

Centre State Relations Under Constitution of India

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“Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source.”

- Dr. B.R. Ambedkar

INTRODUCTION

In a system of multi-level governance operating essentially in a federal framework such as ours, harmonious relations between the Centre and the States are critical for the stability, security and economic growth of the country and welfare of the people. The Constitution of India is federal in form but is more unitary in character. The Indian Constitution was adopted on November 26, 1949, and came into force on January 26, 1950.² It is universally believed that our Constitution is an organic living institution. It is flexible yet resilient, designed to meet the needs and requirements of a fast changing and rapidly developing society. The federal system of governance has been discussed at length in various Articles of the Constitution outlining and determining the relationship between the Central and State Governments. At the same time, from the functional stand point, the Constitution does not restrict itself to a static format but lends to satiate to a dynamic process. The turn of events at the time of country's partition preceding the birth of free India impelled the Constituent Assembly to opt for a “Union of States” with a strong Centre, keeping away from the idea of a loose federation that had engaged the attention of the framers of the Constitution initially.

The distribution of powers is an essential feature of federalism. The object for which a federal State is formed involves a division of authority between the Centre Government and the separate States.³ The tendency of federalism to limit on every side the action of the Government and to split up the strength of the State among co-ordinate and independent authorities is special noticeable, because it forms the essential distinction between a federal system and a unitary system of Government.

A Federal Constitution establishes the dual polity with the Union at the Centre and the States at a periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the constitution. The one is not subordinate to the other in its own field the authority of one is co-ordinate with that of the other. In fact, the basic principle of federation is that the legislative, executive and financial authority is divided between the Centre and the State not by any law passed by the Centre but by Constitution itself.⁴

EVOLUTION OF FEDERAL SYSTEM

The distribution of powers between the Centre and the States in the Indian Constitution is based on the scheme provided in the Government of India Act of 1935. Though the federal provision was not implemented, it provided a blueprint for the federal state which India established in the Constitution of 1950. However, autonomous provinces were created under this Act as the first step in the establishment of the federation. Based on the nature of the relationship between the National government and Regional government, the governments can be classified as Unitary and Federal systems. Our Federalism is influenced by American, Canadian, and Australian Federalism. The Constitution of India provides for a federal system of government in the country. The Indian federal system is based on the ‘Canadian model’, unlike the US model. Indian system resembles the Canadian federation in its formation (by way of disintegration i.e., a large unitary state is converted into a federation by granting autonomy to the provinces to promote regional interests; whereas in ‘U.S model’ federation is formed by way of integration i.e., states come together to form a big and strong union. Federalism in the Indian Constitution is not a matter of administrative convenience, but it is the outcome of our own process and recognition of the ground realities. At the time of Independence, India was a nascent democratic country suffering from the aftermaths of partition. The priority then was the ‘integrity’ of the country. Hence India adopted a system that is federal in normal times, but unitary in times of emergency.

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² V.N. Shukla, *Constitution of India* 37 (Eastern Book Company, Lucknow).

³ A.V. Dicey, *The Law of the Constitution* 151 (Liberty classics, 10th edn., 1959).

⁴ Dr. J.N. Pandey, *Constitutional Law of India* 686 (Central Law Agency).

CONSTITUTIONAL SCHEME OF CENTRE-STATE RELATIONS

The Constitution of India provides for elaborate provisions for purpose of a greater degree of cooperation between Centre and States. Moreover, the union government has also been active and set-up various commission and committees to look after the relationship in light of the ever-changing dynamics of the relation. However, the constitutional scheme can be mainly classified into the following three facets:

- A. Legislative Relations
- B. Administrative Relation
- C. Financial Relation and Planning.

