

Understanding the Dynamics of Legislative Relationship between Centre and State under the Indian Constitution



Anil Kumar Thakur

Assistant Professor,
Deptt. of Laws,
Panjab University,
Chandigarh

Abstract

In any federal system of governance the distribution of power among its units is one of the most important aspects. It plays a pivotal role in determining the direction and destinations of the very dynamics of Centre –State relations. A Constitutional arrangement for the distribution powers (legislative, administrative and financial) among the Centre and State has been made under Part XI of the Constitution of India. The importance of part XI can be judged from the fact that whenever the claim of Indian Constitution as federal Constitution is put under the question from any quarter, then in fact part XI is used as a shield to defend its credibility of being a federal Constitution. A fine balance in the distribution of legislative power among the Centre and States is a key to smooth and successful working of the federalism. The framers of the Indian Constitution have also shown their craftsmanship for achieving the goal of balancing the power between the Centre and States. Despite of the fact that framers of the Constitution have demarcated the legislative powers between Centres and States very carefully still many controversies cropped up on the ground when both centre and states asserts their power under these provision. These controversies were either avoided many times through the political wisdom or through the judicial interventions and interpretation when the matter reached to the court.

Keywords: Federalism, Centre-states Relations.

Introduction

Any country which envisages to establish dual polity or federal system of government in which there is a union government and more than one state and where both the government have been empowered with the concurrent Jurisdiction over the same territory, the Constitution of such country must provide for a mechanism by which conflict of Jurisdiction can be avoided the same view has been taken by Justice E.S. Venkataramiah & Prof. M.P. Singh which is as follows:

To that end the Constitution must divide the totality of governmental powers between the general and regional governments the totality of the governmental powers consist of executive, legislative and Judicial Powers. Among them the legislative powers have acquired a place of primacy and predominance in Constitutional democracies because most of the executive and almost all the judicial powers need to be backed by the legislation for their exercise unless the Constitution itself makes independent provisions for their exercise without legislative backing. Thus, the question of division of powers between the general and regional government is primarily the question of distribution of legislative powers.¹

Aim of the Study

The aim of this research paper is to examine the provision of the Constitution which determines the relationship between the centre and States. This paper also intends to explore the judicial intervention resolving the disputed between the Centre and States. The author also wants to analyse some of the doctrines which shapes these relations.

Review of Literature

In his article trends of centre–state relations in India under the neo-liberal regime (2018) Prabhat Patnaik highlights the changing dynamics of relationship between Centre and states in the times of neoliberalism. The author observes that although the Constitution provides ample space to the states but recently in the garb of economic necessities the centre interference is increasing.

Dr. Braham Parkash in article *The Emerging Trends in Centre-State Relations (2017)* emphasize that the era of centralized federalism in India is over and now it the time of co-operative federalism where the states are not the sub ordinates of Centre but both are coordinate to each other.

Again Chanchal Kumar Sharma & Wilfried Swenden (2017) in their article 'Continuity and change in contemporary Indian federalism' throws the light on the dynamics of Centre –State relations through case studies. They examine the question that is there Indian model of federalism and whether it is responsible for sustenance democracy in India.

A Survey of Distribution of Legislative Power under the Constitution

Indian Constitution also provides for the division of powers for the purpose of legislation of different subject matters in part XI, chapter I along with VII Schedules of the Constitution of India deals with the distribution of legislative powers. It is here where Indian Constitution has to pass the acid test of federalism. It is here where Indian Constitution failed to satisfy the traditionalist of its federal credibility due to some provisions in this chapter which has been declared as biased in favour of centre. But there is enough Justification for these provisions due to peculiar condition of Indian polity, and its claim as federal Constitution can't be ignored only on the above ground.

The present Constitutional provisions have its roots in to the Government of India Act 1935. Some Articles of the present Constitution are mere a reproduce of the sections of 1935 Act. Some provisions of the Act find place as modified wisdom in the new Constitution. As it has been observed by Asok Chanda, in following words:

The Constituent Assembly didn't consider that, having regard to the evolution of India's political system and needs of co-ordination of economic and industrial development centrally, any basic departure should be made from the modified Federal concept embodied in the 1935 Act. The Constitution however enlarged the scope of the legislative authority of states by transferring several items from the central list of 1935 Act. To the provincial (State) list; but at the same time it made other adjustment to strengthen the powers of the centre to foster national economic unity. National highways, interstate trade and commerce and several other items were accordingly transferred to the union list from the provincial list of the 1935 Act. And inter-state rivers were made a concurrent subject. Comprehensive provisions were also incorporated to make India a single economic unit for the purposes of trade and commerce under the overall control of the Parliament.²

