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## CENTRE-STATE RELATIONS AND FEDERALISM

### Introduction

Federalism implies a clear demarcation of powers between Central and State Government and has its roots in Part XI- Articles 245 to 263 and Part XII-Articles 264 to 293 of the Indian Constitution, wherein, powers are clearly divided between the Centre and the State into legislative, administrative, and financial heads.

Articles 245 to 255 defines legislative relations between the Union and the states, specifically the Parliament and state legislatures. It defines the scope and extent of the Union's and states' legislative powers. Articles 256 to 263 deal with administrative relations between the Central and the State. Article 256 states that state governments are expected to comply with the laws of the parliament and not impede the exercise of executive power of the Union. Articles 264 to 293 of Part-XII of Constitution, deals with financial relation between the Centre and the state and the division of powers between the two especially in matters of taxation, since it is the responsibility of the Centre to allocate funds to the states.

The Seventh Schedule – Article 246 of the Constitution further classifies this division into three lists: the Union List, the State List, and the Concurrent List and if an issue is not addressed by any of the three Lists, it is considered as residual power of the Parliament. The Union list contains 100 items, the state list contains 61 items and the concurrent list contains 52 items.

Finally, in such federal system, the independent judiciary serves as the final interpreter of the Constitution and the guardian of constitutional ideals. Despite having two sets of government, we have a single integrated judicial system with single integrated chain of courts to administer both union and state laws with Supreme court at the apex.

### Unitary versus Federal Constitution

A Constitution can be classified into two types - Unitary or Federal. In a unitary constitution all State powers are vested in a single administration, whereas they are divided between a central government and multiple regional administrations in a federal constitution. Indian Constitution is unique in the sense that it is federal in structure but unitary in spirit. The Indian Constitution establishes a dual polity in which neither the Central Government nor the States are administrative units or agencies of the Central Government, each having its own distinct Constitutional identity however in times of need and exigencies, acquires strong centralising tendencies that give the Central Government absolute power. This unique feature was added by framers of our constitution who believed that if the central government was weak, the states would develop a tendency to secede.

Indian jurists and researchers have gone one step ahead and have best described our constitution as quasi-federal i.e. federation sui-generis or federation of its own kind, implying, characteristics resembling a federal state with some unitary characteristics. Despite the existence of substantial parts of a federal constitution, the central government retains some influence over the subjects of National importance. Article 1 of the Indian Constitution declares India as a union of states, clearly implying that the nation is not the result of an agreement among the states, and secondly, that the states cannot leave the Union. Furthermore, Article 3 of the Constitution empowers the Indian government with necessary authority to divide, alter and redistribute state boundaries or to create a new state out of reorganisation of existing ones. Article 1 also underlines the fact that the devolution of powers is necessary for such a setting. This conscious recognition and acceptance of federal nature of Indian polity is crucial to protect its national character.

### Co-operative Federalism

The intent of Constituent Assembly behind Schedule VII of the constitution also underlines and nurtures the notion of cooperative federalism since it not only differentiates between the legislative powers of the Centre and states but also provides certain subjects which requires synergistic efforts on the part of both the collaborating governments. No doubt there are certain circumstances in which the Centre can make laws for the State on the subjects mentioned in List II of the 7<sup>th</sup> schedule. These circumstances can be the constructive fructification of collaborative efforts of both the governments or can be destructive obstruction of their respective counteracting forces. There is also the effect of conditional enumeration of the legislative powers and the Doctrines of Direct Impact and Denudation in which in the State

List of the Seventh Schedule a few entries enumerate matters on condition that they should be read subject to certain entries in the Union List. By virtue of such entries the State Legislature's power to enact law pertaining to several items has been subordinated to the power of the Union Parliament legislates to certain items mentioned in the Union List. However, at the same time Indian Constitution recognises and promotes the establishment of a multilevel or multilayered federation with multiple modes of political power distribution with tribal areas, autonomous district councils, panchayats and municipalities specified in fifth, sixth, eleventh and twelfth schedule of Indian Constitution respectively.

### Centre-State Conflicts and its impact on federalism

The study of Centre- State relations is of incessant interest since the governments at the two levels cannot and do not function in watertight compartments and hence there is bound to be disagreements between them. Typically, such disagreements emerge when the Centre transcends its power by passing laws on issues that fall under the State list, or when the Centre makes any other laws that have a direct bearing on the State's legal or constitutional rights, for example during COVID-19 pandemic, the discontentment among states and centre triggered when National Disaster Management Act, 2005, was invoked, because the Central guidelines became binding on them. More examples are recent suit filed by Kerala Government under Article 131 against the Union challenging the Citizenship Amendment Act, 2019 and suit filed by the Chhattisgarh Government under the same Article challenging the National Investigating Act, 2008, despite police being a state subject or the recent suit filed by the State of Kerala against the Union of India challenging the limits imposed on the state's borrowing capacities. The rationale behind this ubiquitous force which empowers the Central laws, stems from Articles 249 and 256, which gives Parliament an all-pervasive authority to amend or pass laws without worrying about its repercussions.