A. Legislative Relations

Chapter I of Part XI of the Indian Constitution specified two-fold division of Legislative powers between the Union and the States.⁵

- with respect of territory,
- with respect of subject matter.

i) Territorial Jurisdiction

As regards territory, Article 245 (1) provides that subject to the provisions of this constitution, a State Legislature may make laws for the whole or any part of the state to which it belongs. It is not possible for a State Legislature to enlarge its territorial jurisdiction under any circumstances except when the boundaries of the state itself are widened by an act of Parliament. Parliament has, on the other hand, the power to legislate for 'the whole or any part of the territory of India, which includes not only the states but also the union territory of India. It also possesses the power of 'extra-territorial legislation which no state legislature possesses.'⁶ This means that laws made by parliament will govern not only persons and property within the territory of India but also Indian subjects resident and this property situated anywhere in the world.

Limitations to the territorial jurisdiction of Parliament: The plenary territorial jurisdiction of Parliament is, however, subject to some special provisions of the constitution. They are, (a) As regards some of the Union Territories, such as the Andaman and Lakshadweep group of Islands, regulations may be made by the President to have the same force as Acts of Parliament and such regulations may repeal or amend a law made by Parliament in relation to such territory (Art. 240). (b) The application of Acts of Parliament to any scheduled area may be barred or modified by notifications made by the Governor (Para 5 of the V Schedule (3) of the Indian Constitution). (c) Para 12 (1) (6) of the VI Schedule says that the Governor of Assam may, by public notification, direct that any other act of Parliament shall not apply to an autonomous district or an autonomous region in the state of Assam or shall apply to such district or region or part thereof subject to such exceptions or modifications as he may specify in the notification. It is obvious that the foregoing special provisions have been inserted in view of the backwardness of the specified areas to which the indiscriminate application of the general laws might cause hardship or other injurious consequences.

ii) Distribution of Legislative Powers (Subject Matter)

As regards the subjects of legislation, the constitution adopts from the Government of India Act, 1935 and divides the powers between the Union and the States under three lists. They are as follows:

- The Union list
 - The State List and
 - The Concurrent List.⁷
- a) **The Union List:** At present the Union List consists of 97 Subjects over which the Union shall have exclusive power of legislation. The Subjects mentioned in the Union List are of national importance, for example defence and foreign affairs etc.
 - b) **The State List:** The State List comprises of 66 Subjects over which the states have exclusive power to make laws. The Subjects mentioned in the State List are of local or regional importance, such as public order, police and public health etc.
 - c) **Concurrent List:** The Concurrent List includes 47 subjects and both the union and the states can make laws on this list but in case of conflict between the Central Law and the State Law, the Central Law will prevail over the State law. The purpose of adding the List to the constitution was to secure uniformity in the main principles of law throughout the country.

⁵ The Constitution of India, 1950 at art. 245-255.

⁶ *Id* at art. 245 (2).

⁷ *Supra* note 7 at art. 246.

iii) Residuary Powers

It is quite interesting to note that the residuary powers are vested in the union, while in the United States of America and Australia, these powers are given to the states. Parliament has exclusive power to make any law with respect to any matter not enumerated in any one of the three lists.⁸ This reflects the leanings of the Constitution-makers towards a strong centre. Another notable thing regarding to residuary powers is that "the final determination as to whether a particular matter falls under the residuary power or not is that of the courts."

iv) Predominance of the Parliament

In spite of a clear demarcation in the law-making power of Parliament and State Legislatures, Parliament was assigned a predominant position in the general Legislative field. If a matter happened to be included in the Union list and the State List, and if there was ever a conflict between them the Union List prevailed. Similarly, if there was an overlapping between the Union and concurrent lists, the Union list was paramount, and the concurrent list had priority over the State List. Clause (4) of Article 246 of the Indian Constitution further provided that, Parliament has power to make laws with respect to any matter for any such part of the territory of India as had not been included in a State, notwithstanding that such matter was a matter enumerated in the State List.

