

CONCEPT OF INDIAN FEDERALISM

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In the context of Centre-State relations, an assessment of the federal structure of government in the Constitution is essential. In fact a federal structure is a design of government in which there is division of power on territorial basis between the Centre and States. This limits the concentration of power and authority in the hands of only one government as the country's powers get divided between the Centre and States. Thus both are limited governments.

Many theoreticians and scholars have contributed their ideas which led to the emergence of such limited governments to ensure people's rights. John Locke's (1690) theory of limited government and the function of the government to protect the rights of life, liberty and property¹ were adopted by the Constitution-makers of the United States of America. Another theory given by Baron de Montesquieu (1748) greatly influenced the American Constitution-makers as it emphasised separation of powers of the Legislative and Executive branches of government.²

After independence, the Indian Constitution-makers also adopted the federal structure for the governance as India had got freedom after a long struggle for independence of the country and liberty of the people. The Constitution-makers, who drafted it, ensured limited government by adopting the federal structure of governance without referring to the term federation. The Constitution of India came into force on January 26, 1950. But the Constitution-makers of India differed from the USA's federal system and combined it with the parliamentary form of government.

Concept of Indian Federation and Centre-State Relations

The Indian Constitution provides for a federal system of government but the term 'federation' has nowhere been used in the Constitution. On the other hand, Article 1 of the Indian Constitution describes 'India, that is Bharat' as a 'Union of States', an expression which implies two things. Firstly, unlike the USA the Indian federation is not the result of an agreement between the units. Secondly, the units have no right to secede from the federation. In fact the States of the Indian federation have no independent existence of their own. Parliament can alter their names and territories without their consent.

The Constituent Assembly members were convinced that a vast country like India could not be efficiently governed from a single Centre and thought it desirable to adopt a federal system of government. The diversity of race, religion, and language also impelled them to go for a federal policy, because it could ensure unity of the country while assuring autonomy in matters of local importance. It may be observed that the Indian Constitution does not possess all the features of a typical federation and makes many deviations. In view of these deviations the critics have challenged the federal character of the Constitution, and described it as 'quasi-federal'. For example, K.C. Wheare says: "The Indian Union is a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features."³

Development of Federation till Independence

In the early days of British expansion, the East India Company followed the policy of centralisation. It was from 1861 that the policy of centralisation was changed. In 1870, Lord Lytton transferred the subject of Law, Justice and

Land Revenue to the Provinces. In 1909, the Committee on Decentralisation recommended that there should be devolution of powers. The Government of India Act, 1919 brought about Financial Devolution and under Section 2 of the Act, the provinces were empowered to raise debts. Fifty subjects were put in the Provincial List.

. The Government of India Act, 1935 for the first time introduced the Federal concept and used the expression 'Federation of India' in a Constitution Act relating to India. The Constitution of India empowers the Union to entrust its executive functions to a State by its consent (Article 258) and a State to entrust its executive functions to the Union (Article 258A). While the federal system is prescribed for normal times, the Indian Constitution enables the federal government to acquire the strength of a unitary system during emergencies.

Development of Federation after Independence

After the attainment of independence, the founding fathers of the Indian Constitution realised that the cultural configuration of India—unity in the midst of diversity—lent itself to a federal structure of political organisation. The Indian Constitution was, therefore, based on the federal principle. A federal Constitution is considered appropriate where among the constituent units there is a desire for "Union though not for Unit". The diverse people of India fitted into this picture. And, therefore, the federal structure of the Constitution was quite appropriate.

. The founding fathers of the Indian Constitution gave a Constitution which was federal but with a strong Centre because of the prevailing centrifugal tendencies in the country. However, the balance tilted increasingly towards centralised administration for several years after independence for a variety of reasons. The Indian federation started working as a Unitary state—thanks to growing encroachment of the Centre on the States' functions, the fiscal imbalance between the Centre and States, a centralised planning process and, above all, frequent imposition of Central Rule on the State under Article 356 of the Constitution. All this created misgivings in some States and led to a rise of regionalism and students' demand for State autonomy and radical changes in the Indian Constitution. One reason for such a demand was the disparities in the social and economic development. According to P.R. Dubhashi: "Federalism is an attribute of the political organisation of a State and not a category of nation. These who describe India as a Federal nation have in mind the vast and diverse nature of our population and the variety of our language, culture and regional traditions. While these features may be on a much larger scale in India than in any other state in the world, the fact remains that even small nations like Belgium and Switzerland have linguistic and cultural diversity but these are not called Federal nations."⁴

