

Chapter VII-A

UNION – STATE LEGISLATIVE RELATIONS :

A CRITICAL VIEW

UNION-STATE RELATIONSHIP

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In the last chapter we discussed about the federal system of Government conceived by the founding fathers. The concept of federalism in our Constitution was designed as an administrative rather than a contractual federation to bring political stability.

In the words of Wheare –“India is a unitary State with subsidiary federal principles rather than a federal State with subsidiary unitary principles”. Indian federalism has certain unique features which distinguishes it from the American system. The provisions that shows bias towards Center and the reasons why our Constitution Framers had chosen in favour of centre. These are –

(1) Parliament’s power to make laws for the whole or any part of the country with respect to any of the matters enumerated in the State list during the proclamation of Emergency. (2) The dual role of the Governor of a State as its Constitutional head as well as an agent of the Union Government, (3) An unequal representation of the States in the Rajya Sabha, (4) a number of other provisions reveal the Constitutional imbalance between the Union and the States such as – the amending process of the Indian Constitution, the single judiciary system, the All India Services, the single Election Commission and the

provisions for reservation of certain State bills for Presidential assent, (5) The criterion for distribution of the revenue resources: Despite these unified tendencies, the Centre is heavily dependent upon the States for implementation of its policies. At times this has led many State Governments to successfully defy the directives of the Union. A classic example of the persistent defiance of the Union's directive by the State Governments has been their refusal to levy tax on agricultural income.

The question of Center-State relations did not arise for a long time and the original Constitutional scheme worked very well. In 1957, the possibility of Center-State tension arose with the formation of the first non-Congress Communist State Government in Kerala. However the ministry did not last long.

The Centre-State relations viewed as a straight fight over turf came sharply in focus after the fourth general elections which were widely considered as having opened up a new chapter in federal processes. Fourth General Election (1967) radically altered the party position in a number of States and the problem assumed importance. While they no doubt constitute, a convenient benchmark, in reality a series of socio-economic and political changes during the sixties provide the backdrop for understanding the subsequent phases. Mention is made about coming into power of the first major regionalist party—DMK. The DMK Government on assuming power did not like the idea of a strong Centre and constantly tried for greater State autonomy. The more serious conflict was witnessed in West Bengal in 1969 under the chief Minister ship of Jyoti Basu. Finally, the internal crisis of the Congress party and the emergence of dissident splinter groups followed by the great split contributed significantly to raising the level of consciousness regarding inadequacies of the federal system. The social realities of the north-eastern region had been clamoring for attention and recognition for a long time and the

creation of separate States there was the last major exercise in federal restructuring.

A politicized and discerning electorate welcomed the emergence of regional alternatives to a party whose State leaders had ceased to command respect because of their ineffectual representation in Central policy making forums. State electorates showed reluctance to surrender to the Centre, through party channels, the limited Constitutional autonomy they enjoyed in ordering their own affairs.

The persistence and intensification of multi-party federalism over the last decade have raised serious doubts regarding the viability of the old centralist regulatory conception of federal management. Over concentration of powers had generated a need for decentralization and it is argued that stronger States would ultimately strengthen the Centre.

The widening gap between *fast track* India, that has already entered the hi-tech age and is predominantly centralist in orientation, and the other India which constitutes the bulk of the constituencies in the States, has added a new dimension to the federal policy. Uneven development of ethno-regional units and increased politicization lend urgency to review of economic and financial relations between the Centre and the States.

The forceful championing of States' interest, by non-Congress Government, and the partial success they were able to obtain raised the possibility of challenges to Central leadership, along similar line, from within the Congress. Regional Congress leaders were quick to point to their own needs for greater autonomy in sectoral allocation of resources in order to meet the threats of internal factionalism and growing opposition.

The persistence and intensification of multi party federalism over the last decade have serious doubts regarding the viability of the old centralize regulatory conception of federal management. Uneven development of ethno regional units and increased politicization lend urgency to review of economic and financial relations between the Centre and the States. So, tension has grown in our federal polite.

The major area of Center-State irritants in India relates to the legislative sphere of the Constitution. The distribution of legislative powers between the Center and the States is the sine-qua-non of a federal Constitution.

The scheme of distribution of powers in our Constitution between the Center and the States is more elaborative and comprehensive than the schemes in the USA, Canada, Australia and Nigeria.

The general principles guiding the division of powers are the same which are aptly pointed out by Prof. Dicey in these words: "Whatever concerns the nation as a whole should be placed under the control of the national Government. All the matters which are not primarily of common interest should remain in the hands of the several layers."¹

The impetus to centralize the federal structure was inspired by the emphasis on creating State interventionist command economies modeled on a mixture of ideas from America" New Deal, Soviet planning and the plans of Britain" Labour Party which was elected to office after World War II at the time when Indian Constitution was being drafted. Soviet model of planned change. This was reflected in

¹ A.V. Dicey-An Introduction to the study of the Constitution, taken from Centre-State Relations in India-
427 -Subh N. Singh,1990.

the Constitution in various ways including the legislative division of powers.

7.2. LEGISLATIVE DIVISION

The essence of federalism lies in the sharing of legal sovereignty by the Union and the federating units. And, in general, the most precise way of demarcating the respective areas of the federation and federating units is to demarcate their respective areas in regard to legislation. The entire scheme of distribution of legislative powers under the present Indian Constitution is based on the Government of India Act 1935.

Articles 245 to 255 of the Constitution of India contain a charter of the distribution of legislative powers between the Union and the State. There is a three-fold distribution of legislative power—represented by three lists – Union, State and Concurrent.

The Seventh Schedule to the Constitution embodies these lists, viz. the Union List, the State List and the Concurrent List consisting of 97, 66 and 47 items respectively. Even after the changes in the Schedule brought about by Constitution Amendment acts, the numbers of entries in the three lists have remained the same.² We will discuss about this later part of the chapter.

UNION LIST- It consists of the 97 subjects which are of common interest to the Union and with respect to which uniformity of legislation throughout the Union is essential.

STATE LIST- It consists of 66 items which allow for diversity of interest and treatment. Although the States are given exclusive

² Our Constitution –Subhash C Kashyap.

powers over the subject in the State list, there are two exceptions to this general rule.

1. Under Article 249, if the Rajya Sabha declares by a resolution supported by 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, Parliament is competent to make laws on that matter for the whole or any part of India.
2. Again under Article 250, Parliament is empowered to make laws on any item included in the State List for the whole or any part of India while a proclamation of Emergency is in operation.

7.3 CONCURRENT LIST

The 47 matters in which uniformity of legislation throughout the Union is desirable but not essential are included in the concurrent list.

The Scheme of Distribution in India (Articles 245-246)

The Constitutional provisions in India on the subject of distribution of legislative powers between the Union and the States are spread out over several articles (articles 245-254). However, the most important of those provisions – i.e. the basic one – is that contained in articles 245-246. Article 245 provides that (subject to the provisions of the 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.

