or constitutional provisions. These documents specify the scope of subjects falling under the ISC's purview and its role in promoting cooperation and coordination among states and the central government. As an advisory body, the ISC engages in deliberative processes to discuss and analyze various issues within its jurisdiction. This may include convening meetings, workshops, or conferences where members deliberate on policy matters, exchange views, and formulate recommendations.

The enforcement of the ISC's decisions and recommendations primarily relies on the voluntary cooperation of its members, which include representatives from the central government and state governments. While the ISC itself may not have direct enforcement powers, its

recommendations can carry significant weight and influence policy decisions at both the central and state levels.

The ISC's investigative and deliberative powers are defined within the framework of its mandate and operational guidelines. While it may not have coercive enforcement mechanisms, its influence stems from its role as a forum for dialogue, consultation, and consensus-building among stakeholders at the central and state levels.

ISC comparison

The ISC (Inter-State Council) in India, similar to bodies in other countries such as Australia and Germany, serves as a mechanism for intergovernmental cooperation and coordination. While each country's specific body may differ in structure, mandate, and powers, there are general lessons that can be learned to potentially improve the effectiveness of the ISC in India.

One lesson from international examples is the importance of clearly defining the mandate and objectives of the intergovernmental body. This ensures that all stakeholders understand its purpose and can work towards common goals effectively.

Effective intergovernmental bodies often prioritize inclusivity and representation of all relevant stakeholders. Ensuring participation from state and local governments, as well as relevant sectors and civil society organizations, can enhance legitimacy and effectiveness.

Transparency in decision-making processes, including clear rules and procedures for decision-making, can help build trust among stakeholders and ensure accountability.

Adequate resources, including funding and staffing, are essential for the functioning of intergovernmental bodies. Ensuring sufficient resources are allocated can enhance the body's capacity to fulfil its mandate.

Establishing effective mechanisms for resolving disputes or conflicts among member entities can help prevent gridlock and ensure timely decision-making.

Periodic review and evaluation of the body's performance and effectiveness can help identify areas for improvement and ensure that it remains relevant to changing needs and circumstances.

By studying the experiences of similar bodies in countries like Australia and Germany, India can potentially identify best practices and lessons learned to enhance the effectiveness of the ISC. This might involve reforms to its structure, processes, and functioning to better address the diverse needs and challenges of India's federal system.

CONCLUSION

In conclusion, the legal analysis of Inter-State Councils within constitutional provisions illuminates their critical role in fostering cooperative federalism and intergovernmental coordination. Throughout this examination, it becomes evident that Inter-State Councils serve as vital mechanisms for addressing inter-state disputes, facilitating collaboration on issues of national significance, and promoting harmonious relations among diverse governmental entities within federal systems.

The study underscores the importance of robust constitutional provisions that delineate the establishment, composition, powers, and functions of Inter-State Councils. Such provisions are essential for providing clarity, coherence, and legitimacy to the operations of these councils, ensuring their efficacy in navigating complex intergovernmental dynamics.

Moreover, the analysis reveals the need for continual evaluation and refinement of Inter-State Council mechanisms to address emerging governance challenges and adapt to evolving political landscapes. This includes considerations for enhancing the autonomy, institutional integrity, and accountability of Inter-State Councils, as well as exploring avenues for streamlining decision-making processes and bolstering stakeholder participation.

Despite the inherent complexities and limitations faced by Inter-State Councils, their significance as instruments of cooperative federalism cannot be overstated. By fostering dialogue, consensus-building, and mutual understanding among federal and state governments, Inter-State Councils contribute to the overall stability, cohesion, and effectiveness of federal systems.

In essence, the legal analysis of Inter-State Councils in constitutional provisions underscores their pivotal role as institutional cornerstones of federal governance. By upholding principles of subsidiarity, collaboration, and shared responsibility, Inter-State Councils embody the spirit

of cooperative federalism, ultimately contributing to the advancement of democratic governance and the realization of collective national interests.

BIBLIOGRAPHY

- 1) <https://www.studyiq.com/articles/inter-state-council/>
- 2) <https://legalaffairs.gov.in/sites/default/files/Constitutional%20Mechanism%20for%20the%20settlement%20of%20Inter-State%20Disputes.pdf>
- 3) <https://www.barandbench.com/columns/strengthening-the-horizontal-federalism-in-india-need-of-the-hour>
- 4) https://www.researchgate.net/profile/Minilik-Assefa-Abisa/publication/353760883_THE_SETTLEMENT_OF_INTER-STATE_BORDER_DISPUTES_UNDER_THE_ETHIOPIAN_FEDERATION11/links/610f9e200c2bfa282a2f5a18/THE-SETTLEMENT-OF-INTER-STATE-BORDER-DISPUTES-UNDER-THE-ETHIOPIAN-FEDERATION.pdf
- 5) <https://www.cambridge.org/core/journals/cambridge-yearbook-of-european-legal-studies/article/abs/states-equality-v-states-power-the-eurocrisis-interstate-relations-and-the-paradox-of-domination/B1947A89E03B72AA8FE089EC1EC1E86D>