

CENTRE STATE LEGISLATIVE RELATIONS

CENTRE- STATE RELATIONS- AN OVERVIEW

After independence India adopted the federal structure for its government for political and administrative convenience. A policy of dual polity was accepted, with the Union government at the centre and the state governments at the periphery—each enjoying stipulated powers assigned to them. The autonomy of the states is so adjusted with the centre that the unity of the country and integrity of the nation can be ensured and a harmonious relation can be established. The Constitution of India described India as ‘a Union of States’¹. The term implies that firstly, the Indian federation is not the result of an agreement between independent units, and secondly, the units of Indian federation cannot secede from the federation. The Indian constitution contains federal and non- federal features.

The federal features of the Constitution include:

- (1) A written constitution which defines the structure, organization and powers of the central as well as state governments.
- (2) A partly rigid constitution whose major portion can be amended only with the consent of the states.
- (3) A clear distribution of powers between the Center and the States through three lists- Union list, State list and Concurrent list.
- (4) An independent judiciary which acts as the guardian of the Constitution.
- (5) The creation of an Upper House (Rajya Sabha) which gives representation to the states in the central government, etc.

The Constitution also contains a number of unitary features:

- (1) The creation of a very strong centre, unlike USA
- (2) The absence of separate constitutions for the states, unlike USA
- (3) The right of Parliament to amend major portions of the Constitution by itself, unlike USA. Exclusive right of Parliament to propose amendments to the Constitution is guaranteed.
- (4) A single citizenship for all, unlike USA

¹ 1. (1) India, that is Bharat, shall be a Union of States.

- (5) Unequal representation of the states in the Rajya Sabha, unlike USA
- (6) The right of Parliament to change the name, territory or boundary of states without their consent, unlike other federations of the world
- (7) The presence of All- India Services which hold key positions in the Centre as well as the States
- (8) Appointment of the Governor by the President, unlike other federations of the world
- (9) The granting of extensive powers to the President to deal with various kinds of emergencies, unlike USA.
- (10) The right of Parliament to legislate on state subjects on the recommendation of the Rajya Sabha, unlike some other federations of the world.
- (11) The presence of a single integrated hierarchical judicial set up, with the Supreme Court of India at the apex, unlike USA.
- (12) The residuary powers under the Indian Constitution are assigned to the Union and not to the States, unlike USA.

On account of the presence of a large number of non- federal features in the Indian constitution India is often described as a ‘quasi-federal ‘country.

In terms of creation of new states in India and rising debate regarding the central proposal for creation of Telengana, centre-state relations have again come under surveillance. The provisions for creating new states and changing the boundaries of new states are provided in Articles 2 to 4 of the Constitution.

Article 2 of the Constitution enumerates that ‘Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit².

Article 3 of the Constitution states that 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:...

² **2A.** [Sikkim to be associated with the Union] Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, s. 5 (w.e.f. 26-4-1975).

A simple law passed by both the Lok Sabha and Rajya Sabha is enough to create a new state. However, only the central government (“President”) can introduce a Bill for this purpose. However, before introducing the Bill, the affected states are to be consulted.

The process of consultation followed flows as follows:

- (1) The matter is referred to the legislatures of the affected states.
- (2) No specific time period within which states have to send their decision back to the centre has been mentioned in the Constitution. The central government can specify the time period while referring the matter.
- (3) The Constitution does not mention that the state legislatures have to agree to the proposed creation/alteration of states. The Parliament may therefore, pass a law creating a new state even if affected states do not agree to the proposal.

The implications of these provisions are clear: for all practical considerations, the Constitution only requires that the central government should have a simple majority in both houses of Parliament. The system is, therefore not representative enough for maintaining the federal identity of the units of Indian federation.

However, these provisions in the Constitution were created at a time when India’s security and sovereignty was at stake, when a number of independent states were forced to merge with the larger Indian state. There were obvious concerns about giving greater representative power to the princely states who had recently agreed to be governed under the Indian union. There was also the question of compromise with the Muslim demands in a way so that ‘unity in diversity’ could be properly assured. Thus the Constitution sought to create a federal system of government in the country with specific unitary features. Limited autonomy was given to the states.

But as we know that "The relations between the Central Government and the States are inevitably, in a federation, most complex. Developments occur every year, some of them almost invisible to the purely legal onlooker"³(Menzies, R G, 1967, p. 8). Therefore changes could have taken place over the course of time, which did never happen upholding the spirit of federalism in India. Moreover there are some more Constitutional sanctions which questions the existence of federalism in India. The issue can be addressed in terms of the constitutional relationship between the centre and the constituting states.

LEGISLATIVE RELATIONS

The Constitution divides legislative authority between the Union and the States in three lists- the Union List, the State List and the Concurrent List. The Union list consists of 99 items. The Union Parliament has exclusive authority to frame laws on subjects enumerated in the list. These include

³ Menzies, R G, *Central Power in the Australian Commonwealth*, Cassell, London, 1967, p. 8

foreign affairs, defence, armed forces, communications, posts and telegraph, foreign trade etc. The State list consists of 61 subjects on which ordinarily the States alone can make laws. These include public order, police, administration of justice, prison, local governments, agriculture etc. The Concurrent list comprises of 52 items including criminal and civil procedure, marriage and divorce, economic and social planning, trade unions, electricity, newspapers, books, education, population control and family planning etc. Both the Parliament and the State legislatures can make laws on subjects given in the Concurrent list, but the Centre has a prior and supreme claim to legislate on current subjects. In case of conflict between the law of the State and Union law on a subject in the Concurrent list, the law of the Parliament prevails. Residuary powers rest with the Union government. Parliament can also legislate on subjects in the State list if the Rajya Sabha passes a resolution by two-third majority that it is necessary to do so in the national interest. During times of emergency, Parliament can make laws on subjects in the State List. Under Article 356 relating to the failure of constitutional machinery in the state, Parliament can take over the legislative authority of the state. Likewise, for the implementation of international treaties or agreements, Parliament can legislate on state subjects. Finally, Parliament can make laws on subjects in the State list if two or more states make a joint request to it to do so. Thus, the Centre enjoys more extensive powers than the states.