Thus, article 245 sets out the limits of the legislative powers of the Union and the States from the geographical (or territorial) angle.

From the point of view of the subject matter of legislation, it is article 246 which is important. Article 246 reads as under:

- (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 1 of 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, shall 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 (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 Articles shows that laws made by Parliament, however cannot be questioned on ground of extra-territorial operation.

And any State law would be void if it has extra-territorial operation (Kochuni v. State of Madras, AIR 1960 SC 1080) unless sufficient nexus can be shown to exist between the object and the State (State of Bombay v. RMDC, AIR 1957 SC 699: Tata Iron & Steel Co. v. State of Bihar, AIR 1958 SC452).

The supremacy of federal laws is maintained in two situations:

- (a) in determining the extent of legislative power of the federation and the units, (if a doubt arises as to the list in which a

particular subject of legislation falls, Article 246 achieves federal supremacy);

- (b) In determining the question whether a federal law will prevail or a State law will prevail; (if both have an impact on a particular human activity, and are in conflict with each other, then the federal law prevails).
- (c) In case of any inconsistency between laws made by Parliament and those made by the Legislature of the State in respect of items in the Concurrent List, the Union law shall prevail and the State law shall be void to the extent of inconsistency except where a State law is reserved for the consideration of the President and receives his assent (Art. 254).

If a particular entry does not find an express mention in the three legislative lists, then the power to legislate thereon (i.e., the residuary law-making power) is vested in the federation (Art. 248). In certain situations (even apart from emergencies), the federation may come to be vested with legislative power, even on State subjects to give effect to any international treaty, agreement, convention or decision Art. 253).³

The Concurrent List indicates the vesting of power in two parallel legislatures, operating at the same time and also because such a scheme is to be found in most federations of the world, though the details vary.

The practical importance of the Concurrent list, (when adopted in any federation) lies in the fact, that the vesting of the same type of power in two parallel agencies carries, within it, the seeds of a possible conflict. This implies, that the Constitution should provide, in

³ E Venkataramiah and P. M. Bakshi, *Indian Federalism* (1992)

advance, a mechanism for resolving such conflict. In India, article 254 of the Constitution primarily seeks to incorporate such a mechanism. Further, so far as the Concurrent List is concerned, it is desirable to quote what the Joint Committee on Indian Constitutional Reforms said, with reference to the corresponding list, as contemplated in the proposals that led to the Act of 1935 ⁴:-

“Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a central or to a Provincial legislature and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the central legislature should also have a legislative jurisdiction enable it, in some cases to secure uniformity in the main principles of law throughout the country, in others, to guide and encourage provincial effort and in others, again, to provide remedies for mischief arising in the provincial sphere, but extending, or liable to extend beyond the boundaries of a single province”.

It has now been realized everywhere that in some fields of Governmental activities, the strict division of power between the two Governments is inconvenient, because full efficiency demands a combination of local administration with national planning and co-ordination. The Concurrent List is like a shock- absorber which enables both the Union and the States to go beyond their own exclusive legislative sphere, as necessity arises, to meet exigencies without transgressing the boundaries of each other. Alladi krishnaswami Aiyar had remarked in the Constituent Assembly, “The existence of large list of Concurrent subjects is calculated to promote harmony between the Centre and the Units and avoid the necessity of the Courts having to resolve the conflict if there is to be only a two-fold division of subjects.”⁵ The views expressed by him till today hold

⁴ Taken from NCRWC Report.

⁵ CAD, Vol.II- taken from Centre-State Relations in India by Subh N. Singh.

validity to establish a harmonious relationship between the Centre and States for orderly progress and prosperity.

Keeping in view all the factors the Framers of the Constitution tried to apportion the functions in a way best suitable to the peculiar Indian circumstances, conditions and exigencies of the country. But a debate has started about the viability of retaining the arrangement of "Concurrent List" at all because it grants an upper hand to the Centre. Let us examine this issue now.

It would be convenient to give here some concrete examples of the three main objectives of a Concurrent List as envisaged by the Joint Select Committee.

1. Uniformity - The aspect of uniformity in the main principles of law. This consideration accounts for the following entries in the Concurrent List in the present Indian Constitution.

- Entry 1. Criminal law.....
- Entry 2. Criminal Procedure
- Entry 5. Marriage and divorce etc.
- Entry 7. Transfer of property other than agricultural land
- Entry 8. Registration of deeds and documents
- Entry 9. Actionable wrongs
- Entry 10. Bankruptcy and insolvency
- Entry 11. Trusts and trustees
- Entry 12. Administrator's general and official trustees
- Entry 12. A. Administration of justice etc. (inserted in 1976)
- Entry 13. Evidence etc.
- Entry 14. Civil procedure etc.
- Entry 15. Contempt of court etc.
- Entry 16. Lunacy etc.
- Entry 28. Charities etc.

2. Encouraging local effort-The Joint Select Committee also stressed the need to “guide and encourage provincial effort”. This consideration forms the background and rationale for several legislative measures enacted in India, wherein the Union has laid down the policy and guidelines, – thereby promoting further efforts by the States. The following can be regarded as examples of such approach.

- (a) The Probation of Offenders Act, 1958.
- (b) The Family Courts Act, 1984.
- (c) The Consumer Protection Act, 1986.
- (d) The Environment (Protection) Act, 1986.

3. Problems extending beyond the State- Finally, as envisaged by the Joint Select Committee⁶ on Indian Constitutional reforms, some entries in the Concurrent List take into account the fact, that (in future), a need may arise to enact legislation providing for mischief’s arising in the provincial sphere, which extend, (or are likely) to extend, beyond the boundaries of a single province. Examples of entries in the Concurrent List, which illustrate this consideration, are the following:

- Entry 3. Preventive detention
- Entry 5. Marriage etc.
- Entry 15. Vagrancy; nomadic and migratory tribes
- Entry 21. Commercial and industrial monopolies, etc.
- Entry 25. Education, including Universities, etc.
(This entry was revised in 1977).
- Entry 33. Trade and commerce etc. in certain products and goods.
- Entry 35. Mechanically propelled vehicles etc.
- Entry 38. Electricity

Incidentally, the wisdom of including “Electricity” in the Concurrent List (entry 38) is amply demonstrated by the successive statutory measures enacted on the subject in India after independence

⁶ Paragraph 4.2, supra.

beginning with the Electricity (Supply) Act, 1948, supplemented or modified by a mass of recent legislation in the subject.

