

Tension in Center- State relations

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Abstract

The constitution of India was framed in such a way that the integrity of the nation could be maintained along with the diversity of Indian society. Our political leaders analyzed the constitutions of major democratic Nations and followed some of the features of their constitution but did not adopt them in Toto and molded them according to the requirement of nation building and national development. We were inspired by the federal structure of the USA, Australia and Canada. But we adopted the federal structure which is unique in character. Some of the features resemble the federalism of the USA and some of them are matched with the federalism of Canada. A strong Center was established along with the division of Legislative, executive and financial powers between center and States. After the Independence Congress party formed the government not only in Center but also in almost all states till 1967. During the dominance of Congress party the center-state relations develop in a cordial manner. After the 1967 fourth general election, tension started to arise between the center and non-Congress state governments. The coalition era started in 1989 and during this coalition era the center- state relations turned into bargaining federalism. Regional parties became part of the Central Government and bargained for regional interest. The separatist movement such as Khalistan movement, movements in northeast States deteriorated the center- state relations. After 2014 the BJP won with absolute majority and the era of coalition came to an end. There are many issues such as the role of governor, article 356, deployment of Paramilitary forces in states and all India services except are the cause of tension between Central Government and state governments. State governments demand for autonomy and less interference of the Central Government in state administration.

Key words: *Federalism, State Autonomy, President Rule, National Emergency, Coalition Government.*

After the independence of India, we adopted the federal system of governance. Although the word 'Federal' is not mentioned anywhere in the constitution. Instead of federalism, we include the word 'Union of States'. BR Ambedkar said "The word Indian Union indicates two things viz., (a) that the Indian Federation is not the result of an agreement by the units; and (b) that the component units have no freedom to secede from it."¹ All the typical features of federalism don't match with our Federal structure. For example, separate constitution for States, dual citizenship, equal representation of states in the Upper house of legislature, Residuary powers to States and autonomy of States, which are considered the features of Federal structure, are not the part of Indian Constitution. Because of the absence of these Federal features, some Scholars are not ready to accept the Indian system as a federal system and called it a Unity system or a Quasi-federal system. G.N. Joshi contends that "the union is not strictly a federal polity but a Quasi-Federal polity with some vital and important elements of unitariness..... It is designed to work as a Federal government in normal times but as a unitary government in times of emergency."² Indian constitution includes some basic features of Federal structure such as Supremacy of constitution, bicameral legislature, power divided among the union government and state government and independent Judiciary etc. J.P. Suda says "it is not a genuine Federation but a federation having several features of a unitary state."³ Our constitution is tilted towards the center and makes it more powerful as compared to States. K.C. Wheare, a well known British authority on federalism, classified India as "a unitary state with subsidiary Federal principles, rather than a federal state with subsidiary unitary principles."⁴ The 7th schedule of the constitution divides the power of legislation among center and States by including three lists - Union list, State list and Concurrent list. The Residuary powers are provided to the union government like the Canadian constitution. In the American constitution the residuary powers are provided to the states. In the American constitution only Federal powers are mentioned in the constitution and the residuary powers are allotted to the state government. The Sarkaria commission has rightly observed "The role of Federal Supremacy is a technique to avoid absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle therefore is indispensable for the successful functioning of any Federal or Quasi- Federal constitution. It is indeed the kingpin of the federal system."⁵

Our Parliament is empowered to enact legislation on the subjects of the union list, concurrent list and in specific conditions on the state list also. The state legislatures are empowered to enact laws on the subjects of state list and concurrent list. If there is any clash between Union legislation and state legislation on the subjects of concurrent list, then the union legislation will prevail. The executive powers of both governments are attached with their legislative powers.