DISTRIBUTION OF LEGISLATIVE POWERS

245. Extent of laws made by Parliament and by the Legislatures of States.- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

[The legislative power so conferred by Article 245 is distributed by Article 246 between the Union and the States with reference to the subjects enumerated in the three lists of Schedule VII. Clause (1) of Article 245 is expressly "subject to the provisions of this Constitution". It implies that the legislative powers of both the Parliament and the State Legislatures enlisted under Article 246 are also subject to the limitations imposed by the other provisions of the Constitution.]

246. Subject-matter of laws made by Parliament and by the Legislatures of States.- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List'). (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List'). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List'). (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

[The powers assigned to the State Legislatures under Article 246 are expressly subject to the Supremacy of Parliament]

247. Power of Parliament to provide for the establishment of certain additional courts.- Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

248. Residuary powers of legislation. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

249. Power of Parliament to legislate with respect to a matter in the State List in the national interest.- (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation. - (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

251. Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.- Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law

made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.- (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

253. Legislation for giving effect to international agreements. - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

[The provisions of Articles 249 to 253 are in the nature of exceptions to the normal rule that in respect of a matter coming within the State List, the State Legislatures have exclusive power to make law.]

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

255. Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.- No Act of Parliament or of the Legislature of a State, and no provision in any

such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President.

The reservation of State Bills under Article 200 and the exercise of its powers by the Union Executive with respect to such Bills under Article 201 have a direct impact on Union-State relations in the legislative sphere.

The Sarkaria Commission on Centre-State Relations was set up thirty-three years after the commencement of the Constitution. Set up in 1983, the Sarkaria Commission took five years to complete its deliberations and finalise its report. The report was submitted in 1988. The Sarkaria Commission Report on Centre-State relations was the most comprehensive review of the Indian parliamentary federal system since the adoption of the Constitution in 1950. The Sarkaria Commission examined the scope of the constitutional provision, the manner in which they have worked since inception.

Sarkaria Commission felt that the supremacy clause was the very key stone of the arch of federal power. Most state Governments did not seek any change in the existing provision relating to the legislative relations.

Sarkaria Commission recommended that residuary powers of legislation in regard to taxation matters should remain with parliament, while the residuary field, other than that of taxation, should be placed in the concurrent list.

The entire scheme of the distribution of legislative power undoubtedly displays a strong tendency towards a high degree of centralization. This scheme seeks to reconcile the imperatives for a strong centre with the need for state autonomy. Sarkaria Commission felt that the proposed redistribution of powers would require drastic changes in the basic scheme and frame work of the constitution, so judiciously designed to protect the independence and ensure the unity and integrity of the country. Therefore the Sarkaria Commission didn't suggest any major structural change in the fundamental fabric of the Constitution.

OBSERVATIONS

Strong centre, it was thought, would be able to ensure peace, coordinating matters of common concern and of speaking effectively for the whole country. But if units do not enjoy autonomy, it would be a retrograde step politically and administratively. Till 1967 INC was in power in the centre and in the states, which was termed as 'one party dominant system'. With the coming of the different political parties in power in some states and the centre, a qualitative change in the relations was expected. But the germ of the disease lies in the provisions of the Constitution.

The legislative relations between the centre and the states determined in accordance with the provisions of the Article 246- 255 of the Constitution and the legislative powers categorized by three lists—Union Lists with 99 subjects, States List with 61 and Concurrent List with 52 subjects, changing the status respectively from 97, 66 and 47 show that India started her constitutional journey with the spirit of creating a strong centre and still continuing in the same line, despite the fact that political analysts are arguing in favour of more regional autonomy keeping in view the demands of the secessionist forces. Residuary legislative powers rest with the Parliament. Moreover when there is state of emergency, Parliament can make laws on the subjects given under Union List. In the case of a conflict between the laws made by the state and the laws passed by the centre the central law will prevail. Clearly the centre is decidedly stronger as far as legislative powers are concerned. No party in the central government or in the states have ever given a thought on the issue, may be for some political reasons; most of the state Governments, political parties and eminent persons find no fault with the structural aspects of Acts 246 to 254; but keeping in view the larger socio- economic and development factors constituting units of Indian federation must be given more autonomy.

The Government of India Act, 1935, made a comprehensive enumeration of subjects of legislative powers and divided them into three Lists—Federal, Provincial and Concurrent. It conferred the residuary powers on the Governor-General who could, in the exercise of his discretion, place any subject not found in any of these three Lists. Present scheme of distribution of powers between the centre and the states is almost the reflection of 1935 British arrangement, which needs additional focus considering the strain in the centre state relationship in the present decade.

Dr. SOMA GHOSH
Principal
Hiralal Mazumdar Memorial College for Women Dakshineswar