7.4 INTERPRETATION OF LEGISLATIVE ENTRIES:

1. Determination of nature of legislation

It is obvious, that where either the Union or the State legislature proposes to enact a law, it must, in the first place, decide whether it has legislative competence with reference to the subject matter of the law. For this purpose, the draftsman will necessarily have to examine whether the subject matter falls within the relevant list, that is to say:

1. The Union List or the Concurrent list or
2. The State List

- (a) The co-existence of Central and State laws in a particular area can give rise to litigation. Such problems arise, either because the Union or a State may illegally encroach upon the province of the other (parallel) legislature, or they may arise because (though there is no encroachment, as such, on each other's sphere), the two laws clash with each other.
- (b) The two situations are, strictly speaking, different from each other; and they must be judged by two different tests. Where the subject-matter of the legislation in question falls within either the Union List or the State list only, then the question is to be decided with reference to legislative competence. One of the two laws must necessarily be void, because (leaving aside matters in the Concurrent List), the Indian Constitution confers exclusive jurisdiction upon Parliament for matters in the Union List and

upon a State Legislature for matters in the State List.⁷ The correct doctrine applicable in such cases is that of *ultra vires*. Since one of the two laws must be void, the question of inconsistency between the two has no relevance. Only one law will survive; and the other law will not survive.

- (c) In contrast, where the legislation passed by the Union and the State is on a subject matter included in the Concurrent List, then the matter cannot be determined by applying the test of *ultra vires* because the hypothesis is, that both the laws are (apart from repugnancy), Constitutionally valid. In such a case, the test to be adopted will be that of repugnancy, under article 254(2), of the Constitution.⁸
- (d) It follows, that it is only where the legislation is on a matter in the Concurrent List, that it would be relevant to apply the test of repugnancy. Notwithstanding the contrary view expressed in some quarters, this appears to be the correct position. Such a view was expressed by Dr. D. Basu in his Commentary on the Constitution of India (1950) and it is this view, that seems to have been upheld (impliedly) by the Supreme Court in the under - mentioned decisions: -
 - (i) *Deep Chand Vs. State of U. P.*, AIR 1959 SC 648; (1959) Suppl. 2 SCR 8.
 - (ii) *Premnath Vs. State of J&K*, AIR 1959 SC 749 (1959) Suppl 2 SCR 270.
 - (iii) *Ukha Vs. State of Maharashtra*, AIR 1963 SC 1531, paragraph 20.
 - (iv) *Bar Council, U.P. Vs. State of U.P.*, AIR 1973 SC 231, 238; (1973) 1 SCC 261.

⁷ Paragraph 2.2, *supra*.

⁸ Paragraph 2.3, *supra*.

- (v) *Barani Vs. Henry*, AIR 1983 SC 150, paragraph 15.
- (vi) *Hoechst Pharmaceuticals Vs. State of Bihar*, AIR 1983 SC 1020, paragraphs 68, 69 and 76 (Full decision of the position).
- (vii) *Pochanna Lingappa Vs. State of Maharashtra*, AIR 1985 SC 389, paragraph 26; (1985) 1 SCC 425.
- (viii) *Vijay Kumar Sharma Vs. State of Karnataka*, AIR 1990 SC 2072
[For decisions in section 107, Government of India Act, 1935 see *Lakhi Narayan Das vs. Province of Bihar*, AIR 1950 FC 59.

Since the Concurrent List⁹ gives power to two legislatures, a conflict can arise between laws passed on the same subject by the two legislatures. To deal with this situation, Article 254 (1) and (2) of the Constitution makes the following provision:

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.

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 is 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 the State:

⁹ Paragraph 2.2, *supra*.

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.”

Repugnancy has been explained in many judicial decisions. Important amongst these, are the following:

- (ii) *Zaverbhai Vs. State of Bombay*, AIR 1954 SC 752 (Implied repeal – Essential Supplies Act)
- (iii) *Tika Ramji Vs. State of UP*, (1956) SCR 393; AIR 1956 SC 676. (U.P. Sugar Cane Act, etc.).
- (iv) *Ahmedabad Mill Owners’ Association Vs. I.G.*, AIR 1967 SC 1091.
- (v) *Karunanidhi Vs. Union of India*, AIR 1979 SC 898; (1979) Cri LJ 773; *Karunanidhi Vs. Union of India*, (1979) Cri LJ 1876 (Mad) (FB).
- (vi) *Raghubir Vs. State of Haryana*, AIR 1981 SC 2037.
- (vii) *Western Coalfields Vs. Special Area Development*, AIR 1982 SC 697.

- (a) It follows, that it is only where the legislation is on a matter in the Concurr¹⁰ent List, that it would be relevant to apply the test of repugnancy. Notwithstanding the contrary view expressed in some quarters, this appears to be the correct position. Such a view was expressed by Dr. D. Basu in his Commentary on the Constitution of India (1950) and it is this view, that seems to have been upheld (impliedly) by the Supreme Court in the under - mentioned decisions:

¹⁰ Dr. D. Basu Constitution of India (1950).

- (ix) *Deep Chand Vs. State of U. P.*, AIR 1959 SC 648; (1959) Suppl. 2 SCR 8.
- (x) *Premnath Vs. State of J&K*, AIR 1959 SC 749 (1959) Suppl 2 SCR 270.
- (xi) *Ukha Vs. State of Maharashtra*, AIR 1963 SC 1531, paragraph 20.
- (xii) *Bar Council, U.P. Vs. State of U.P.*, AIR 1973 SC 231, 238; (1973) 1 SCC 261.
- (xiii) *Barani Vs. Henry*, AIR 1983 SC 150, paragraph 15.
- (xiv) *Hoechst Pharmaceuticals Vs. State of Bihar*, AIR 1983 SC 1020, paragraphs 68, 69 and 76 (Full decision of the position).
- (xv) *Pochanna Lingappa Vs. State of Maharashtra*, AIR 1985 SC 389, paragraph 26; (1985) 1 SCC 425.
- (xvi) *Vijay Kumar Sharma Vs. State of Karnataka*, AIR 1990 SC 2072 [For decisions in section 107, Government of India Act, 1935 see *Lakhi Narayan Das vs. Province of Bihar*, AIR 1950 FC 59.
- (xvii) Act, 1935 see *Lakhi Narayan Das vs. Province of Bihar*, AIR 1950 FC 59.

Notice should also be taken of article 255 of the Constitution, quoted below:

“Article 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 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’.

Doctrine of pith and substance

For this purpose, the test of “pith and substance” is usually applied. In no field of Constitutional law is the comparative approach more useful, than in regard to the doctrine of “pith and substance”. This is a doctrine which has come to be accepted in India and derives its genesis from the approach adopted by the courts (including the Privy Council), in dealing with controversies arising in other federations. Briefly Stated, what the doctrine means, is this. Where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid.

The principle of “pith and substance” had come to be established by the Privy Council, when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. In India, the doctrine of pith and substance came to be adopted in the pre-independence period, under the Government of India Act, 1935. The classical example is the *Privy Council decision in Prafulla Vs. Bank of Commerce*, AIR 1946 PC 60, holding that a State law, dealing with money lending (a State subject), is not invalid, merely because it incidentally affects promissory notes (See now Union List, entry 46). The doctrine is sometimes expressed in terms of ascertaining the “nature and true character of legislation”; and it is also emphasized, that the name given by the Legislature (to the legislation) in the short title, is immaterial. Again, for applying the “pith and substance” doctrine,

regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions.

