

THE CENTRE – STATE ADMINISTRATIVE RELATIONS IN CONTEMPORARY INDIA: A DETAILED ANALYSIS OF THE CONSTITUTIONAL STIPULATIONS AND RECOMMENDATIONS FOR A PROGRESSIVE EXECUTION

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ABSTRACT

“Federalism is no longer the fault line of Centre-State relations but the definition of a new partnership of team India”, was the quote given by Narendra Modi, which laid down, in a nutshell, the very foundation on which the concept of federalism has been established. The term federation, owing its origin to the word ‘foedus’, refers to a treaty, an arrangement or an understanding between the Centre and the States, which defines mutual co-existence between authorities in the Centre and those of the States.

Also, K.C. Wheare, a well-known political thinker and an academician, had remarked with respect to India being a federation: *“The Indian Union is a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features.”* However, the present administrative system has completely failed to establish the equilibrium between the Centre and the States, as the Union stands in a position of domination over the States. Some of the factors which have led to domination of the Centre over the States include the overwhelming financial power of the Union and the utter dependence of the States upon the Union grants for discharging

their functions, and the comprehensive sweep of the Union Planning Commission set up under the concurrent power over planning etc. – all which, including such other relevant factors, have been critically analyzed in the paper.

The paper explores the various dimensions pertaining to Centre-State relations, such as the concept of federalism, specifically in terms of Indian polity, and the need for the parity between the Centre and the States - where both co-exist independently and distinctly, with neither of them being ancillary to the other, as enshrined under Schedule VII of the Indian Constitution which classifies the subject matters between the State and the Centre in the form of the Union, State and Concurrent lists. The paper also includes a detailed analysis of the role and the position of the Governor and the conflict in practice, along with the description of the Inter – State Councils and their significance in determining and balancing the Centre – State relations. The paper concludes with suggestions to curb the limitations with respect to the balancing of the Centre-States relations and to ensure that the federal features shall continue to be exist, so as to avoid the possibility of the country reduced to a Unitary State.

INTRODUCTION

The term Federation has its origins from the word ‘Foedus’ which means treaty. Federation, thus, can be defined as an arrangement where central and regional authorities co-exist in a mutually inter-dependent political leadership. In this framework, parity is kept in such a manner that not one or the other level of government gets to be overwhelming to the degree that it can direct the choice of the other, although even then, each can impact, negotiate and influence the other. It has become integral for countries such

as India, US and Russia to become adept to the system of federalism, which is a vital instrument for protecting the unity of the nation.

However on many spheres, true division of powers between the centre and the state has failed to take place, and the centre ends up being on the dominant side. Some scholars in India have urged that the unitary bias of our Constitution has been accentuated in its actual working by two factors—

- (a) the overwhelming financial power of Union and the utter dependence of the States upon the Union grants for discharging their functions, and,
- (b) the comprehensive sweep of the Union Planning Commission, which is set up under the concurrent power, over planning processes.

In this regard, Santhanam observes: *“India has practically functioned as a Unitary State though the Union and the States have tried to function formally and legally as a Federation.”*¹

There are various spheres in administrative relations where centre has exerted its influence, with the prominent area being that of the appointment and removal of governors. The tussle between the Union and the State has resulted in differences in the matter of preference of Governors, with the Governors being reduced as mere agents of the Centre. There have also been instances of arbitrary declaration of State Emergencies, failure of Union to adjudicate disputes with regards to use, distribution, and control of inter-state rivers or river valleys, failure of Inter-State councils and All India Services to facilitate co-operation and co-ordination between Union and the State and other such controversies. The recent conflict between CM of Delhi, Arvind Kejriwal, and Lt. Governor Najeeb Jung, is an example of power struggle between the Centre and the State, along with the issues concerning the new weapon employed by the BJP Government, i.e. the NITI

¹ Ashok Chandra, *Federalism in India: A Study of The Union-State Relations*, London: George Allen and Unwin Ltd., 1965, p. 100.

Aayog, which replaced the FYPs and was brought into the forefront without the approval of State Governments. The paper puts focus upon the administrative relations between Centre and the States in the present federal system and explores the root cause of collision between the two and give suggestions to overcome it.