The union government enjoys the executive powers on those subjects which are allotted to parliament for legislation and state governments enjoy the executive powers on those subjects that are allocated to state legislatures for legislation. Besides legislative and executive powers the financial powers are so divided between Union and State governments. Center-State relations developed in a cordial manner during the dominance era of Congress party. But it turned into tense with the emergence of non-congress governments at state level. After 1989 coalition period started in Indian politics. Now are regional parties were in the position of bargain. In the 1998 Lok Sabha elections AIADMK supremo J. Jayalalitha tried to bargain for a more decisive role in the new government in the center. India Today observed, "with 27 MP Jayalalitha can demand a price for sport to any government..... Along with N. Chandrababu Naidu's band of 12, Jayalalitha can decide the complexion of any government in the 12th Lok Sabha."⁶

Legislative Relations

The legislative relations between center and the states are mentioned in the XI part (article 245 to 255) of the constitution. The seventh schedule of the constitution includes three lists: Union list, state list and concurrent list. Along this division, Parliament is empowered to enact law on state list also, which is mentioned from article 249 to 255. The legislation enacted by State legislation can be held by the Governor for the consent of parliament (article 201).

Some provisions are added in the constitution that empowered our Parliament to laws on state list subjects also. All these provisions are considered against the federal structure and state governments have registered their objection to these provisions many times. Article 249 says that if the matter is related to National interest, the Parliament can enact law on the state list also. But for this the resolution must be passed by the Council of States by two third majority. The Council of States possesses the power to declare a matter is of national interest or not. Article 250 of the Constitution empowered Parliament to enact law on the subject of state list during National emergency under article 352. During the national emergency the legislation passed by Parliament on the subject of state list will be inoperative on the expiration of 6 month after the revocation of emergency. Although the state legislative power to enact law would be sustained as usual. But if any mismatch or contradictory with the legislation enacted by Parliament then the legislation of parliament would be prevailed.

Article 250 of the constitution empowers the parliament to enact any law on the subjects of state list if two or more states make such a request to Parliament. On the request of these states, Parliament can enact legislation. That would be applicable only those particular states which made a request to do so. However any other state can adopt this legislation after passing a resolution in her legislature. Some legislation passed by parliament on the request or

state governments are Prize Competition Act,1955; the wildlife (Protection) act,1972; Urban land (Ceiling and regulation) act 1976; transplantation of human organ act 1994.

To Implement International agreement Parliament can enact any law on any subject, mention in the state list, according to article 253 of the Constitution. To protect or enhance national interests the Union government has to sign International agreement or International treaty. But to implement that particular agreement the union government has to enact law on the subject of State list. In those circumstances, Parliament, under article 253, can enact legislation on the subject of state list. Our Parliament has passed many such legislation such as United Nations (Privileges and Immunities) Act, 1947; Geneva Convention act, 1960; anti -hijacking act, 1982 and the legislation relating to environment and TRIPs.

State government can be disposed and President rule may be imposed in any state, if state government is blamed not to working according to constitution. Such provision is mention in the article 356 of the constitution which is popularly known as President Rule. Under the president rule, the legislative power of state assembly can also be transferred to Parliament. But all such laws may continue to be operated even after the end of President Rule. But such a law can be repealed or Re-elected by the state legislature.

The Centre state legislative relations are also influenced for regulated by some other provisions of the constitution. Governor, which is the constitutional head of the state government and an agent of Central Government in the state, is empowered to hold the legislation for the consent of president under the article 201. The consent of president is equal to the consent of Central Government. Through this provision Central Government can interfere in the legislative process in the state. This is strictly objected by State governments. The president enjoys absolute veto over such legislation. It means that it can deny approving the legislation.

Administrative relations

The administrative relations between center and state are mentioned in part 11 of the constitution article 256 to 263. The administrative powers of the Union and State Government are depend on their legislative powers with some exceptions. The executive power of the union government is extended to the whole of India but restricted to the subjects of union list or the legislation enacted by the union government on the subjects of state list and concurrent list.

In respect of concurrent list, the executive power rests with the states except when a constitutional provision or a parliamentary law specifically confers it on the state. So the subjects which are enacted by parliament are also administered by state governments except when the constitution or the parliament has directed otherwise.e.g. Under the essential

commodities act, made by the parliament on a concurrent subject, the executive power is vested in the center.