The under mentioned decisions illustrate the above proposition:-

- (i) *State of Rajasthan Vs. G. Chawla*, AIR 1959 SC 544, 547 (Ancillary matters).
- (ii) *Southern Pharmaceuticals Vs. State of Kerala*, AIR 1981 1865, paragraph 15 (incidental encroachment, to be disregarded).
- (iii) *Prem Vs. Chhabra*, (1984) 2 SCC 302, paragraph 8.

7.5 EVALUTION

The scheme of the distribution of Legislative powers between the Centre and the State permits undoubtedly towards a high degree of centralization. The basic division of power is biased in favour of the Union in a number of ways.

1. The Union List is much longer than the State List, with 97 items within the exclusive control of the Union, 66 items exclusively with the States and 47 items in the concurrent List over which both could legislate.
2. The Union can regulate some of the crucial items on which the States have exclusive powers. Police is within the State List (List II Entry E. 2) subject to armed forces of the Union being deployable by the centre (List I E. 2A). Matters of *Communication* is subject to Union intervention (List II E. 13). *Mines and Mineral Development* are in the State List (I..II E23) but subject to regulatory control by the Union legislation (see List II E. 24 and List I E 7 and 52) so is *Trade and Commerce* (List II E. 26 and List III E. 33). Only the lesser corporations are within the States exclusive preserve (List II E 33 and List I.E. 60). The Union has also got the better catchment area over certain aspects of *taxation* (List II. E. 54, 57 and 63).

3. The Lists are substantively in favour of the Union covering in great detail international aspects including *foreign trade, armed forces, communication and commercial life, various aspects of education* and the greater power to levy taxes. Thus, in the crucial exclusive areas of trade and commerce industry and mining the Union has overriding control.
4. Residuary powers lie with the Union and not with the States (Article 248) which also has in any case, a general legislative and executive power over matters not mentioned in any of the other Lists (Lists I E 97)
1. certain matters such as *forest and environment* originally on the State List were transferred to the Concurrent List in 1976 through 42nd Amendment Act and have remained there.

The Constitutional design as it was expected to work has certain other features.

1. The Upper House (Rajya Sabha) can by a resolution empower the Union to intrude into the exclusive State area (Article 248). Equally two or more States can request the Union to legislate on the State List. This is how the Wild Life Protection Act (1971) came to be passed.
2. During an Emergency, Indian federalism potentially collapsed (Article 250).
3. In the areas of concurrent power, Union legislation prevails (Article 254). A corollary to this is that the Governor is given the general power to reserve bills which he thinks need the Union's consideration (Article 200-I). In one example of this given by the *Sarkaria Commission Report on Centre-State Relations*, it took the

Union twelve years to give its consent to a Bill which has been passed by the West Bengal legislature in 1969.

3. The treaty making power which was vested with the Union Stated that once any treaty agreement, convention... any decision made at any international conference, association or other body was signed by the Union, the latter had overriding powers to traverse Indian federalism and enact laws and exercise executive power on any matter relating to the implementation of the treaty.

The treaty making power has become very relevant at a time when trade and other international regimes—like those under the General Agreement on Trade and Tariffs (GATT) are being created in way that national barriers and the sovereignty of the nation State is being assailed.

The new GATT is a special instance in question because it is not just concerned with trade in goods but also services (General Agreement on Trade and Services), investment (Trade Related Investment Measures), intellectual property (Trade Related Intellectual Property Rights) and various other aspects of the economy. Troubled by the effect of the new GATT on their power, three States – Rajasthan, Orissa and Tamil Nadu – filed suits in the Supreme Court of India against the Union of India raising a federal dispute that the new GATT (amongst other things) affects their exclusive powers given to them by the Constitution and forces them to share power with the Union in ways that violate the basic structure of the Constitution.

A Citizens' Commission, headed by Justice Krishna Iyer and manned by retired judges, has taken the view that the States may well be right in their contentions. It has, therefore, been suggested by various concerned persons that the potential of the treaty-making empowerments in the Union to dissolve Indian federalism by a mere

signature may be much too lethal for Indian governance and requires review.

To quote N.A. Palkhiwala , “ The Center has become a vertical monolithic edifice by appropriating to itself various subjects which should be dealt with by the States.. In India, Central Government has brought distortions and aberrations in legislation pertaining to industries. Industries fall under the entry 24 of the State List and are thus within the jurisdiction of the States. But such jurisdiction is hedged with the Central interference under entries 7 and 52 of the Union List. Under entry 7, Parliament may bring in any restriction on Industries declared by Parliament to be necessary for the purposes of defence or for the prosecution of war. Entry 52 still goes further and says that if Parliament deems it expedient “ in the public interest” to control any industry, it may do so. By virtue of power vested in Parliament under entry 52, Parliament passed the Industries (Development and Regulation) Act,1951. Consequently the Union Government regulates and controls every industry at every stage right from the stage of issuing license. The sweeping Central control must end because it is one sided and does not stand the test of reasonableness.

The Memoranda of the Karnataka Government and the West Bengal Government demanded deletion of or amendment to Article 248,249,252 and 254 so that no State could be deprived of any Legislative power which belongs to it without its prior concurrence. We will discuss these Government s demand's in the next chapter in which we will also discuss about Article s 200 and Article 201. Under these Articles the Constitution provides certain discretionary powers to the Governor. These have been an important field of irritants in the Union-State relations. However the working of the Constitution of the last five decades has shown that these Article s have been misused to establish central hegemony, to allow such a legislation which does not

fall in line in conformity with the ideology of the ruling party at the Centre and sometimes to discredit the opposition party of the State.

In regard of Articles 248, 249, 252 and 254 it may be said I feel that demands of the Karnataka and West Bengal Governments seem to be unjustified because these Articles serve a good purpose and do not in any way intend to encroach upon the autonomy of the States. The Sarkaria commission has also favoured the retention of these Articles.

Some contradictory opinions are expressed over the question whether repugnancy in Article 254 occurs only in matters relating to this Concurrent List. The words, 'competent to enact', in clause (1) have given rise to this debate.

Ivor Jennings has gone a step further to suggest that Article 254 (1) is not to be restricted to repugnancy in the Concurrent field alone. It applies equally to cases of repugnancy between Union Law and State Law in different Lists. But this view appears to be erroneous. A number of scholars opine¹¹ that the words 'competent to enact', in clause (1) are wide but the scope of clause (1) has been restricted by making it subject to the Concurrent List. The Supreme Court in *Zaverbhai's* and *Premnath's* case has also expressed similar views.¹² Some commentators feel that this provision is a radical deviation from generally accepted theory of federalism to permit a national Legislature to transfer unto itself unilaterally powers reserved to the States by the Constitution.

Recently NCRWC examined the Constitutional provisions regarding powers of legislation, analyzing the Constitutional amendments that have been enacted to time to time and the judicial pronouncements on

¹¹ RCS Sarkar, *Union-State Relations in India*.