- a) **Power of Parliament to legislate in the National Interest:** The predominance of Parliament in the sphere of lawmaking was established by several Articles of the Indian Constitution. It is provided that, if Rajya Sabha declared by a resolution supported by not less than two-thirds of the members present and voting that it was necessary or expedient, in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it becomes lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter during the period the resolution remained in force.⁹ Such a resolution remained in force for such period, not exceeding one year, as might be specified therein. The Rajya Sabha, however, could extend the period of such a resolution for a further period of one year from the date on which it would otherwise have ceased to operate. A law made by Parliament, which Parliament would not but for the passing of such resolution by Rajya Sabha have been competent to make, ceased to have any effect on the expiration of a period of six months after the resolution had ceased to be in force, except in respect of things done or omitted to be done before the expiration of that period. This provision enabled the Rajya Sabha which represented the States, to put in the concurrent list any matter that was of local concern but had assumed national importance. The Rajya Sabha could do so anytime, emergency or not emergency.
- b) **During Proclamation of Emergency:** Article 250 says that, the Parliament shall have the power to make a law on any item of the State List in case, a proclamation of emergency is in operation. Such a law shall apply to the whole country or any part thereof in the case of National Emergency (under Article 352) and to any state under President's Rule (under Art. 356) or Financial Emergency (under Art. 360). The laws of the state or states shall remain inoperative during this period to the extent of being repugnant to the law of the centre (Art. 251).
- c) **Agreement between States:** In case, the Legislatures of two or more states pass a resolution and request the centre to make a law on a certain item of the state List, then it shall be lawful for the Parliament to make a law. Firstly, such a law shall apply to the states which made such a request, though any other State may adopt it by passing such a resolution subsequently. Secondly, such a law can be amended or repealed only by the Parliament.¹⁰
- d) **For giving effect to International agreements:** Parliament shall have the power to legislate with respect to any subject for the purpose of implementing treaties or International agreements and conventions. In other words, the normal distribution of powers will not stand in the way of Parliament to enact legislation for carrying out its International obligations, even though such legislation may be necessary in relation to a state subject.¹¹
- e) **Avoiding inconsistency:** When a law of the State Legislature is inconsistent with any law of the Parliament, the law of Parliament prevails over the law of the State.¹²

⁸ *Id* at art. 248.

⁹ *Id* at art. 249.

¹⁰ *Id* at art. 252.

¹¹ *Id* at art. 253.

¹² *Id* at art. 254.

- f) **In case of failure of Constitutional machinery in the States:** The predominance of Parliament was further established by Article 356 and 357 of the Indian Constitution. Article 356 stipulated that, if the President was satisfied that a situation had arisen in which the government of a state could not be carried on in accordance with the provisions of the Constitution, he might declare that the powers of the Legislature of that state would be exercisable by or under the authority of Parliament. Article 357 provided, delegate the law-making power to the President. The effect of Article 356 would be that the Legislature of the state in question would stand dissolved or suspended and the law-making power would vest in Parliament during the period the proclamation of Emergency remained in force.

In addition to the Parliament's power to legislate directly on the State subjects under the foregoing Articles, the constitution also provides for the centre's consent before a bill passed by a state Legislature can become a law. Article 200 of the Indian Constitution directs the Governor of a state to reserve a bill passed by a state Legislature for the consideration of the President, if in his opinion, if it is passed into law, would derogate the power of the High Court so as to endanger the position which the court is required to fulfill under the constitution. Article 201 says that, the President shall have the power to give his assent to such a bill or return it to the state for reconsideration on the basis of his recommendations. Thus, from the scheme of distribution of Legislative powers between the union and the states, it is quite evident that framers have given more powers to the Parliament as against states. The states are not vested with exclusive jurisdiction even over the subjects assigned to the states by the constitution and thus it makes the states to some extent subordinate to the centre. This centralizing tendency is no doubt inconsistent with the federal principle, but the framers of the constitution were more concerned with the unity of the nation rather than following the traditional requirements of a federal constitution. Besides, the central control was considered necessary for the purpose of achieving rapid economic and industrial progress".⁷

B. Administrative Relations

The administrative relations between the union and the states may well be studied as under: (i) normal and (ii) emergency conditions. The constitution has devised several techniques of control to be exercised over the states by the Union government under normal circumstances. The states shall not interfere with the legislative and executive policies of the Union government.

