
UNIT 4 STATES IN THE CONSTITUTIONAL SCHEME

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4.1 INTRODUCTION

The framers of the Indian Constitution created a federal state, structured essentially on the model of the Government of India Act, 1935, in recognition of the enormous diversity of the regions of this vast sub-continent. It was a highly centralised federation. However, political forces have worked towards reducing the Centre's grip over the states. And there is increasing realisation of the need for coordination between the two sets of government.

4.2 BACKGROUND

When we speak of 'States in the Constitutional Scheme' we mean by the 'state' a unit of the Indian state that is structured on the federal pattern as in the United States of America (USA). The federating states of the USA were independent states before the formation of the US federation in 1789. After the formation of the USA its units continued to be called 'states'. All the federations that were formed after 1789 did not call their units states. The units of the Swiss confederation are called 'cantons,' a French word meaning provinces. The Canadian federation calls its units 'provinces' whereas in the former Union of Soviet Socialist Republics they were called republics.

Before India became free and framed her republican constitution it was the territories under the rule of the native princes which were called 'princely states.' The territories within British India were divided into provinces. The Constitution of India removed this difference of status and organised India into four kinds of states A, B, C and D. After 1956 the units of the Indian federation came to be classified under two broad categories, called 'states' and 'Union territories.' Subsequently, several Union territories were promoted to the status of states. Union territories may, therefore, be regarded as potential states. An understanding of the state system in India is focused broadly on three themes:

- 1) Identity and territorial integrity of the states.
- 2) Relation of the states with the Union of India.
- 3) Relation among the states.

4.3 IDENTITY AND TERRITORIAL INTEGRITY OF STATES

Identity and territorial integrity of the states is of course the basic feature of the state system. Technically it would mean that the states which form the federation should retain their shape, name and character. In practice, however, this is always not so. Even in the world's classic federation, the USA, the identity and territorial shape of the states have changed a great deal over time – specifically between the formation of the federation (1789) and the civil war of the 1860s.

In India the years since Independence have seen many a great change in the shape, identity and character of the states. The main reason for this is that the British left India as a highly amorphous country. Its economy was fragmented and variegated. Its administrative units did not correspond to the cultural contours of the Indian population. Its administrative pattern was not uniform. The political leadership of independent India had to sort out these divergences which still persist. The reorganisation of states is yet incomplete. The Unit 5 deals with this story of reorganisation of states in some detail.

Constitution of new states, their mergers and the changes of their territorial boundaries have been facilitated by Article 3 of the Constitution which allows the Parliament to (a) form new states by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state; (b) increase the area of any state; (c) diminish the area of any state; (d) alter the boundaries of any state; (e) alter the name of any state; after the President (i.e., the Union Government) has so recommended after consultation with the state legislature(s) concerned.

One aspect of the states' identity is that, unlike in the USA, in India, there is no double citizenship. There is only the citizenship of the Union.

4.4 UNION-STATE RELATIONSHIP

It is a common practice for the world's federations to lay down legal-political relationship between the Union and the states in a written and relatively rigid constitution. A federal

constitution is in the nature of a contract/treaty. Its terms may not be altered without the consent of both the Union and all or an overwhelming number of states. Secondly, the constitution divides power between the Union and the states. Thirdly, a judiciary supervises this division of power.

The Indian Constitution elaborately lays down this division of power in the Seventh Schedule under Article 246. Broadly speaking, the matters necessary to run a unified administration and areas of common interest of the states are placed in the Union List (List I) and the matters of particular interests of the states are placed in the State List (List II). There is a third list of subjects under a Concurrent List (List III) on which the Union and the states have concurrent jurisdiction.

The Concurrent List, it should be understood, does not mean that these powers are exercised by the Union and the states in cooperation with each other. There are other provisions in the Constitution of India enabling such cooperation. Nor does the Concurrent List mean that the Union and the states can exercise their authority on matters included in it subject to concurrence (i.e., consent) of each other. Concurrent subjects are those subjects on which both the Union and the states exercise their jurisdiction. In case of a conflict of jurisdiction on any Concurrent List subject, the Union's jurisdiction shall automatically prevail. The Concurrent List, therefore, covers a grey area in the Union-state relationship.

The subjects which are not covered by any of the three lists – the residual subjects – belong to the authority of the Union.