¹² *Zaverbhai vs. State of Bombay*, 1954, SCA, 1295; *Premnath vs. State of J&K*, AIR, 1959, SC, 749.

major issues arising from concurrency. Its view was that there was no ground for change in the existing Constitutional provisions. But the commission is convinced that it is essential to institutionalize the process of consultation between the Union and the States on legislation under the Concurrent List.

CHAPTER VII-B

UNION – STATE LEGISLATIVE RELATIONS :

A CRITICAL VIEW

STATE AUTONOMY

- 7.B.1 BACKGROUND
- 7.B.2 CONCEPT OF STATE AUTONOMY
- 7.B.3. FACTORS RESPONSIBLE FOR DEMAND OF STATE AUTONOMY AND EMERGING TRENDS.
- 7.B.4. DEMAND FOR GREATER STATE AUTONOMY APPOINTMENT OF COMMISSIONS
 - 7.B.4.1. RAJAMANNAR COMMITTEE
 - 7.B.4.2. WEST BENGAL MEMORANDUM
 - 7.B.4.3. ADMINISTRATIVE REFORM COMMISSION
 - 7.B.4.4. ANANDPUR SAHIB RESOLUTION
 - 7.B.4.5. SARKARIA COMMISSION
- 7.B.5. ROLE OF JUDICIARY
- 7.B.6. NCRWC'S RECOMMENDATION
- 7.B.7. CRITICAL APPRAISAL

7.B.1. BACKGROUND

The Constitution does not use the term 'Centre'. 'Centre' and 'Union' connote very different concepts. 'Centre' is a point in the middle of the circle while 'Union' is the whole circle. The relationship between the Centre and States is the relationship between the Center of authority and its peripheries and not between the whole and the parts.

The main problem of Indian polity, since independence is Center-State relationship. In an earlier chapter while discussing legislative powers we saw that federal structure of India is highly centralized. We also know the factors which influenced the framers

deeply. It is the Central Government which is the dominating partner in terms of powers and finances in the leading federations. The Central Government should not be weakened but it does not mean that State Government should not get their proper shares.

Though the Constitution of India has certain federal characteristics, yet Indian federalism has been influenced by highly unitary trends which were misused while implementing federal provisions which led ultimately to the erosion of the State autonomy. The cry for State's autonomy did arise when the States realized that they are not getting their rights which have been provided under the Constitution.

The actual pattern of Center-State relations came to be shaped by extra-Constitutional, political and economic factors, of which the following are noteworthy:

1. The impact of planning that gave rise to regional imbalances.
2. The impact of a single dominant party at the union and in the States.
3. The impact of dominance of single leaders, Jawahar Lal Nehru (1950-1964) and Indira Gandhi (1971-77) and again (1980-84) on the political system as a whole and on the pattern of Center-State relations in particular. As a result, the Constitution is not the final guide to studying the actual shape of Center State relations in India, as the actual shape has been influenced by the factors listed above in varying degree from time to time. What makes a federation successful is its capacity to evolve mechanisms and processes of tension-management, conflict-resolution, co-ordination and co-operation.

From this point of view, Indian federalism can be seen under distinctive phases:¹

1. 1950-1964- period of paramount of the Center (paramount federalism) This period was marked by Nehru's undisputed sway over the country's affairs on the one hand and strong reaction to the earlier attempts of the colonial power to encourage divisive forces on the other.
2. 1964-1971- period of competitive and bargaining federalism. This phase was characterized first by the changes at the top and, later, by the pattern of multi-party Governments in the States.
3. 1971-75- period of cooperative and normative federalism. The third phase, till the declaration of emergency in 1975, features a new semblance of stability under Indira Gandhi's dominating influence. It is in this phase that the issue of greater State autonomy was vehemently advocated by the leaders of the non-Congress Governments particularly in the States of J&K and Tamilnadu. This period has also witnessed growing controversy over the stationing of the Central Reserve Police forces in States. The non-Congress Governments in West Bengal and Kerala objected to the Centre's right to send central forces to protect the offices, communications and other installations in the States on the ground that it violated the States' right to maintain law and order. This phase has produced the greatest tensions and conflicts in the Center-State relations in India.
4. 1975-77 - period of emergency (Unitary federalism). The nineteen months of emergency period during 1975-77 when the increasing demand of State autonomy was not only shelved in the background, but the very federal character of the system had undergone complete alteration.

¹ Indian Constitution-trends and Issues, Rajiv Dhawan

5. To these four phases can be added, fifth one- 1977-1984- in the first part of which the advent of the Janata Party for a short time with its commitments to the process of devolution and decentralization in policy making but belied the hopes. And the later part was represented with the era of Congress with soft corner for the process of federalization.
6. The sixth phase can be assumed, 1984-1989- in which Rajiv Gandhi tried to set in the motion to reverse process of federalization through decentralization.
7. The last phase can be called coalition Era of multi-party competitive politics- This phase has led many observers to believe that the State autonomy has been the maximum. As the one party dominance reduces the federal principle to a vanishing point, multi-party coalition Government would help to resolve all the conflicts and tensions in Center-State relations.

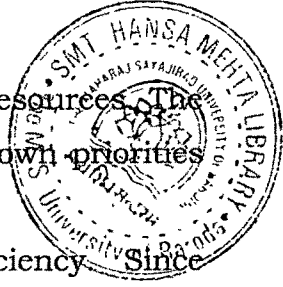
7.B.2. CONCEPT OF STATE AUTONOMY

Autonomy in a federal form of Government means, the units should have sufficient and adequate Legislative and administrative powers without any interference from outside control and adequate financial resources for implementing and executing its plans for reconstructing the society on modern welfare lines without any control of the central Government in any way.

State autonomy under the division of powers of a federal Constitution has three important dimensions apart from the political:²

1. Autonomy is a condition for self-expression, for the expression of a sense of identity.

² Thoughts on More Perfect Union- Dr. S. P. Aiyer taken from "The Constitution and the Parliament in India " The Lok Sabha Publication.

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2. Autonomy is a condition for the effective use of resources. The States must have the freedom to determine their own priorities in planning.
 3. Autonomy is a condition for operational efficiency. Since federalism is best suited to a large country, the States provide an important level for implementation of Government programmes.

In the context of federalism, autonomy has a restricted meaning and does not connote the sovereignty of the units of the federation. When autonomy becomes a cover for ideological strategies against the Union Government it tends to destroy the foundations of the federal system. Finally, the demarcation of jurisdictions between the Union and the State Governments under the federal Constitution, however carefully carried out, does not provide an arrangement without possibilities of conflict or of practical inconvenience.

The concept of State autonomy is a relative one and it might vary from one administrative area to another; likewise, the idea of federal centralization is also relative. The Central Government may be strong in some fields, weak in others. It may be strong at one time but weak at another. Every system has its centralizers and its decentralizers. These and other factors have influenced the relationship between the States and the Union Government, tilting the balance sometimes one way, sometimes another. The problem of State autonomy cannot be settled once and for all to our satisfaction as well as to that of subsequent generations. This is also the experience of the USA.