### Centre-State Relations – A Critical Analysis

The issue of Centre-state relations in India has been a very debated topic among scholars and policy makers. There has been a growing discontentment among the states, alleging encroachment by Centre in the jurisdictions of the state with consequent erosion of federalism in India resulting in tensions and disputes between the Centre and the states, particularly with regards to finance and administration.

It is true that there are significant geographical inequalities in India making it impossible for a unitary government to meet the demands of the nation, necessitating separate authorities at the federal and state levels with clear demarcation of powers between the two.

It is also true that our Constitution-makers had before them the federal Constitutions of the world and they were well aware of the constitutional history of many countries and the problems that had arisen there concerning of Centre-State relationship. They were conscious of the fact that Indian State is not immune to such controversies and for this reason they made elaborate provisions for the resolution of disputes among the Central government and the States and the States inter se. Furthermore, in conflicts among Centre and one or more States, or between a Centre, on the one hand, and some State or States on the other, or between two or more Governments, on the other side, the Constitution has bestowed original jurisdiction on the Supreme Court only to resolve the issue (Article 131).

It can be ascertained from the tone of distribution of subjects through the Lists system that the framers of the Constitution were not passionate on a federal form of Government for India. To endorse that in matter of distribution of power in the legislative sphere they were departing from the federal idea to national interest and justice in various spheres to the people of India, the framers of the Constitution laid down through Art 249 of the Constitution that Parliament could with the prior approval of a two- third majority in the Council of States, legislate on any matter in the State List, irrespective of any exigency, on the grounds that the matter was of national concern. Even in matters of Fiscal interest, the framers of the Indian Constitution, drawing on the experience of federal countries like the U.S.A, Canada and Australia were of the view that there should be a strong Centre and it should have control over the finances. The division of taxing power under the Constitution has been so made that the taxes that have inter-State base are assigned to the Union and that those that have regional base are given to the States. This scheme of distribution and division of administrative as well as financial powers, have made the dependence of the States to the Union.

On the other hand, perusal of Art 258, clarifies that the article has been specified to accomplish decentralisation of Union functions, that is, Union administrative powers, as far as possible, without adversely affecting the autonomy of the States in discharging the assigned functions. Such decentralisation of Union functions or administrative powers helps to expand the administrative authority of the States and to create a sense of responsibility and participation in them in carrying out functions relating to Union matters. Though Art 258A was inserted into

the Constitution later with the purpose of countering the difficulties felt by the Union in carrying out effectively development in states with the Governor's consent. It is relevant to note here that articles, Arts 258 and 258A, together present a situation for cooperative endeavour by the Union and State Governments; they can cross their limitation of the division of powers for the greater benefit of the people.

### Major Sources of Conflict between Centre and State:

The Constitution bestows upon the Central government with increased authority, and continuous intervention in the administration of the States under special provisions and circumstances, which are:

1. Article 356 - Imposition of President's Rule, on the grounds of breakdown of Constitutional machinery in the state.
2. Article 355 - Deployment of Central Forces to preserve peace and order without consulting the State's Government
3. Article 154 - Role of the Governor in a state.

The Constitution of India clearly defines the roles of the Governor and the State Government. The Governor is appointed by the President of India by warrant under his hand and seal. Problem arises where the party ruling in the Centre is not in power in the state, which in turn leads to a political war of attrition and a feeling of hostility between the Governor and the ruling party in the state. A few notable incidents are showdown between Governor Dhankhar and Chief Secretary/Director General of Police in West Bengal, Governor Bhagat Singh Koshyari versus state in the matter of election of the Speaker in Maharashtra, Governor R.N. Ravi in matter of T.N. Admission to Undergraduate Medical Degree Courses Bill, Tamil Nadu, Governor Arif Mohammed Khan in the issue related to the appointment of the Vice Chancellor of a Technical University, Kerala and in the matter of L.G. versus Delhi Government, wherein the matter has been raised by Delhi Government in the Supreme Court to look into the issue of jurisdictional conflicts between Delhi's elected government and the Lieutenant Governor. The issue is whether Lieutenant Governor possess independent decision-making authority over and above the elected government and whether he can restrict the latter's executive and legislative powers. The matter is crucial since the national capital enjoys a special status and is not

considered a full-fledged state and the role of the Lieutenant Governor differs from that of a Governor.

Instances of conflict also arise when Governors reserve a Bill enacted by a State Legislature for the President's assent in direct confrontation with the advice of the State's Ministry, but to serve the interests of the Central Government. Despite political differences, both entities must take a holistic view and keep the larger interest of welfare of the state and the masses. Such ongoing tussles warrants an imminent need for a balanced interpretation of their respective roles and functions to maintain constitutional harmony in India's diverse federal structure.