Article 256 of the constitution determines obligation of the Union and State governments. This article says that state government should be exercise its power in such a way that (a) to ensure compliance with the law made by the parliament and any existing law which apply in the state and (b) not to impede or prejudice the exercise of executive power of the center in the state.

To exercise its executive power, the Centre Government can direct to state governments in few matters, to construct and maintain the means of communication which are to be declared of national or military importance or to protect the railway property within the state and to execute the specific schemes for the Welfare of the scheduled tribes in the state. If the state government does not follow these directions then under article 365, Center Government can take coercive action against that particular state government and can declare state emergency. The Governor is the constitutional head of the state government and also the Agent of the central government in the state. The governor is the constitutional head of the state government and submits periodical reports to the President of India. As per the report the Governor insured the central government that the state government is running according to the provisions of the constitution. On the basis of the Governor's report or otherwise, the Central Government can impose a state emergency in the particular state if it considers that the state government is not working according to the provisions of the Constitution or the law and order situation has collapsed in that state. Sometimes the union government deposed the state government on the allegation of corruption or horse trading also. The union government is accused of the misuse of article 356 to topple the elected state government.

In the state administration, the Central Government employees are appointed as all India services through the Union Public Service Commission. In an emergency situation, the President can proclaim National Emergency under article 352. In the national emergency the Federal structure of government transforms into a unitary structure and all the executive and legislative power of state governments can be used by the union government and Parliament.

Financial relations

Under the Indian federal system the financial powers of all the sources of income are also divided among union government and state governments. Although this distribution is not equal and the financial situation of states to collect taxes are limited and to meet his financial requirement he has to depend on the grant-in- aid of the central government. Article 275 empowers Parliament to give financial assistance to the states. This grant-in-aid is fixed on the Recommendation of finance commission. Sarkaria Commission recommends 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 constitution may be suitably amended to give effect to this recommendation.⁷The cost of the welfare scheme for the Welfare of tribes is to be met by the union government. Goods and service tax has replaced the traditional tax system. Article 285 exempted the property of the union from all taxes imposed by a state.

Some provisions are explained or modified in such a way that the financial strength of the union government improves and financial strength of the state government weakens. For example 'Industries' is part of the state list but the union list permits Parliament to legislate in respect of 'industries' the control of which by the union is declared by law to be expedient in the public interest. Empowered by this provision of constitution 'Industries (development and Regulation) Act 1951' was enacted by Parliament which specifies those 'industries' which are of public interest. In course of time more and more industries are added in this act. Thus without any amendment, Industries transferred into the Union list. Extra-constitutional authorities such as the Planning Commission also distorted the balance of financial relations among states and center and tilted more towards center. Only 30% of grants are distributed through financial commission and about 70% of grants are distributed through Planning Commission. Now NITI Aayog has replaced Planning Commission

Parliament has enacted the finance act 1959 and made a provision that all income tax paid by Limited companies must be treated as Corporation tax. Corporation taxes are totally allotted to centers, not shared with States. The union government also imposed a levy or surcharge on income tax or on other taxes. Taxes or duty is divided among center and States but not the levy or surcharge. Thus many ways have been developed by the central government to enhance its financial capacity.

Tensions in Center state relations

Granville Austin is of the view that the constituent assembly of India was the first assembly which adopted from the very start what is called as the concept of cooperative federalism.⁸ After the Independence Centre-state relations started in a cordial environment and continued till the first half of 1960s. In 1967 at the central level and almost in all states Congress party formed the government. And there was good coordination and discipline among Union leadership and state leadership. so no serious conflict emerged during that period except some cases such as dispute with communist Government of Kerala in 1957 which culminated in the imposition of president rule in Kerala after two years of formation of Communist government.