7.B.3. FACTORS RESPONSIBLE FOR DEMAND FOR STATE AUTONOMY AND EMERGING TRENDS

Federalism in India has undergone far reaching changes due to a multiplicity of factors- the informal and deliberate modification in the original distribution of powers, the one party dominance system for almost three decades in which Chief-Ministers in general were nominees of the High Command, multiple levels of economic and social development, and the peculiar ethnic, linguistic, cultural, economic and political characteristics of the constituent States. All these have at various times influenced the development of public policies in the background of conflicting forces of centralization and decentralization.

The Constitution 42nd Amendment Act, 1976, substantially altered the original federal character of the Indian system. This has unquestionably reaffirmed the intent of the Constitution Makers to establish a lasting Union in which the States will have no right to secede. Significant changes have occurred in the Seventh Schedule which have affected the original distribution of powers between the Centre and the States. The entries transferred from the State List to the Concurrent List include, (a) administration of justice, constitution and organization of all courts except the Supreme and the High Courts, (b) education, (c) weights and measures, (d) forests, and (e) protection of wild animals and birds. Taxes on advertisements, broadcast by radio or television were also excluded from the purview of entry 55 of the State List.

In addition the Union List has also been amended to give authority to the Union Government to deploy any armed forces of the Union or any other forces.

The most controversial change was to make the administration of justice and the organization of courts other than the Supreme Court and the High Courts a concurrent subject. The amended Constitution had drastically tilted the balance of power regarding initiation and implementation of public policies in favour of the Centre.

Even in normal times, there are certain provisions of the Constitution which are against the working of the provincial autonomy. These provisions are Articles 3, 132, 133, 134, 148, 155, 156, 201, 217 (10, 249 to 257, 259, 275, 910, 312, 316, 324(2), 353 and 355 etc.³

The Centre-State relations viewed as a straight fight over turf came sharply in focus after the fourth general elections which was widely considered as having opened up a new chapter in federal process. The internal crisis of the Congress party and the emergence of dissident splinter groups followed by the great split contributed significantly to raising the level of consciousness regarding inadequacies of the federal system. The social realities of the north-eastern region had been clamoring for attention and recognition for a long time and the creation of separate States there was the last major exercise in federal restructuring.

Planning has seriously affected the Center-State relationship in favour of the Center and eroded the State autonomy.

Another factor, which has further resulted in centralizing tendency, is the role of Congress Party. Since it was dominating the central and the provincial Governments, the policy and programmes chalked and thrashed out by the central leadership were implemented by the provincial leadership. The Chief Ministers were imposed or

³ Problems of State Autonomy and its emerging Trends- Ramji Lal.

removed at the direction and discretion of the central leadership. The non-Congress Governments were not allowed to function and Article 356 was seriously misused. When the Congress party failed to get defection in Kerala, it organizes an agitation to dislodge the Government headed by EMS Namboodiripad. We will see many examples of this in the coming chapter. The working of the Congress Party gave severe set back to the provincial autonomy.

A politicized and discerning electorate welcomed the emergence of regional alternatives to a party whose State leaders had ceased to command respect because of their ineffectual representation in Central policy making forums.

The persistence and intensification of multi-party federalism over the last decade have raised serious doubts regarding the viability of the old centralist regulatory conception of federal management. Over concentration of powers had generated a need for decentralization and it is argued that stronger States would ultimately strengthen the Centre.

Uneven development of ethno-regional units and increased politicization lend urgency to review of economic and financial relations between the Centre and the States.

The forceful championing of States' interest, by non-Congress Government, and the partial success they were able to obtain raised the possibility of challenges to Central leadership, along similar line, from within the Congress. Regional Congress leaders were quick to point to their own needs for greater autonomy in sectoral allocation of resources in order to meet the threats of internal factionalism and growing opposition.

Among emergency provisions, the incorporation of Article 356- to restrict and check the powers of the State is also one of the main reasons of tension.

The office of the institution of Governor is another important reason of troubled relationship of Center-State.

We will study these two main causes of the tension in detail in next chapters. In this chapter we will concentrate on the demand for more autonomy by States.

7.B.4. DEMMAND FOR GREATER STATE AUTONOMY AND APPOINTMENT OF COMMISSIONS.

From time to time, State Governments (mostly opposition run) have passed resolutions, submitted memoranda to the Finance Commission and have expressed views at appropriate Conferences to change the scheme of the Constitution. Regarding Centre-State relations many commissions and committees have been constituted. The following are some important of them. Here it would not be practical to go far while discussing their terms for demands but I will discuss only those topics which are related with my topics.

7.B.4.1. RAJAMANNAR COMMITTEE (1969)

On September 22,1969 the Tamil Nadu Government constituted a Committee consisting of Dr. Rajamannar, Dr. Lakshmanswami Mudaliar and P.C.Chandra Reddy to examine the entire question regarding the relationship that should subsist between the Centre and the States in a federal set up and suggest suitable amendments to the Constitution so as to secure utmost autonomy to the States. A questionnaire covering more than 100 questions was issued by the Committee and suggestions were invited on the issues. The questionnaire contained the following issues namely:

1. Federal system under the Constitution as the basis of Centre-State relations;
2. Administrative and Executive Fields;
3. Legislative Field
4. Finance: Taxing powers: Distribution of revenues: Grants and Loan from Centre;
5. Judiciary- Supreme Court and the High court;
6. Public Services;
7. Elections

It presented its report to the Tamil Nadu Government in May 1971. The pith of the report is to alter the theme of subordination of the States “ running right through the Constitution.”⁴

A.G. Noorani has correctly said that the Rajamannar Committee was not asked and it did not inquire into the State of relations between the Center and the States with an open mind.⁵ Though Dr. Rajamannar resented this charge in a press interview,⁶ yet it cannot be accepted as an impartial body.

The renowned jurist Mr. M.C. Setalvad looked at the recommendations of the Committee with great apprehension.⁷ The Committee was asked by its terms of reference to suggest constitutional changes not to secure the extent of autonomy necessary for proper governance, but the “utmost autonomy” possible in a federal set up. As the Makers of the Constitution himself had favoured bias towards the Centre this report was supposed to be wholly unsatisfactory.

⁴ Federalism and Centre-State relations in India- O.P. Tiwari

⁵ “Centre-State ties-A wrong Approach,” The Indian Express, July 18, 1971- taken from O.P. Tiwari’s book.

⁶ The Sunday Statesman, New Delhi, July, 1971- taken from Supra.

⁷ Setalvad.M.C., “Union and State Relations under the Constitution,”-taken from Supra.