There were other reasons too for the present provisions in the Constitution of India as it was noted by the Dr. K.C. Markandan as follows:

The objective had always been to frame a Constitution that would curb divisive tendencies and enable unity and integrity; the federal idea with autonomous states has only been to accommodate Muslims with British still ruling India.³

As noted above⁴ distribution of power generally and predominantly refers to the legislative distribution of powers. But there is no uniformly accepted Method or formula for the division of power in the Federal Constitutions. It is the most difficult and delicate Job for the framer of any Constitution in the world. The framers of the Constitutions must have to do some mental and logical acrobats, while balancing, the power between general and regional government. The above view has been also supported by M.P. Jain as follows:

Federalism constitutes a complex governmental mechanism for governance of a country. It has been evolved to bind into one political union several autonomous, distinct, separate and disparate political entities or administrative units. It seeks to draw a balance between the forces working in favour of concentration of power in the centre and those urging a dispersal of it in a number of units it thus seeks to reconcile unity with multiplicity. Centralization with decentralization and nationalism with localism.⁵

Despite all the difficulties and peculiarities one can find two broad categories or patterns for distribution of legislative powers. First is led by America and followed by Australia and Switzerland. Another is led by Canada and followed by India.

Part XI, Chapter-I of the Constitution of India is the nerve-centre of union-state relationship. Provisions under this chapter play a significant role in determining the sphere of Centre-state relationship. Similarly different entries in the three lists in the VII schedule works like an artery, as an artery supplies fresh blood to different part of the human body which is necessary for life, similarly these entries supply different legislative bodies (i.e. Parliament and Legislative Assembly) with the power to legislate. Legislative bodies are literally nothing without these legislative powers. It would be just like a dead organ of a human body. Legislative bodies would be just like a body without soul if there is no Constitutional mandate to legislate on different subjects.

There are total 11 Articles (Articles 245-255) in the first chapter of Part XI of the Constitution of India these articles directly deals with the division of legislative power between centre and states. These articles provide power i.e. with respect to territory as well as with respect to subject matter. This is clear from plain reading of the Article 245 which provides as under, the extent of laws made by Parliament and by the Legislatures of states. The provision reads as:

245(1) Subject to the provisions in this Constitution, Parliament may make laws for the whole or any part of the territory the India, and the legislature of a state may make laws for the whole or any part of the state.

(2) No law made by the parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.'

Article 246 further provides provision on the subject -matter of law made by parliament and by the legislature of the states. The provision read as:

Article 246 (1) further provides notwithstanding in clauses (2) and (3); parliament has

exclusive power to make laws with respect to any of the matters enumerated in list I (union list) of the seventh schedule.

Article 246 (2) Provides that notwithstanding anything in clause (3), Parliament, and subject to clause (1) the legislature of any state also, have power to make laws with respect to any of the matter enumerated in list III (concurrent list) in the seventh schedule. Article 246 (3) contents that subject to clause (1) and (2), the legislature of any state has exclusive power to make laws for such state or any part of thereof with respect to any of the matters enumerated in list II (state list) in the seventh schedule.

According to Article 246 (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 list) notwithstanding that such matter is a matter enumerated in state list.

Without acquiring the brief knowledge about the three lists in the seventh schedule of the Constitution, the meaning of the above articles would be worthless. Because, in practice both⁶ works together and therefore it should be read together and interpreted accordingly. Seventh schedule has three lists. These are follows.

List I

This list is known as Union List. This list contains 97 entries, which are of national importance like, defence, communication finance etc. Subjects which are enlisted in the union list are exclusively open for the union government.⁷

List II

Second list is known as State List. It has 66 entries in it. These entries are basically of local importance which should be governed primarily at that level only. For example agriculture, Law and order etc. In normal circumstances state is exclusively entitled to legislate on these entries.⁸

List III

This list is known as Concurrent list. There are some subjects on which both Union as well as state Legislature can legislate. Some time it may happens that a State requires a special law, but Centre is not ready to legislate on it only for that particular State. In that situation a particular state may proceed on its own. Some time centre may enact a law to bring uniformity among the different State laws. There are 47 entries under this list and both Parliament and State legislatures are equally entitled to legislate on it.⁹

Inter se relations and working among these three lists of the seventh schedule as well as relationship of seventh schedule with the part XI of the Constitution needs to be properly investigated to understand the dynamics of how these volatile equation of Centre-State relationship. Because this distribution of legislative power is not as simple as it appears. It also has been noted by Amal Ray in the following word:

Mere enumeration of the subjects for the legislation is not the sole determinant of the ambit of the power and jurisdiction of the centre and state.