Generally speaking, the Union has power over all matters of defence, including the armed forces and their deployment; atomic energy and the minerals necessary for its production; war and peace; foreign affairs and foreign jurisdiction; extradition and citizenship; admission into, expulsion and emigration from India; pilgrimage abroad; railways; national highways; national waterways; maritime shipping and navigation; major ports; airways; post, telegraph and telephone; currency, coinage and foreign exchange; international and inter-state trade and commerce; banking, business corporations and insurance; establishment of standards of weight and quality; ancient and historical monuments; the Survey of India; census and inter-state migration; Union public services; elections to Parliament, to legislatures of the states and the offices of the President and the Vice-President; powers, privileges and immunities of each House of Parliament; constitution and organisation of the Supreme court and the High courts; taxes on income other than agricultural income; and taxes and duties on international trade

Generally speaking, the states have jurisdiction over public order and police without involving the Union's armed forces; officers and servants of the High Courts; prisons; local government; public health and sanitation; pilgrimage inside India; intoxicating liquors; relief of disabled and unemployable; burial and burial grounds; cremations and cremation grounds; libraries, museums, ancient and historical monuments other than those of national importance, roads, bridges, ferries and other means of communication outside the scope of the Union list; tramways, roadways and inland waterways outside the scope of Union functions; agricultural affairs and preservation of animal stock; ponds and prevention of cattle trespass; intra-state water resources; Land affairs; fisheries; courts of wards; regulation of mines and mining other than those necessary for nuclear energy production.

4.4.1 The Extra-ordinary Powers of Parliament

Governmental activities are conducted in terms of law. The primary focus of the division of power between the Union and states, therefore, falls on legislation. Executive powers of the Union and the states are co-extensive with their legislative powers. There is no doubt about the fact that the division of power between the Union and the states is heavily loaded in favour of the Union. This load has been increased by certain extraordinary provisions of the Constitution.

According to Article 249 of the Constitution the parliament may legislate on any subject, if the Council of States (Rajya Sabha), by a two –thirds majority declares such subject to be a subject of national importance. According to Article 250 the parliament may legislate on any state subject, for the whole or any part of the territory of India, during the operation of a proclamation of emergency.

According to Article 252 the parliament may legislate on a state subject for two or more states if their legislatures consider it desirable. On the other hand, as the Union may legislate on its jurisdictional subjects for the whole or a part of the country, there is no provision for the Union delegating its power to legislate to any state legislature(s).

In case of a declaration of constitutional breakdown in a state under Article 356 of the Constitution, not only the legislative functions of the state legislature but also its financial powers are taken over by the parliament. That is to say, the parliament passes its budgets, allocates fund for administration and controls taxation for the state government.

4.4.2 The Extra-ordinary Executive Powers of the Union

The executive powers of the Union and the states are coextensive with their respective legislative powers which, we have seen are heavily tilted towards the Union. The executive powers of the Union are, however, more than this range of powers by way of certain special provisions of the Constitution.

The executive power of the states are required to be so exercised as not to impede or prejudice the executive power of the Union. The most important of such powers is the appointment and removal of the governors of the states who may, as we shall see, become their real executive heads on occasions. The Union can give executive directions to the states toward that purpose. The executive power of the Union will also extend to the giving of directions to a state as to the construction and maintenance of means of communication declared in the direction to be of national or military importance and of the protection of the railways Article 257 according to Article 365 the failure of a state to comply with and give effect to such directions may entitle it to the declaration of constitutional breakdown by the Union.

4.4.3 The Governor's Role

The state Governor has a critical role in maintaining the status and autonomy of the states. The Governor is appointed by the President of India (i.e., the Union) and holds his/her tenure during the pleasure of the President. He is the agent of the Union and is normally expected to secure the Union-state amity. At times, however, his role may turn out to be a major factor of tension in the Union-state relation.

The Governor is the executive head of the state and all functions of the state executive are carried out in his name and under his authority. He appoints a Council of Ministers to aid and advise him on his functions except when he is required under the constitution to act in his discretion. This exception is not there in the case of the President of India in whose case all ministerial advises are binding. The problem with the Governor is that his/her discretionary field is not clearly defined. Clause 2 of Article 163 says that if a question arises about whether a matter is required by the Constitution to be dealt with by the Governor in his discretion the decision of the Governor taken in his discretion is final. Clause 3 of the same Article says that such a question cannot be raised in any court. This means that the Governor has unlimited discretion if he/she wants to apply it.

On the other hand, the Council of Ministers is responsible to the elected state legislature. It has reason to claim to be representatives of the people of the state. Whenever the governor overrides the state council of Ministers, therefore, a suppression of democracy is alleged.