7.B.4.2. ADMINISTRATIVE REFORMS COMMISSION (1969)

This commission was constituted by the Government of India under the chairmanship of Mr. K. Hanumanthaiya. Its Secretary was V.V. Chari. The other members of this commission were H.V.Kamath, Debabrata Moookerjee, T.N. Singh and V. Shankar. It submitted its 13th report to the Prime Minister on 19th June, 1969. It is unanimous. However its report had been printed by the Ministry of Home Affairs, New Delhi in June, 1980. Its recommendations to smoothen the Centre-State ties were very valuable. Its recommendations were related with following:

1. Unity of India : Its paramount Importance
2. Allocation of Functions and Resources between the Centre and the States
3. Role of the Governor
4. Inter-State Council and Inter-Water Disputes
5. The Problem of Law and Order
6. Some Important Institution having a bearing on Centre-State
7. Relationship

Decentralisation of Powers in Certain Areas.

So far as the Centre-State Relations is concerned it is most desirable to implement all or some of the recommendations of the Administrative Reforms Commission, which have not lost their relevance, after the appointment of Sarkaria Commission.

7.B.4.3. THE ANANDPUR SAHIB RESOLUTION

It was adopted by the Akali Dal, the Sikh party in Punjab, at "one of the most sacred cities of the Sikhs" on 17th October 1973.

Apart from specific Sikh demands and demands for a greater Punjab it requested that” in this new Punjab and other States, the Central intervention should be restricted to Defence, Foreign Affairs, post and Telegraph, Currency and Railways”.

The Anandpur Sahib Resolution was one of the factors making the Indira Gandhi Government in 1983 appoint a new commission on Centre-State relations-“Sarkaria Commission”.

7.B.4.4. WEST BENGAL MEMORANDUM (1977)

After the election of 1977, the CPI(M) led by Jyoti Basu, the Chief Minister of West Bengal was actively advocating the cause of State autonomy. The resulting political scene has given rise in certain quarters to a demand for a fresh look at Center-State relations. The lead in this direction has come from the West Bengal Government which has adopted, on 1st December 1977, a 2,500 word memorandum, arguing the case for a truly federal relationship between the Centre and the States.

The memorandum pointed out that national unity and integration depends on more rapid all-round development of the mass. This cannot be done by concentrating all powers and resources at the Centre which reduce the States to mere recipients of Centre’s mercy and generosity.

The West Bengal Memorandum is clearly reminiscent of the efforts of the DMK Government of Tamil Nadu culminating in the appointment of the Centre-State Relations Inquiry Committee in 1969. It was on the pattern of Rajamannar Committee’s report, justifying the demand of greater political and economic autonomy to the States and for reducing interference by the Central Government in the affairs of State Government.

It was submitted to the Union Government for consideration in 1977, but no national debate could take place on it as there was change in the Government in the Centre.

In sixth General Election held in 1977, Janata Party emerged victorious in the Centre, and the movement for Greater State autonomy was put into cold storage obviously because the Rajamannar committee had accounted entire responsibility for emergence and growth of unitary trend in India, to the Continuous rule of Congress party both in the Centre and States. With the appearance of Janata Party in the Centre, total reform in the political power structure, particularly in the field of Centre-State relations was expected. But the approach of Janata Party did not become different.

Next development which gave fresh lease of life to the movement of demand for the Greater State autonomy was the reappearance of Mrs. Indira Gandhi as Prime Minister in 1980 and her style of functioning at the Centre. Efforts were made to replace non-Congress (I) Government s in States. The demand for re-structuring Centre-State relations took new impetus, and most of the opposition leaders joined on the call of N.T.Ramaraao, the former Chief Minister of Andhra Pradesh. They have been successful in holding three conferences, first, at Vijayawada in 1980, second in New Delhi in 1981 and third at Srinagar in 1983.

The Vijayawada conference was preparatory for a common stand. The New Delhi conclave 1981 discussed the common problem but totally collapsed and did not produce any result. The Srinagar conclave was organized, in early October, 1983, by Farooq Abdulla, the then Chief Minister of Jammu and Kashmir and was attended by number of opposition leaders including Jyoti Basu, N.T.Ramaraao and ram Krishna Hedge. By formulating recommendations, the conclave was expected to have valuable impact on Sarkaria Panel.

7.B.4.5. SARKARIA COMMISSION (1988)

While responding to the situation related with the demand for autonomy, the then Prime Minister Smt. Indira Gandhi on 24th March 1983 announced in Rajya Sabha for appointment of a three-man Commission headed by a former Supreme Court J. Ranjit Singh Sarkaria to probe into the issue. This Commission has worked on several issues which directly or indirectly concerned with Union-State relations. It took at least 5 years for its study on the subject and finally submitted its voluminous report running into 1580 pages dividing into two parts. The matter which affects Union-State relations bitterly is the role of a Governor. The commission has made the following recommendations.⁹

1. This Commission headed by Justice R.S. Sarkaria, was constituted to examine and review the working of the existing arrangements between the Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate. The report was submitted in the year 1987-88.
2. It includes all inter Governmental relations whether founded on or arising from or related to constitutional or statutory provisions or administrative practices and conventions including the mechanisms through which they are worked", thus clearly recognizing the importance of unwritten conventions and practices.
3. As a general characterisation of the Commission's recommendations are that although a drastic amendment to the Constitution was deemed 'neither desirable nor necessary', it found that its actual working 'leaves much to be desired'.

“Unfortunately, there has been a pervasive trend towards greater centralization of powers over the years due to pressure of powerful economic forces”. Codes and conventions evolved in the earlier years have been broken too lightly in the later years -----narrow personal and parochial interests have been given priority over larger national interests”⁸

Report is an examination and review of the working of:

1. The Constitutional provisions regarding powers, functions and responsibilities. Of Union and States having a bearing on their relations “in all spheres”;
2. The statutes having an interface between Union and States, particularly to extent to which they impinge upon each others’ area of responsibility and functions;
3. The administrative practices and conventions----- in area of concurrent or separate responsibility such as planning, devolution of financial resources,-----including the mechanism or agencies through which these functions are channelized.’
4. So the conclusion of the Sarkaria Commission had to be that conventions in accordance with the spirit of the Constitution had to be renewed and newly developed.
5. There are many vital subjects on which its recommendations are valuable. There was the recommendation to amend the Constitution to place residual Legislative power on the Concurrent List, and thus taken them away from automatic Union authority. (The important exceptions were to be the residual powers of taxation, which would stay with the Union). There was a recommendation to develop a convention of prior consultation with the Centre prepared legislation in the concurrent field. The report also recommended not to amend

⁸ Sarkaria Commissions Report- quoted from “The Purse and the Power” by Arie De Ruijter.

the Constitution, but to finally used the authority in the hands of the President (Art. 263) to set up an Inter-State Council that was established by Narasimha Rao Government but of general nature.

6. Sarkaria Report apart from finance, planning and development gave very valuable recommendations on the position of the Governor and the use of Article 356 in States. These Articles are discussed in the next chapter in detail.