After the fourth general election, in half of the states, a non-Congress coalition or political party came into power. And after that the tension among states and Center started. States started to demand for more autonomy. Non-Congress ruled state governments opposed the interference of the Central Government in the state Administration and legislation. The following areas of conflict among states and Centre governments are:-

Role of governor –Governor is the constitutional head of the state government. Along with the duty of the constitutional head, the Governor has to play the role of agent of Central Government in the state. The governor is appointed and dismissed by the president on the Recommendation of the Council of Ministers and Prime. minister. So the Governor remains at his/her post till the pleasure of the Central Government. To save his/ her post, the Governor always tries to please the central government. He preferred his duty as an agent of the Central Government than his duty as constitutional head. The Central Government pressurizes the Governor many times to take some unconstitutional or biased decisions to destabilize the state government generally led by the opposition political party. Under the pressure or direction of the Central Government, sometimes the Governor submitted the periodical report to the Central Government with allegations of the worst condition of law and order and demand for president rule in that particular state. In the appointment of Chief Minister, after the Assembly Election, the Governor plays an important role and uses his/ her discretionary powers in a biased manner. Article 201 empowers the Governor to hold the Bill passed by the state legislature for the consent of the president. and the President enjoys absolute veto in this matter. So through this discretionary power the governor can interfere in the legislation process of the state assembly.

All India services- In the constitution, article 315 -323, there is a provision of all India services and Public Service Commission. The Union Public Service Commission is the commission of the Central Government, which selects the IAS and IPS officers which are appointed in the state administration. These officers are appointed by the president of India. State governments always oppose such types of appointments. The Central Government interferes in the administration of the state State governments through these officers. It is the demand of the states that these selections should be done by their state public service commission.

Deployment of Paramilitary forces: - In States, sometimes law and order situations cannot be controlled by local police. In such a situation the Central Government deployed Paramilitary or military forces in the state to control the situation. To send the forces to the States the consent of the state government is not required. The center can deploy forces even against the wishes of state governments. State governments consider it as interference of the union government in the domain of state administration. During the election also Central forces are

deployed in States to ensure free and fair elections. Generally it is not objected to by state governments.

Change the name and boundaries of state: - Our constitution makes the provision that Parliament can change the name and boundary of a state. This provision is against the federal structure. Parliament can bifurcate or divide a state territory. State legislature has no say in the process of change in their name and boundaries.

Distribution of financial powers: - However, of all federal problems, the financial relations between the center and the units are more difficult.⁹In the financial matters State governments are badly dependent on the center governments, because most of the sources of high income are controlled by the central government. The resources available to the states are very few and scanty necessitating large scale resources transfer from the Union, in the process making States heavily dependent on the union.¹⁰ State governments demand autonomy in financial matters.

Conclusion

The center- state relations developed in a cordial manner and in a disciplined way, because of the dominance of Congress party at Central level and also at state level. The dominance of Congress party at state level came to an end after the 4th general election with formation of non- Congress government in many states. The tension started to increase between center and state government. The central government tried to destabilize the non-Congress government through imposition of state emergency or the discretionary power of governor. This tension continues even after the non-congress government at center level. During the coalition period the state government became part of the Central Government and started to bargain the central government for their regional interest. The Border States such as Tamilnadu, West Bengal and Jammu & Kashmir started to interfere in foreign policy matters also. In the age of globalization, federalism took a new shape in the form of competitive federalism. A competition started between centre and States for economic development. State governments always object the centre undue and unconstitutional interference of Central Government in state administration and in legislation. In financial matters state governments seek self-dependency and more power in imposition and collection of taxes to meet their financial requirements.

¹ Constituent assembly debates, 1947, August 20, 1947, Vol. VII, No. 1, p.43

² G.N.Joshi, "The constitution of India", London, 1954, p.32.

³ J.P. Suda, "Indian constitutional development and national movement", Meerut, 1951, p. 523.

⁴ .K.C. Wheare, "Federal government", London, 1963, p.27.

⁵ Commission on center-state relations Report, Part-1, Government of India, 1988, p. 28.

⁶ India Today, March 23, 1998, p. 82.

⁷ Ibid., p.31.

⁸ Granville Austin, "The Indian Constitution, Cornerstone of a nation", Bombay, 1974,pp. 187-88.

⁹ K. Santhanam, "Union state relations in India", Asia publishing house, 1963, p.29.

¹⁰ P.K.Jha, "Fiscal autonomy of states in Indian Federation", Southern Economist, May 1, 1976.