THE CONCEPT OF FEDERALISM IN INDIA: THE CONSTITUTING ASPECTS

In lieu of defining the word ‘federalism’, KC Wheare has explained the concept of federalism to be - *“The method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent.”* However, such definitions have altered from time to time with theorists such as Birch defining federalism only in terms of co-ordination to *“co-operative federalism”*. According to Birch, the emphasis shall be put upon the relationship between two sets of governments of the mutual co-operation and interdependence rather than of independence and legal barriers.²

However, despite the differences, there are certain attributes which constitute the very concept of federalism, with one of them being the requirement for the maintenance of parity between Centre and States. As mentioned above, the federal arrangement provides for a separate and independent co-existence, where neither of them is a subordinate of the other. The requirement of separation under federalism includes the need for the existence of two-fold government, which is enshrined under the Indian Constitution, where the Schedule VII classifies the subject matters between the State and the Centre in the form of three lists, i.e. – the Union with 97 subjects, the State list having 66 subjects and the Concurrent list with 47

² Anirudh Prasad and Justice D.A. Desai, n.1, p. 23.

subjects. A Constitution of India stands testament to the prevalence of federal characteristics.

THE FRAMEWORK OF ADMINISTRATIVE RELATIONS IN INDIA: SIGNIFICANCE AND IMPORT

The key component in governing the Centre-State relations is the Administrative Relations. The components of the Centre- State relations are dealt in Articles 256, 257, along with Articles 356 and 365. Under Articles 256 and 257, the Centre has been vested with powers to issue guidelines and directions to the State. The whole objective of Article 356 is to provide for the administration of a State when no political party can garner a majority in the House to form a stable government, either by itself, or by forming a coalition with another party. For a variety of reasons, the effect of this exercise is not uniform. In some cases, the Assembly had been dissolved, but in some other cases it was kept in suspended animation. From 1950 to 2005, that is, within a period of 55 years, the country has had the taste of President's Rule in different States on more than 126 occasions. The Article 365, on the other hand, authorizes the President to hold that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, that is, if the State fails to comply with or give effect to any directions given in exercise of the executive power of the Union.³ The meaning of the expression "any direction" must be understood to mean that any direction issued under any of the provisions of this Constitution in the exercise of the executive power of the Union.⁴ However, the President is expected to exercise his power vested under this article in a cautious and expedient manner. Thus, Article 365 may act as a deterrent to prevent any hasty resort to drastic action under Article 356, in the event of failure on the part of a State Government

³ State of West Bengal v Union of India

⁴ Krishna P. Shetty, "President's Power under Article 356 of the Constitution - Theory and Practice" in Alice Jacob (Ed.): *Constitutional Developments since Independence* (Bombay: Tripathi: 1975), p. 342.

to comply with or to give effect to any constitutional direction given in the exercise of the executive power of the Union.

Therefore, the extraordinary powers under Article 365 are not only necessary but should also be exercised with great caution and only in extreme cases.⁵ The Sarkaria Commission has further demonstrated the express usage of Article 365, in this manner:

Where a direction issued by the Union in the exercise of its executive power under any of the provisions of the Constitution, such as, Articles 256, 257 and 339(2) or, during an emergency under Article 353, is not complied with by the State Government in spite of adequate warning and opportunity, and the President thereupon holds under Article 365 that a situation, such as that contemplated in Article 356 has arisen.

If public disorder of any magnitude endangering the security of the State takes place, it is the duty of the State Government to keep the Union Government informed of such disorder, and if the State fails to do so, then such failure may amount to impeding the exercise of the executive power of the Union Government and justify the latter giving appropriate directions under Article 257(1). If such a direction given to the State by the Union executive under Article 257(1) is not complied with, in spite of the adequate warning, the President thereupon may hold that the situation as that contemplated under Article 356 has arisen.⁶

Pt Thakurdas Bharagava, an eminent lawyer of pre-Independence period, had famously once laid down about Article 365 -

“The Provincial Governments will be in constant fear and will constantly tremble before him (the Prime Minister). Such a provision will invest the

⁵ Sarkaria Commission Report on Centre-State Relations, Part I (New Delhi: Government of India: 1988), pp. 106-07.