4. Fiscal Matters like taxation, Statutory versus discretionary grants, Economic planning etc.

5. Article 256 - Directives from the union to state governments. Under this article, the union's executive power extends to issuing direction to the states in order for them to comply. For example, the union can provide directions to the state for the building and maintenance of means of communication of national or military importance, as well as the protection of railways within the state.

6. Article 254(1) - Parliament is entitled to use the state machinery for the enforcement of the union laws, and may amend powers and entrust duties to the state.

7. Article 312 - All India Services. In addition to central and state services, Article 312 of the Constitution provides for the establishment of "All-India services" common to both i.e. the union and the states. While the State government's power is limited to only recommending the suspension of an All-India Service Officer, it is only the Central Government which has the authority to appoint, transfer and take disciplinary action against such officers.

### Assessing the Core Constitutional Issues using Case-Laws

It is not the case that the powers of Centre as defined in aforesaid articles are unlimited and without any riders, Supreme Court from time to time through various judicial pronouncements has curtailed the powers of the Union. A glaring example is the case of S.R. Bommai vs. Union of India wherein the Supreme Court ruled that the President's power to oust a state government from its office is not absolute but conditional subject to ratification by both houses of Parliament. The President can only suspend the Legislative Assembly till then. If the proclamation is not ratified by both the Houses, it expires after two months and the ousted

government is reinstated. The ruling aimed to prevent the flagrant abuse of Article 356 of Indian Constitution, which permitted the imposition of President's power over state governments

On the other hand, in the case of State of West Bengal vs. Union of India wherein the state challenged the constitutionality of the Coal Bearing Areas (Acquisition and Development Act) 1957 by contending that the Parliament lacked the authority to establish legislation governing the acquisition of land and that the Coal Bearing Areas (Acquisition and Development Act) 1957, passed by the Parliament exceeded its authority, the supreme court pronounced that the Indian Constitution is the supreme law and that there is no State Specific Constitution. It can only be revised by the Union Parliament, it was ruled that the Acquisition and Development Act of 1957, did not exceed the authority of Centre, hence it was legitimate. Entry 42 of List III of the Seventh Schedule of the Constitution of India empowers the Parliament to adopt legislation regarding the acquisition of any State's property.

Thus, upon close consideration of the federal and unitary characteristics of the constitution, it is not difficult to conclude that in each federal feature, there exists a centralising power.

Constitutional provisions regarding division of administrative powers between the Centre and the States.

The Constitution has enough mechanisms for guaranteeing harmonious financial ties between the centre and the states, such as grants-in-aid and the establishment of a Finance Commission. The formation of the Inter-State Council is regarded as a sufficient step toward bridging the gap between union and states and establishing amicable relationships between the two.

Likewise, the disputes regarding use, control and distribution of waters in case of inter-state rivers have been set at rest once and for all by vesting the powers to deal with it, exclusively in Parliament (Article 262). Necessary powers have been bestowed upon the Parliament to adjudicate any dispute or complaint, with regard to use, distribution or control of the waters. Another important step is replacing the older Planning Commission where only the Union had a say with NITI Aayog where states have an equal role to play, apart from boosting the morale of the states, it also holds them responsible for better decision making since they are now a part of the process. As regarding fiscal or financial federalism, with the implementation of dual-structure GST model, both the Centre as well as the states have an important role to play within

their respective spheres. Both are empowered to levy and collect taxes. Additionally, the Centre also redistributes a part of its taxes among the states. Thus, it can be safely argued that India is federal in form but unitary in spirit.

## Conclusions

To sum up, the administrative relationship between the centre and the states in India has undergone many transformations since independence. The Constitution of India provides for a system of inter-governmental relationship both for normal times and emergencies. In normal times, the federal polity was expected to function on the principle of dual government while in situations of emergency constitutional arrangement of distribution of powers deliberately tilts in favour of the union.

The distribution of powers between the centre and states in the legislative and executive fields, is clearly stipulated in the Constitution and at the same time, the Constitution includes sufficient mechanisms for facilitating cooperation between the centre and the states like establishment of All India Services, the formation of a Joint Public Service Commission for two or more states, and the presence of an integrated judicial system.

In the recent past, the politics of centre-state relations has revolved around such issues as more powers and more financial resources to the states by redrafting of the Indian Constitution. In response to the states' demands, the Sarkaria Commission was set up to review the working of the federal system, which however found the present system adequate. But the way things are moving, it seems that in the years to come 'consensus' rather than 'control' is going to be the dominant paradigm of centre-state administrative relationship. Admittedly, in times of national or medical emergencies, it is most appropriate that Unitary features of Constitution gains predominance and Centre should give directions to the states, backed by a coercive sanction for their enforcement, thus exercising supervisory control over the states in the maintenance of law and order. It can be expected that the Centre-State relations will strengthen over time and hope that both the Central government and the State government cater to enhanced cooperative federalism which is a determining factor in governance of the country.