The problem becomes complicated by two special powers of the Governor: (1) the power to reserve bills, after they are passed by the state legislature, for the President's assent, and (2) the power to report a breakdown of the constitutional machinery. Should the Governor exercise these powers on the aid and advice of the Council of Ministers? There is no clear answer to that. However, it can be assumed that a Governor can never expect his/her council of Ministers to report a constitutional breakdown in the state, and he/she must do it without the Council of Minister's advice. This cannot be said about the first power. If a state legislation is expected to be controversial, a governor may try to persuade the council of Ministers to advise him/her to reserve the bill for the President's assent. Exercise of these two powers by the Governor has created great bitterness in Union-state relations.

4.4.4 The Administrative Relations

Government is largely run by the bureaucracy. There are three kinds of bureaucracy in India: the state services, the central services and the all-India services. Whereas the first two services are filled up and controlled by the states and centre respectively, the all-India services are filled up and largely controlled by the centre though the officers are attached to the state cadre. Senior positions in the state governments are almost always manned by members of the all-India services, namely, the Indian Administrative Service and the Indian Police Service. However, members of the all-India services as well as the central services are recruited through the Union Public Service Commission while the members of the state services are recruited through the State Public Service Commission in each state.

There are two special kinds of bureaucrats whose status is constitutional: the Comptroller and Auditor-General of India and the Election Commissioners of India. They are appointed by the President of India. The Comptroller and Auditor-General examines the accounts of both the Union and the state Governments. The Election Commission supervises the elections at the central and the state levels. This allows some control of the Union over the government accounts and the election processes in the states.

4.4.5 The Financial Status of the States

Generally speaking, all taxes and duties collected by the states go to their coffer and are appropriated by the states. They include such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union list that are levied by the Union but collected and appropriated by the states where they are levied (Article 268). The revenues and taxes collected by the Union, from the items mentioned in the Union list, however, are appropriated in two ways. The taxes on sale and purchase of goods and taxes on consignment of goods other than newspapers of inter-state nature are levied and collected by the Union but assigned to the states where they are collected and distributed among those states according to the principles laid down by Parliament Article 269). All other taxes and duties under the Union list are levied and collected by the Union and distributed between the Union and the states according to the manner prescribed by the Finance Commission or, until the Finance Commission is constituted, by the President (Article 270).

There are two items mentioned in the Concurrent list, namely, (1) Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duties, and (2) fees in respect of any matters in respect of the matters in the concurrent list, but not including fees taken in any court, which belong to concurrent jurisdiction of the Union and the states, Their proceeds are retained by the Union and the states respectively. The Union may collect any duty or tax from matters not mentioned in any of the lists and retain their proceeds.

For a long time the Finance Commission used to make recommendation only on non-plan expenditure of the governments. Since the ninth Finance Commission they are making recommendations on plan expenditures too.

4.4.6 Tension Areas in Union-State Relations

It has been noticed that the Union-state conflicts relate mainly to division of financial resources between them, the role of the Governor, particularly in giving assent to legislations by the state legislatures, appointment and dismissal of the Council of Ministers and recommendations of President's rule on the ground of 'constitutional breakdown.' Most of these are political questions and, for long, the Supreme court declined to intervene in such disputes. In 1993, however, in the case of S.R. Bommai and Others vs. the Union of India, the Supreme Court decided that the relevance of material contained in the report of the Governor recommending the President's rule in a state is subject to judicial scrutiny. In any case, the state legislature cannot be dissolved until after the Parliament debates and approves of the declaration of constitutional breakdown. In 1998, in the case of Uttar Pradesh the Supreme Court ordered a floor test of the strength of the parties claiming the right to be appointed to the Government.

For a long time the states have complained about their meagre financial resources that made them rely heavily upon the grants-in-aid by the Union as well as loans sanctioned by it. The 80th amendment to the Constitution effected in the year 2000 sought to remove part of the imbalance by making more fund available from the Union coffers to the states. But the principles by which the Finance Commission divide the state allocations have not satisfied the states. The rich states complain that they are deprived of their legitimate share of the Central transfers, the poor states complain that they are not getting enough.

The states still do not have an unlimited power to borrow from the market. A state without the consent of the Government of India may not raise any loan if there is still outstanding any part of the loan which has been made to the state by the government of India or by its predecessor government, or in respect of which a guarantee has been given by the government of India or its predecessor Government { Article 293(4)}. The states dependence on the Union Government is heavy. The small states of north-east India depend on the Union Government for even the non-plan expenditure to the extent of 90% and more.