⁶ Sarkaria Commission Report on Centre-State Relations, Part I, (New Delhi: Government of India: 1988), p. 173, para 6.4.12

Central Government with absolutely arbitrary power and I maintain that arbitrary power should not be given to any person. Ministers and Provincial Governments will have no security or stability and will change at the whim or caprice of the Prime Minister.”⁷

As has been the case with Articles 356 and 365, it has rather become a viable option for the Central Government to dominate and exert pressure and influence on the State Government.

THE INTER-STATE COUNCILS: AN INTERPLAY OF GOVERNING FACTORS

Constituted under Article 263 of the Constitution with the objective of promoting co-operative federalism, the Inter-State Councils did not come into play until the 1990s during the rule of VP Singh, which set up a regular Inter-State Council (ISC) in 1990 by the ordinance of the President. Other than this, the Planning Commission as well as National Development Council (NDC) has been set up with the sole aim of bridging the gap between the Centre and States.

Subhash Kashyap a well-known political scientist and an expert on the Constitutional provisions, remarked regarding the Inter-State Councils -

“It was on pragmatic consideration, provided that only those powers, concerned with the regulation of local problems, should be vested in the states; the residue, especially those which tend to maintain the economics, industrial and commercial unity of the country was to be left to the union. While disturbing powers, unconsciously, the foundations of a cooperative federalism were being laid. This new spirit was to depend not so much on institutional devices but, "on the harmonious working of the federal power structure, in the stability and effectiveness of the centers, in a just system

⁷ XI CAD pp. 512-13

of resolution of centre-state and Inter-state conflicts and in adequate institutional system for consultation, coordination, interchange and integration.”⁸

The Sarkaria Commission had also given the recommendation for the institution of a permanent Inter-State Council, which should be charged with the duties set out in (b) and (c) of Article 263 of the Indian Constitution. Such a Council, comprising six Union Cabinet Ministers and the Chief Ministers of all the States, was created in April, 1990. Though the President is given the power to define the nature of duties to be performed by the Council, the Constitution outlines the three-fold duties that may be assigned to this body, and one of these is – *“The duty of enquiring into and advising upon disputes, which may have arisen between States”*.

The power of the President to set up the Inter-State Council may be exercised not only for advising upon disputes, but also for the purpose of investigating and discussing subjects in which some or all of the States, or the Union, and one and more of the States have a common interest. In the exercise of this power, the President of India constituted the Central Council of Health, the Central Council of Local Self-Government, Transport Development Council, the Central Council of Indian Medicine and the Central Council of Homoeopathy.

Despite regional powers such as AIADMK and Samajwadi Party becoming a force to reckon with in the political circles, nothing of significance has occurred with regard to improving centre - state relations via the Inter - State Councils. Seventeen years since its inception, only 7 meetings have been held where discussions have transpired over repetitive issues including recommendations of the Sarkaria Committee, the role of

⁸ Subhash C. Kashyap (ed.), *Union-State Relations in India*, Institute of Constitutional and Parliamentary Studies, New Delhi, 1969 p. 212.

Governor, inter-state water disputes etc., but have regardless yielded no result. The previous Congress Governments before VP Singh failed to develop any instrumentality requisite for the progress of the Centre-State relations. Also, developments of NDC as well as ISCs have taken place without any constitutional backing, therefore, such being merely reduced to a cabinet resolution as well as multi-party system deferring the decisions and implementation of such decisions made by ISCs.