i) Techniques of Union Control Over States

- a) **In normal times:** Even in normal times, the Indian Constitution has devised techniques of control over the states by the Union to ensure that the state governments do not interfere with the legislative and executive policies of the union and also to ensure the efficiency and strength of each individual unit which is essential for the strength of the union. Some of these avenues of control arise out of the executive and legislative powers vested in the President, in relation to states. For instance, the President of India has power to appoint and dismiss the Governor, and other dignitaries in the state, if they were found guilty.¹³

The President has also got some powers relating to the legislation. His previous sanction to introduce legislation in the state legislature (Art. 304); assent to specified legislation which must be reserved for his consideration (Art. 31A), instruction of President is required for the Governor to make ordinances relating to specified matters (Art. 213), veto power in respect of other State bills reserved by the Governor.¹⁴

Specific Agencies for Union Control: The fathers of Indian Constitution, in order to safeguard the infant democracy of India provided several means to control administrative affairs of the states. They are:

- **Directions to the State Governments:** The Union Government is competent to give directions to a state government and to secure compliance with such directions. President's rule can be imposed, in case the State government fails to comply with any directions issued by the union government in the exercise of its executive powers.
- **Delegation of Union functions:** The Constitution has enabled the union and the state governments to exchange their respective administrative functions. For example, the President with the consent of the State government may entrust any executive function of the union to the states¹⁵ while legislating on a Union Subject, Parliament may delegate powers to the state governments and their officers in so far as the statute is applicable in respective states.

¹³Idat art. 155&156.

¹⁴Idat art. 200.

¹⁵Idat art. 258.

Conversely, a State government may, with the consent of the Government of India, confer administrative functions upon the latter relating to State Subjects.

- **Disputes relating to Water:** Article 262 authorizes the Parliament to provide by law for adjudication of any dispute or complaint with respect to the uses, distribution or control of the waters of any Inter-State rivers and River Valleys under clause (2) of this Article. Parliament may by law provide that neither the Supreme Court nor any other court shall have any jurisdiction in respect of such disputes and complaints relating to water of Inter-State rivers and River Valleys. Under the Article 262, Parliament passed Inter-State Water Disputes Act, 1956. This Water Disputes Act empowers the Central government to set up a Tribunal for the adjudication of such disputes. The decision of the Tribunal shall be final and binding on the parties to the disputes. Neither Supreme Court nor any other court shall have jurisdiction in respect of any water dispute which may be referred to such a Tribunal under that Act.
- **Inter-State Council:** The President of India is empowered to establish Inter-state Council, if at any time it appears to him that the public interests would be severed thereby. The duty of Inter-State Council is to inquire and advise upon disputes which may have arisen between states. It also investigates and discusses subjects of common interest between the union and states or between two or more states, for instance, research in such matters as agriculture and forestry.¹⁶
- **Grants-in-aid:** The Constitution of India has given the Parliament the power to make such grants as it may deem necessary to give financial assistance to any state which is in need of such assistance. By means of this, the union can correct Inter-state disparities in financial resources and can exercise control and co-ordination over the welfare schemes of the states on a national scale. The Union government also provides for specific grants for welfare of Scheduled Tribes and development of tribal areas.¹⁷
- **All India Services:** There are certain services common to the union and the states called 'All India Services', of which the Indian Administrative Service and the Indian Police Service are the existing examples. "The constitution also gives the power to create additional All India Services, if the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interests".¹⁸
- **Advisory bodies:** There are a few advisory bodies at the union level which co-ordinate the activities of the states in India, for example, National Planning Commission (1950) and National Integration Council (1986).

b) In Emergencies

The Indian Constitution provides for three kinds of emergency situations where the provisions available in the constitution can be pressed into service. These three situations are related to imposition of National Emergency¹⁹ when there is war, threat of war or internal rebellion. The second situation is related to the breakdown of the constitutional machinery in the state where the centre intervenes through the President of India for the imposition of President's Rule in the state under Article 356. The third situation is related to grave financial crisis and there is need to impose Financial Emergency under Article 360. The Government of India, under proclamation of emergency, shall acquire the power to give directions to a state, on any matter. Though the state government will not be suspended, but it will be under the complete control of the union executive. During the operation of emergency, Parliament shall have the power to legislate on any matter in the State List. It can modify the provisions of the constitution relating to the allocation of financial resources.