4.5 INTER-STATE RELATIONS

The Constitution envisaged a relation of peaceful coexistence, if not amicable co-operative relations among the member states of the federation. If there arises any dispute between the Union and a state or a group of states or the Union and a state or a group of states on the one side and one or more states on the other; or between two or more states, the Supreme Court of India can be approached under its original jurisdiction for adjudication (Article 131). There are two specific mechanisms prescribed for resolution of inter-state disputes outside the judicial process however:

- 1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters or, or in, any inter-state river or river valley (Article 262).
- 2) If at any time it appears to the President that public interest would be served by the establishment of a Council charges with the duty of – (a) inquiring into and advising upon disputes which may have arisen between states; (investigating and discussing subjects in which all or some states , or the Union and one or more states, have a common interest; or (c) making recommendations upon any subject and, in particular, recommendations for the better coordination of policy and action with respect to that subject – it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure (Article 263).

The Inter-State Council has discussed the desirability of controlling the power of the Union to declare a constitutional breakdown in a state under Article 356 of the Constitution and has recommended the restriction of this power through amendment of the Constitution.

Parliament has the power to set up tribunals to decide inter-state river disputes and it can, by legislation, exclude the jurisdiction of any court in the matter. Such tribunals in the past have not been entirely successful as they do not have the judicial authority to enforce their decision. On the other hand, under the River Waters Disputes Act, 1956, the Supreme Court can direct the Central Government to fulfil its statutory obligation.

The most difficult point of inter-state conflict is the border disputes between the states arising out of historical and cultural factors. Occasionally such conflicts have led to violence as in the dispute between Karnataka and Maharashtra. The constitutional mechanism to solve the dispute is provided by Article 3 of the Constitution which vests the power of altering the boundaries of states only after receiving the views of the concerned states. Parliament is not obliged to respect the views, but to disregard them may be politically disastrous.

A third mechanism for achieving centre-state and inter-state coordination in regard to development planning was established by an act of Parliament – the National Development Council consisting of state's Chief Ministers and Union cabinet ministers to finalise development plans after they are framed by the Planning Commission of India.

4.6 POLITICS AND STATE RIGHTS

Much of the autonomy of the states, their rights against the Centre as well as against each other depends upon politics. The Central Government can persuade the state Governments to accept a certain point of view if both the Governments are under the control of the same party. The massive states reorganisation of 1956, the partition of Gujarat and Maharashtra in 1960, the partition of Punjab in 1966 and the reorganisation of north-east India in 1971 were possible because the Congress party was in power at the Centre and at the concerned states at the relevant times.

When different parties are at the Centre and at the states, ideological and political conflicts often create tension between the Centre and the states as well as among the states. Since 1959 a number of state governments have been superseded chiefly because they were run by parties other than the one that ruled the Centre. The grossest cases occurred in 1977, when the Janata Party government at the Centre dissolved as many as eight state governments government run by the Congress Party. In 1980, on the other hand, the Congress-run central government superseded as many state governments run by the Janata Party. After that, however, the frequency of such supersessions decreased and, in 1993, the practice got severely restricted by the Bommai case judgement of the Supreme court of India.

In 1989 one-party hegemony (of the Congress Party) was decisively over. Except for the period of 1991-96 the Central Government came to be controlled by coalitions in which regional parties played major roles. Consequently, central intervention in state affairs also fell substantially. Two major complaints of the states, however, persist: (1) the Centre is accused of putting party men at the gubernatorial positions in the states to serve its own political agenda, and (2) the Centre discriminates against some states and favours some in regard to financial support on party considerations.

4.7 SUMMARY

The Constitution of India provides enough provisions regarding their the relationships between the states, and the states and the union. The organisation on of states into different federal units give them distinct political identity. Recognition of the state has made the state separate identities, the issue of their re-organisation remains alive. Despite the clear division of power between the states and thereon, the arrangement of the states in the constitutional scheme is titled in favour of the centre. The economic disparities, cultural differences and political factors keep the issue of the relations between states, and states and union intact.

4.8 EXERCISES

- 1) To what extent did the Constitution envisage the autonomy of the states in the Indian federal structure in regard to the legislative division of power?
- 2) What is the extent of executive control of the Union over the states in India?
- 3) Examine the role of the Governor in Union-State Relation.
- 4) Examine the financial status of the states in the Indian federation.
- 5) Examine the tension areas in the Union-State relations.
- 6) What kinds of inter-state conflicts are envisaged in the Constitution of India? What are the mechanisms prescribed for solution of such conflicts?