THE ROLE OF THE GOVERNOR: ANALYZING THE CONSTITUTIONAL PROVISIONS AND THE JUDICIAL TRENDS

The Governor acts as the constitutional head of the State and is appointed by the President. The Governor holds office at the desire of the President.⁹ Although the President, in his own satisfaction, can remove the Governor, he in actual practice, appoints the Governor upon the advice heeded by the Council of Ministers led by Prime Minister.¹⁰ The Governor is obliged to act on the aid and advice of the Council of Ministers headed by the Chief Minister,¹¹ except in a few areas where he can act on his discretion as laid down in *Shamsher Singh v State of Punjab*¹². An important point, however, was enumerated in the case of *Hargovind Pant v. Raghukul Tilak*,¹³ where in 1979, the Constitution Bench of the Supreme Court held that even if in the *Shamsher Singh case* it has been laid down that the Governors stand bound by instructions of the Council of Ministers headed by Chief Minister, the Governors are not in any way “subordinate or subservient to the

⁹ Article 156, Constitution of India 1950

¹⁰ Article 74(1) Constitution of India 1950

¹¹ Article 163, Constitution of India 1950

¹² (1974) 2 SCC 831

¹³ 1979 SCR (3) 972

Government of India”, and that the post is an independent constitutional office, “*which is not subject to the control of the Government of India*”.

The Governor is “*constitutionally the head of the State who has been vested the executive power of the State*”. Further, in the case of *BP Singhal v Union of India*¹⁴, the Supreme Court laid down observations pertaining to the status of the Governor in the following manner:

The President, in effect, the Central Government, has the power to remove a Governor at any time without giving him or her any reason, and without granting an opportunity to be heard.

However, this power vested upon the President, as enumerated in the above mentioned point, cannot be exercised in an arbitrary, capricious or unreasonable manner. The power of removing Governors should only be exercised in rare and exceptional circumstances and for valid and compelling reasons.

The mere reason that a Governor is at variance with the policies and ideologies of the Central Government, or that the Central Government has lost confidence in him or her, is not sufficient to remove a Governor. Thus, a change in the Central Government cannot be a ground for the removal of Governors, or to appoint more favorable persons to this post.

A decision to remove a Governor can be challenged in a court of law. In such cases, first the petitioner will have to make a prima facie case of arbitrariness or bad faith on the part of the Central Government. If a prima facie case is established, the court can require the Central Government to produce the materials on the basis of which the decision was made, in order to verify the presence of any compelling reasons.

¹⁴ (2010)6 SCC 331

The Governor, over the past few years, has been reduced to a mere subordinate of the Centre, as well as a victim of the Centre-State conflict. Going against the judgment laid down by Supreme Court, the current BJP Government forced many Governors including Aziz Qureshi and Kesari Nath Tripathi to relinquish their post in the of States of Mizoram and West Bengal, respectively.

RECOMMENDATIONS FOR A HARMONIOUS APPROACH TO CENTRE – STATE RELATIONS

The Indian federation started working as a Unitary State—owing to the growing encroachment of the Centre on the States’ functions, the fiscal imbalance between the Centre and States, a centralized planning process and, above all, the frequent imposition of Central Rule on the State under Article 356 of the Constitution. All this has created misgivings in some States and has led to the rise of regionalism, and also to the States’ demand for their autonomy and other radical changes required in the Indian Constitution. Alice Jacob, who is renowned political thinker and analyst remarked - “..Every federal constitution necessarily contains provisions regulating centre-state relations. These provisions must provide for adjustments in cases of conflict between the two coexisting authorities.”

There are generally four areas where the conflict arises - the legislative, the administrative, the judicial and the financial. While the Constitution of India provides for a single integrated judicial system, and has thus eliminated the chances of friction between the centre and the states in the judicial sphere,¹⁵ there are numerous measures that can be undertaken with

¹⁵ Alice Jacob, “Centre-State Relations in Planning”, in S.N.Jain, Subhash. C.Kashyap and N.Srinivasan(ed), *The Union and the states*, National Publishing House, Delhi, 1972.

respect to the other areas in order to create harmonious relations between Centre and States:

India has a strong Central Government, where the State Government is bound to furnish obedience to the Centre. Therefore, there is a need for the employment of a watchdog or an authoritative body which keeps a close eye, so as to prevent the misuse of Article 365.

As observed, it is not possible to limit the scope of power under Article 356, and due to the vagueness of the ground of “constitutional failure of machinery”, it has unfortunately often been misused. The recommendations given by the Sarkaria Commission and those in the case of *S.R. Bommai vs. Union of India*¹⁶ become relevant.