From the point of view of maintaining the integrity of India, it has, therefore, become necessary to have a second look at some of the basic issues relating to the constitutional system of India including its federal system in the new context. In view of this principle of the federal structure, K.C. Wheare observed that the Indian Constitution provides a system of government which is quasi-federal. D.D. Basu observed: "The Constitution of India is neither purely Federal nor purely Unitary but is a combination of both. It is a Union or composite State of novel type. It enshrines the principles that in spite of federation the national interest ought to be paramount."⁵ Lipson has observed: "Centralisation of powers in the hands of the Central Government is a universal phenomenon and virtually all the great driving forces in modern society combine in a centralist direction."⁶

Post-1967 Developments in Federation

After Nehru, particularly after the 1967 general elections when the Congress party lost in as many as nine States to other parties, the ruling party at the Centre, the Congress, tried to bypass, ignore or underestimate the gravity of the problem of Centre-State relations. The only thing that the government had set up was the National Development Council. D. Jha observed: "The division of functions and resources in the Indian Federal structure should be considered from the point of view of the best devolution of functions and most effective utilisation of the scarce resources of the country. The issue of State rights versus Central rights should not be raised as there were no State rights prior to the creation of the Federal structure."

. In the year 1969, the Chief Ministers of three States, namely, Andhra Pradesh, Orissa and Kerala, were dissatisfied over the issue of Centre-State relations. The three leaders gave differing analyses of the political trend. All three were critical of the Centre on one score or another.. In the year 1970, the Maharashtra Chief Minister had challenged

the very competence of the Planning Commission to set the norms for giving such special assistance. Other Chief Ministers had questioned the propriety of giving this assistance to only a few selected States. 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."⁷

Role of the President and Central Government

Article 354 empowers the President to order suspension of the provisions of Articles 268 to 279 relating to distribution of revenues between the Union and States, while a Proclamation of Emergency is in operation. There are certain other provisions relating to the authority of the President in the matter of State Legislation and administration which could be used to interfere with and even suppress the State's autonomy. The Governor may reserve a Bill passed by the State Legislature for the consideration of the President (Article 200). Though constitutional experts are of the opinion that the Governor has no authority to act on his own, this interpretation is not implicit in the express provisions of the Constitution. Nor is any remedy provided if the Governor was to act on his own responsibility in making such a reference.

Nobody knows what will happen if there is a serious conflict between the ruling party at the Centre and an Opposition party with a majority in a State Legislature and if the dominant party in Parliament is bent upon frustrating the State's effort to pass genuinely progressive laws. According to H.N. Pandit, "The Union Cabinet in that event might advise the President not to give his assent to the Bill passed by the State Legislature." Now a question arises: can the President exercise his independent judgment to safeguard the autonomy of the State and refuse to withhold his assent to the Bill? If the Presidency had been an independent organ of the State in these matters, the federating States could have looked up to it to defend their autonomy. It has been stated earlier that when the then President of India, Neelam Sanjiva Reddy, strongly favoured for greater autonomy for the States, his authority was questioned.

Chief Ministers' Role in Election of the President of India

Chief Ministers play a significant role in Centre-State relations. The Chief Ministers have come to play a decisive role in the election of the Indian President. This role is inherent in their position as leaders of the Legislatures of their respective States. After the expiry of the term of Rajendra Prasad as the first President of India, Nehru had spared no efforts to get Radhakrishnan as the second President. He had private meetings with the Chief Ministers of the four southern States and told them informally that he would prefer a South Indian as the President because a North Indian had held the post for a whole term. The Chief Ministers told Nehru that they were not concerned with regional considerations and were of the view that Rajendra Prasad would be re-elected if he was available.