C. Financial Relations

Money is the life-blood of all governments without which they could not function and undertake obligations to improve the lots of the people. Since in a federal polity two sets of governments operate, it is necessary that each of them has sufficient funds. It is well said that "No system of federation can be successful unless both the union and the states have at their disposal adequate financial resources to enable them to discharge their respective responsibilities under the Constitution." To achieve this, Indian Constitution has made elaborate provisions relating to the distribution of the taxes as well as non-tax revenue and the power of borrowing, supplemented by provisions for grants-in-aid by the union to the states.

i) Principles underlying distribution of Tax Revenues

The Indian Constitution makes a distribution between the legislative power to levy a tax and the power to appropriate the proceeds of a tax so levied. In India, the powers of a Legislature in these two respects are not identical.

¹⁶Idat art. 263.

¹⁷Idat art. 275.

¹⁸Idat art. 312.

¹⁹Idat art. 352.

- **Distribution of Legislative Powers to levy taxes:** The Legislative power to make a law for imposing a tax is divided between the union and the states by means of specific entries in the union and state Legislative Lists in the VII Schedule of the Indian Constitution. For instance, the State Legislature has the power to levy an estate duty in respect of non-agricultural land belongs to Parliament. Similarly, it is the State Legislature which is competent to levy a tax on agricultural income, while the Parliament has the power to levy income tax on all incomes other than agricultural. The residuary power as regards taxation belongs to Parliament and the Gift Tax and Expenditure Tax have been held to derive their authority from this residuary power. There is no concurrent sphere in the matter of tax legislation.
- **Limitations on States' Taxing power:** A State Legislature has the power to levy any of the taxes enumerated in the state list, but this power is subject to certain limitations imposed by the substantive provisions of constitution. The following are a few examples of this kind. Profession Tax a State Legislature is empowered to levy a tax on profession, trade calling or employment.²⁰ But the total amount payable by a person or an authority in the state shall not exceed Rs.2500 per annum Sales Tax. The power to impose taxes on sale and purchase of goods other than newspapers belong to the state, but taxes on imports and exports and taxes on sales in the course of Inter-State trade and commerce are exclusive union subjects. This article is intended to ensure that sales taxes imposed by states do not interfere with imports and exports or Inter-State trade and commerce, which are matters of national importance and should therefore, be beyond the competence of the states.²¹
- **Tax on consumption or sale of electricity:** The State Legislatures shall not impose a tax on the consumption or sale of electricity which is consumed by the Government of India or sold to the Government of India for consumption by that government without the authorization of law of Parliament.²² Exemption of Union and State Properties from Mutual Taxation. The property of the union is exempted from all taxes imposed by a state or by any authority within a state, but Parliament may authorize to do so. Conversely, the property and income of a state is exempted from union taxation, but the other than the ordinary business of the government shall not be exempted from union taxation.²³ The immunity again relates to a tax on property. Yet, the property of a state is not immune from customs duty.

ii) Scheme of Distribution of Tax Revenue between the Union and the States

This article provides the scheme of the distribution of revenue between the union and the states. The states possess exclusive jurisdiction over taxes enumerated in the State List. The Union is entitled to the proceeds of the taxes in the Union List. The Concurrent List includes no taxes. However, it is to be noted that while the proceeds of taxes within the state lists are entirely retained by the states, proceeds of some of the taxes in the Union List may be allowed, wholly or partially to the States. The Constitution mentions the following categories of the union taxes which are wholly or partially assigned to the states.²⁴