There is a need to convert the ISC into an independent statutory body like the Election Commission. There should be the transfer of a substantial part of the existing manpower assets of the Planning Commission so as to strengthen its policy research and investigation capacity. The Council shall establish a networking relationship with the policy research, social and economic research institutions across the country in order to enable the independent research inputs to go into policy-making and bridge the research/policy divide. Such a revamped ISC shall serve as an umbrella of the special purpose vehicles, in partnership with the States, for many mega-national initiatives such as cleaning of the Ganga or the integrated development of the Himalayas.

¹⁶ AIR 1994 SC 1918. It was observed in this case that federalism is an essential feature of Constitution and part of the basic structure. States are not mere appendages of the Centre. Within the sphere allotted to them, States are supreme and the Centre cannot tamper with their powers. Another important recommendation made was that the Legislative Assembly should not dissolve unless the proclamation made under Article 356 of the Constitution by the President has been approved by both the houses of Parliament.

The consistent inability in getting the States on board for counter-terrorism, the GST (goods and services tax), the Lokpal, foreign direct investment (FDI) in retail, and land acquisition reform - all of these have made it a graveyard of failed initiatives. So, whether the current Government has learnt his lessons well, or whether it now thinks of it as generating a clever political strategy - certain federalist impulses deserve full-throated support, and therefore, should be extended to other fields. The most encouraging sign of this commitment to federalism is the welcome internment of the Planning Commission. As has been emphasized upon, centralized planning is the biggest hindrance to devolved governance.

Although the procedure laid down for the Governor by the President is subject to judicial review, it has, however, not been able to check on the exercise of arbitrary powers by the Centre. In contemporary Indian politics, the Governor has been reduced as a mere puppet and an instrument to dominate over States, and therefore, it has become mandatory for the judiciary to keep a tight check on the Central Government in order to ensure the safety of the tenure of Governor. Also, there is the need for the implementation of recommendations such as that of the Sarkaria Commission, which require measures against the removal of Governors before the completion of their five year tenure, except in extreme or rare circumstances, in order to facilitate a measure of security of tenure which further aids them in carrying out their duties without fear or favour. If such rare and compelling circumstances did exist, the Commission said that the procedure of removal must allow the Governors a reasonable opportunity to explain their conduct, and that the Central Government must give fair consideration to such explanation advanced. It was further recommended that the Governors should be informed of the grounds of their removal.

There should be adherence to the recommendation laid down by the Punchi Commission, where it stressed on the omission of the phrase - “During the pleasure of the President” – as the Governor should not be removed by the arbitrary will of the Parliament, and rather shall be removed only by a fair and competent decision of the Legislative Assembly.

To revive, revamp and release its true potential, the Prime Minister should ensure the following :

1. Merge the National Development Council with the ISC, and transfer the assets of the Planning Commission to the Council Secretariat.
2. Take away the financial allocation functions of the Planning Commission, and transfer them partly to the Finance Commission and partly to the Finance Ministry.

There should be the creation of a second tier such as an experts panel, on the lines of the Planning Commission, along with the assurance of the following :

1. the formulation of cross-sector policies and programs on matters of common interest to the States and the Centre (e.g. subjects in the concurrent list),
2. the development of institutional mechanisms for the implementation of such policies,
3. consensus building on contentious policy issues,
4. policy coordination, and,
5. setting standards across States for the implementation and development of performance parameters, and for overseeing the implementation of the recommendations of the Finance Commission.

INFERENCE

To conclude, the Centre and the States are not to be treated as two parties opposed to each other. The issues have to be examined in order to ensure more financial powers for the States. As Chavan, a renowned political thinker, has famously remarked -

“The States are the crucial arena where great dangers and opportunities exist, where ultimately all the policies and programs of the Government would have to take shape and get translated into the lives of the people. The stability of the State Government is as important as that of the Union Government. The future of India will depend not only on the vision of the leaders in Delhi but also of those States.”

Therefore, the States should have freedom in negotiating loan, aid, etc. for the implementation of the development activities decided upon. In this regard, sufficient administrative powers for stimulating growth and development in the States would certainly be welcome. However, in order to achieve this objective, some important amendments to the Constitution would have to be thought of.