A conflict generally crops up in regard to the election of the President when the Centre and States are run by different parties. This was the situation after the 1977 election. The Centre and the States were run by different parties. The landslide victory of the Janata Party and its allies in the Lok Sabha poll in March 1977 resulted in a critical atmosphere in the States. Most of the States were run by the Congress party. This created a problem for the Centre to elect a favourite President. The election was delayed until

Chief Ministers and National Politics

. Chief Ministers are sometimes invited to the meetings of the Union Cabinet when questions relating to their States are discussed and their presence is considered helpful. For example, P.C. Sen, the Chief Minister of West Bengal, and Biju Patnaik, the Chief Minister of Orissa, attended the Union Cabinet meeting on June 6, 1963 when the food problem in the eastern region was causing concern.⁸ Biju Patnaik was also consulted on defence problems. In fact, Biju Patnaik was given a room in the Ministry of External Affairs, while he continued to be the Chief Minister of Orissa until his resignation in August 1963 under the Kamaraj Plan.⁹

Kamaraj's involvement in national politics is also worth mentioning. Nehru regarded Kamaraj as not merely the Chief Minister of Madras but also a beloved national leader. The Congress in Madras had suffered some reverses in

the bye-elections and Kamraj felt that he should give up office and devote more time to party work. The idea somehow caught on and it was thought that the Congress, which had become complacent as a result of being in power continuously for too long a period, should show some dramatic gesture to convince the country that its leaders were not eager to stick to the office for all time and that they were still inspired by the Gandhian ideals of sacrifice and service to the people.

Chief Ministers' Conference

The Union and the States are inter-dependent in numerous ways. The unity thus brought about has to have the force of consent, not of law. This calls for cooperation and co-ordination on the basis of policies arrived at after due consultations in which the nation as a whole, through the Central and State governments, participates. Co-ordination can be effective only if it is based on commonly acceptable policies for which consultation with the States is necessary.

After the 1967 elections, the political complexion of India changed. Different State governments run by parties with different ideologies came into being. The result of these new developments was that the relations between the States and the Centre became tricky.

Inter-State Council

The Sarkaria Commission had recommended the constitution 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 the duties to be performed by the Council, the Constitution outlines the three-fold duties that may be assigned to this body.

National Development Council

The Planning Commission, which is an extra-constitutional and non-statutory body, was set up to formulate an integrated Five-Year Plan for economic and social development and to act as an advisory body to the Union Government. According to some critics, the Planning Commission is one of the agencies of encroachment upon the autonomy of the States under the federal system.

The working of the Planning Commission led to the setting up of another extra-constitutional and extra-legal body, namely, the National Development Council. The Council was formed in 1952, as an adjunct to the Planning Commission, to associate the States in the formulation of the Plans. The National Development Council had appointed a Standing Committee in 1954 consisting of members of the Planning Commission and the Chief Ministers of nine States. It had been also decided that the Chief Ministers of one or more of the remaining States could be invited to attend meetings of the Committee. On November 4 and 5, 1962, the National Development Council met in New Delhi to consider the gravity of the situation created by the Chinese War and resignation of Defence Minister V.K. Krishna Menon. Since the middle of 1967, all members of the Union Cabinet, Chief Ministers of the States, the administrators of the Union Territories and members of the Planning Commission have been made members of this Council.

Centre's Power to appoint Commission of Inquiry

The Centre has the power to appoint a Commission under the Commission of Inquiries Act, 1952 to enquire into any offence committed or misuse of power or position by the Chief Minister. This power has been utilised by the Centre on some occasions. In September 1963, the Supreme Court had passed strictures on an appeal heard by it on the conduct of the Chief Minister of Punjab, Pratap Singh Kairon. The Opposition demanded the dismissal of the Chief Minister and the imposition of President's Rule in the State. It was argued—"If a Chief Minister ignores the rule of law, he is violating the Constitution and in terms of Article 355, it is the duty of the Union to intervene to ensure that the administration of the State is being carried on in accordance with the Constitution."¹⁰

The Centre had appointed a Commission to enquire into the allegations against the Chief Minister of Andhra Pradesh. This Commission looked into the allegations against the former Chief Ministers of Madhya Pradesh, Himachal Pradesh, Uttar Pradesh and Punjab as well. In 1974, a number of complaints were received against the Chief Ministers of Haryana and Tamil Nadu.

CONCLUSION

The Centre and States are not to be treated as two parties opposed to each other. Issues have to be examined in order to ensure more financial powers for the States. As Chavan thinks, "The States are the crucial arena where great dangers and opportunities exist, where ultimately all the policies and programmes 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." States should have freedom in negotiating loan, aid, etc. for development activities. Sufficient administrative powers for stimulating growth and development in the States would certainly be welcome. To achieve this objective, some important amendments to the Constitution would have to be thought of. The former Prime Minister, Morarji Desai, had rightly said that the States must be strong. Then alone, the Centre will be strong.

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