7.B.5. ROLE OF JUDICIARY

At the inaugural sitting of the Supreme Court on January 28, 1950, the first attorney-General of India, Sri M.C. Setalvad in his address to the court said “the Court will be called upon to frame the boundaries between State and Union action and to adjust the relationship of the Union to the States. The division of powers between the Union and the States has been carefully planned. Yet many viable domestic issues are bound to arise in a variety of forms before the Court, and its decisions are sure to exercise a far-reaching influence on these issues.”⁹

The Supreme Court has jurisdiction under Article 131 of the Constitution to decide disputes between the Centre and the States, the Centre and some States on one side and some States on the other side, and two or more States.

According to A. Prasad¹⁰ “The very existence of the original and exclusive jurisdiction of the Supreme Court to decide disputes between national and State Governments indicates that constitutional structure of India is federal. Though there is no unanimity among the

⁹ Quoted from Centre-State Relations in India, Bidyut Chakrabarty.

¹⁰ Nature of Indian Polity- a. Prasad in Journal of the Bar Council of India, Vol.6 (1&2): 1977.

various judicial pronouncements, however, a thread of federalism is clear through all these decisions. India is a federation, it is agreed by the courts, the only difference lies to some extent to the degree of the powers enjoyed by the Centre and the States.

Shri F.S. Nariman, in his article on "The Supreme Court and Centre-State Relations" in the book "Public Law in India" edited by Shri A.G. Noorani, has referred to the following 5 cases decided by the Supreme Court as "Landmark decisions" on Centre-State relations:

1. State of West Bengal vs. Union of India(AIR 1963 SC 1241) in which the court held that State Property can be validly acquired by the Union Government;
2. Sea Customs Case (AIR 1963 SC1710) in which it was held that indirect taxes like Customs and Excise duties on State properties, and State manufactures can lawfully be imposed, and collected by the Union;
3. Andhra Pradesh Road Transport Corporation Vs. I.T.O. (AIR1964 SC1486) in which it was held that State Corporations or agencies, cannot claim State immunity for taxation.
4. State of Rajasthan Vs. Union of India (AIR 1977 SC 1361) In which it was held that that the State Governments can be virtually compelled by the Centre to seek a fresh mandate from the electorate even before expiry of the Constitutional term of the State Assembly.
5. State of Karnataka Vs. Union of India (AIR 1978 SC 68) in which it was held that the conduct of Chief Minister or Ministers of a State Government could validly be the subject of an inquiry by a commission appointed by the Centre.

Commenting on the Supreme Court's stance with regard to the Centre-State disputes one can't fail to notice that since the

¹¹ A.G. Noorani, "Landmark decisions" on Centre-State Relations.

commencement of the constitution at the Supreme Court it has not even once decided an issue directly arising between Centre and State in favour of the State. It would be unfair to regard this as a criticism—the stark fact is that the judges of the Apex Court have sincerely believed that India needs a strong Centre. This belief has been continuously reflected in the decisions since 1950 in the gray areas of doubt in Centre-State conflicts.

The Sarkaria Commission listing four more cases in addition to those cited by F. S. Nariman has concluded: ‘The need for a strong united India which was the prime objective before the Constitution – makers, appears to have been a silent premise dominating the process of adjudicating of Union –State disputes in these cases’¹².

In *V. Venkatraman v. Controller of East Duty* (AIR, 1960 Mad. 305) and in *R.M.D. C. Private Ltd. V. State of Mysore* (A.I.R., 1962 S.C. 594) the judiciary strictly construed traditional federal principle.

7.B.6. NCRWC’S RECOMMENDATION

Recently, the Commission examined the Constitutional provisions regarding Center-State relationships. The Commission is of the opinion that there is no ground for change in the existing constitutional provisions. But it believes that provisions that are contained in Article 245 to 254, has to be regarded as a valuable instrument for consolidating and furthering the principle of co-operative and creative federalism. The Commission is convinced that it is essential to institutionalize the process of consultation between the two.

¹² Quoted from ‘Centre-State Relations in India’ by Bidyut Chakrabarty.

The Commission recommends that individual and collective consultation with the States should be undertaken through the Inter-State Council established under Article 263 of the Constitution.

7.B.7. CRITICAL APPRAISAL

As we have seen in the earlier chapter, there were some compelling reasons and circumstances prevailing at the time of drafting the Constitution for having a strong Centre. Memories of partition of the country were very fresh in the minds of the framers of the Constitution and this suggested to the framers the need for taking adequate precautions to ensure unity of this vast country and prevent and arrest fissiparous tendencies. That is why they opted for a strong Centre.

The Centre's strength lies in its large legislative and financial powers, and in its control over State Legislation and administration in certain situations. In the last chapter under the head of "Division of Legislative power" we discussed all the relevant provisions under which the Parliament can also enact a law with respect to the subject matters covered by the State List are mentioned. These exceptional circumstances are :

1. If the Council of States by a resolution supported by not less than two-third majority declares that it is necessary in the national interest to do so, during a proclamation of emergency,
2. If the Legislature of two or more States pass a resolution to the effect that it is desirable to have a law passed by Parliament on any matters in the State List.
3. For giving effect to treaties and international agreements, and
4. Failure of Constitutional machinery in a State.

The special circumstances existing at the time of the Constitution making made direct inroads into the traditional federal principle.

If we compare the Constitutional position of the Centre with the States, it becomes quite obvious that there is a conscious Constitutional tilt in favour of the Centre. However, the State's Legislative powers, though not so broadly worded as those of the Centre, are, nevertheless, significant. The State has to maintain law and order. Agriculture and irrigation on which the prosperity of the depend country so much fall within the purview of the States. The State regulates industry and mines, health, waterways, roads, trade and commerce etc.

Can it really be said that, taking into consideration the nation's needs, the power of the Center are excessive or the situations so changed as to call for a radical change in the Constitution as proposed by different memorandum and committees? Is there any absolute federal principle in any of the world's federal Constitutions as assumed by the Rajamannar Committee and the West Bengal Memorandum?

The need to maintain the unity and integrity of country is as important at present as it was 50 years ago. Over population, regionalism, casteism, communalism, terrorism, etc are as great problems as they were in 1950.

The solution to the problem of the Centre-State tensions lies in co-operative federalism and that calls for a continual consultation between the Centre and the States. The excessive autonomy for the States would lead to a steady weakening of the Centre. A weak Centre and strong States would both lead to fissiparous tendencies and

hamper national integration.¹³ Thus owing to the typical historical evolution of our nation and other factors as mentioned above the Centre has to strong to ward off the secessionist forces at work.

According to Nani Palkhiwala,¹⁴ there is no doubt about the injustice done by the Centre to the States but we should not forget that the injuries done to the States are, in a sense, self-inflicted. The Centre is nothing but the States in their federal garb: the Parliament and the Central Government consist of none but the elected representative of the States. The real authors of the injustices are the self-centred representatives of the States who, after being elected to Parliament, have betrayed the true interests of the very States which returned them. Over Constitution aims at co-operative federalism, which undoubtedly appears to be a panacea for the grievances of the States.

¹³ Taken from the Indian Express Editorial, "Careful, dear federalist"- Inder Jit.

¹⁴ We , The People- Nani Palkhiwala.