Power expounds and shrinks in various ways through Judicial interpretation.¹⁰

Besides above mentioned entries there are some provisions which directly confer legislative powers to the Legislature. These provisions are related to:

1. Admission or establishment of new states¹¹
2. Formation of new the states and alternation of areas, boundaries or name of states¹²
3. To regulate the citizenship by law¹³
4. Power of parliament to provide for the establishment of certain additional courts¹⁴
5. Adjudication of dispute relating to waters of inter-State rivers or river valleys¹⁵
6. Language to be used in the supreme Court and the high Court and for Acts, Bills, etc.¹⁶

Although as mentioned above the categorisation and classifications of the legislative subjects have been done under various list and respectively powers have been conferred either to Centre or to States. At the same time territorial limits of legislative power have also been fixed under article 245 of the Constitution but there are exceptions of these provisions where these Constitutional arrangements can be temporarily overlooked. There are circumstances where Central Legislature can make laws in the entries mentioned in State List. Those circumstances are as follows:

1. Where if it necessary or expedient in the national interest. Article 249 of the Constitution.
2. Legislation in case of emergency as per the Article 250 of the Constitution.
3. Delegation of powers by two or more states as per the Article 252 of the Constitution.
4. Legislative powers to implement treaties and decisions made at the international level as per Article 253 of the Constitution.

It is also pertinent to mentioned here that unlike the other federal countries in India the residuary power (Article-248) has been cautiously given to Central legislature. It is also important to mention here that as per the Constitutional arrangement in case of any conflict between the Centre and State in the Concurrent List the primacy has been given to the Central Legislation with certain exception.

As far as the question of judicial intervention is concerned, judiciary has also come up the various interpretation and doctrines¹⁷ which proved to be very significant in the evolution of certain fine principles of Constitutional law. These doctrines took care of the fact that a law should not be declared unconstitutional simply because it incidentally touches upon the subject matter of another list where the law enacting Legislature in not having jurisdiction but it has the legislative capacity make law in their respective list. Judiciary also ensure that a Legislature which lacks the legislative capacity should not be making law by colourable means by playing fraud on the Constitution.

Conclusion

India has its own peculiar features as far as its claims regarding the federalism are concerned. Rather its peculiarities are its uniqueness. There is

Remarking An Analisation

no doubt that Constitution has distributed the legislative powers very thoroughly but there are grey areas where the controversies keep cropping. However, it is a matter of great satisfaction that whenever those issues came up, those were resolved either through political wisdom or through judicial interventions. It can be said that within a very short span of implementation of our Constitution many formal and informal principles have been laid down and all the institution of national life have been contributing positively for the successful working of a co-operative federalism.

References

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Footnotes

1. Justice E.S. Venkataramiah and Prof. M.P. Singh in "Distribution of legislative powers between Centre and states" in M. Hidayatullah (Ed),

Constitutional law of India, 222-305 at 222 (1986).

2. Asok Chanda, *Federalism in India, 72-73 (1965).*
3. Dr. K.C. Markandan, *Centre-State Relations, 66 (1986).*
4. *Supra note 1.*
5. M.P. Jain, *Indian Constitutional Law, 239 (1999).*
6. *Part XI and VII schedule of Constitution of India.*
7. *In union list, entry 2 'A' was inserted by 42nd amendment, while entry 33 was omitted by the 7th amendment. Therefore their no actual change in number of entries in union list.*
8. *In state list, entries 11, 19, 20 and 29 was omitted by 42nd while entries 36 was omitted by 7th amendment leading to decrease in actual number of entries i.e. (66-5) 61.*
9. *In concurrent list, enteries 11 'A', 17 'A', 17 'B', 20 'A' and 33 'A' was inserted by 42nd Amendment. Therefore, leading to increase in actual number of entries i.e. (47+5) 52.*
10. Amal Ray, *Inter-Governmental Relations in India, 31 (1966).*
11. *Article 2 of Constitution of India.*
12. *Article 3 of Constitution of India.*
13. *Article 11 of Constitution of India.*
14. *Article 247 of Constitution of India.*
15. *Article 262 of Constitution of India.*
16. *Article 346 of Constitution of India.*
17. *Such as: Doctrines of Extra Territorial Nexus, Pith and Substance, Colorable Legislation Etc.*