- **Duties Levied by the Union but collected and appropriated by the States:** Stamp duties on bills of exchange, excise duties on medicinal and toilet preparations containing alcohol, though they are included in the Union List and levied by the union government. However, it is shall be collected by the state governments which collects and appropriate these taxes, states by in so far by whom they are collected.
- **Taxes Levied and collected by Union but Assigned to States:** There are certain taxes which are levied and collected by the union but are assigned to the states in which they are collected Such taxes include like the duties in respect of succession to property other than agricultural land, estate duty in respect of property other than agricultural land, terminal taxes on goods or passengers carried by railway, air or sea, Taxes on railway fares and freights, taxes on stock exchange other than stamp duties, taxes on sale of and advertisements in newspapers, taxes on the sale or purchase of goods other than newspapers, where such sale or purchase taken place in the course of Inter-State trade or commerce, taxes on Inter-State consignment of Goods.²⁵
- **Taxes levied and collected by the Union and distributed between the Union and the States:** There are certain taxes which shall be levied as well as collected by the union, but their proceeds shall be divided between the union and the states in a certain proportion, in order to effect an equitable division of the financial resources. These are:

²⁰Idat art. 276.

²¹Idat art. 286.

²²Idat art. 287.

²³Idat art. 285 & 289.

²⁴Idat art. 268.

²⁵Idat art. 269.

(a) Taxes on income other than on agricultural income.²⁶

(b) Duties of excise as are included in the Union List, excepting medicinal and toilet preparations may also be distributed, if Parliament by law so provides.²⁷

iii) Finance Commission

Article 280 of Indian Constitution provides for the constitution of a Finance Commission to recommend to the President certain measures relating to the distribution of financial resources between the union and the states. For example, the percentage of the net proceeds of income-tax which should be assigned by the union to the states and the manner in which the share to be assigned shall be distributed among the states. It shall be the duty of the Finance Commission to make recommendations to the President as to -

- the distribution between the union and the states of the net proceeds of taxes which are to be or may be, divided between them under this chapter and the allocation between the states of the respective shares of such proceeds.²⁸
- The principles which should govern the grants-in-aid of the revenues of the states out of the Consolidated Fund of India.
- The measures needed to augment the Consolidated Fund of a state to supplement the resources of the Panchayats in the states.
- The measures needed to augment the Consolidated Fund of a state to supplement the resources of the Municipalities in the State, and
- Any other matter referred to the Commission by the President of India in the interests of sound finance.²⁹

IMPACT OF COVID-19 ON CENTRE-STATE RELATIONS

The COVID-19 has severely strained federal relations in certain aspects. In the context of finance, PM-CARES Fund was brought under the ambit of Centre-State Relations (CSR), however, the same was not done for state-based funds. As a result, companies were more inclined to make donations to the Centre than states which led to a financial crisis for many states. Moreover, the GST dues of states not being paid by the Centre added to the problem. In terms of administrative relations, many states felt that there has been discrimination by the Centre in terms of distributing medical equipment and vaccines, though the truth cannot be established. Further, as regards the legislative relations, states were not consulted in many matters which were stipulated in the statutes; they were bound to follow the orders of the Centre which strained the relations between the Centre and states.

MAJOR FINDINGS

- Centre-state relations can be trifurcated into legislative, administrative and financial.
- These centre-state relations have given a boost to cooperative federalism in India.
- In contemporary times, states are also included in the decision-making process which is healthy for the growth of the country.
- Cooperative federalism has had a positive impact on good governance as well as on the country.

CONCLUSION

India has a federal structure but also has huge regional disparities. In this sense, different authority at centre and state was necessary to cater to the needs of the country which would have not been possible if it had been a unitary government. Accordingly, certain provisions of the Indian Constitution provide for centre-state relations. These centre-state relations have been instrumental in developing the country as already discussed above. It has helped in better governance of the country, a better mechanism for administration and inclusion of different groups into the mainstream society. Moreover, in contemporary times, an active role is played by the state which further leads to better administration. The different provisions of the Constitution have also played an important role since, without these provisions, there would have been a lot of chaos in relation to the distribution of powers between the Centre and states. To conclude, it is hopeful that the centre-state relations strengthen with time and there is enhanced cooperative federalism since it is an important factor for determining the governance of the country.

²⁶Idat art. 270.

²⁷Idat art. 272.

²⁸Supra note 1 at 864.

²⁹Id at 865.