

# State Administration : Issues & Perspectives

*Dr. Padmalaya Mahapatra*

## **Introduction**

Federalism, which shapes the Centre-State Relations and begets its peculiar problems is a political contrivance to strike an equilibrium between regional aspiration and countrywide needs. This equilibrium is dynamic and not static. The framers of the Indian Constitution were not as free as the framers of the American Constitution who had only the declaration of few principles to guide them. In contrast, the Constituent Assembly of India functioned closely within the mental framework of the Government of India Act, 1935 with its strong unitary bias. Right since 1773 till Indian Independence, 1947 India was unitarily governed and thus accumulated a strong unitary memory. Indeed, the whole body of administrative folklore of India was unitary and thus favourable to the Central Government.

This culture was powerfully reinforced by the partition borne psychology of the time. Partition of India accompanied by riots in many parts of the country followed by Pakistani aggression in Jammu and Kashmir provided the immediate environment for constitution making in India. Indian Constitution is a true child of its time.

## **Constitutional Framework:**

The Centre-State Relations in India have always contained the seeds of conflict and this

partly follows from the arrangements made in the Constitution itself. The Constitution of India made the states deeply subordinate to and dependent on the centre in various ways which was a departure from the federal principles originally put forward under the Cabinet Mission Plan. The legislative, administrative and financial arrangements devised in the Indian Constitution are unmistakable proof of the dominant centrist Constitutional culture in 1947.

The Constitution based on the principles of federalism with a strong and indestructible union has a scheme of distribution of legislative powers designed to blend the imperatives of diversity with the drive of a common national endeavour. The Constitution adopts a three fold distribution of legislative powers by placing them in any of the three lists: namely Union List (97 items), State List (66 items) and Concurrent List (47 items). Article 245 and 246 demarcate the legislative domain subject to the controlling principle of the supremacy of the Union which is the basis of the entire system. The Concurrent List gives power to two legislatures, Union as well as State to legislate on the same subject. In case of conflict, the rule of repugnancy, as contained in Article 254 comes into play to uphold the principle of Union Power.

The Constitution has earmarked 66 items to the states of which 20 relate to taxation, or fees. The state governments are directly responsible for subjects which are of regulatory and developmental nature. In other words, both the regulatory administration and the development administration directly fall within the states' sphere for action. Taking up the regulatory administration first, the states administer; law and order, police, prisons, justice (except the Supreme Court and the High Court), etc. Besides, all important ingredients of development administration constitute their direct charge. The states deal with such subjects as agriculture, animal husbandry, education, public health, prohibition, cooperatives, forests, communication, irrigation, fisheries, industries (specified categories), weights and measures, etc.

### **Powers of the Centre**

The centre's paramount position vis-a-vis the states is all too evident and in this respect the framers of the Constitution were animated by over-riding determination to keep the states dependent upon the centre thereby warding off any threat on their part to national integrity. The Constitution hardly includes anything pertaining to the states which can be considered to be strictly inviolable. There is in it the state list of subjects, but the central Parliament becomes empowered temporarily to legislate on any subject figuring in it if the Rajya Sabha by a two thirds majority authorizes it to do so<sup>1</sup>. The Parliament can create new all India services if the house passes a resolution<sup>2</sup> - a provision which has been invoked twice since 1950.

The state government, moreover, is obliged to exercise its executive power in such a manner as to ensure compliance with the laws passed by the Parliament, and to this end the

centre has clothed itself with the power to issue the necessary directions to the lower government. In certain specified cases such as means of communication of national or military importance and protection of railways, the will of the centre is made to become the will of the state government. The Governor of a State is appointed by the President, which means the central government, and he is empowered to reserve a bill passed, by the state legislature for the consideration of the President, who may even veto it without assigning any reasons, whatsoever.

### **Emergency:**

The centre's powers, already quite extensive, become far-reaching when emergency is declared in the country as was done in 1962, 1971 and 1975. The centre can even supercede the state governments, and this constitutional provision has been invoked on no less than 46 occasions since 1950. Article 3 provides that the Parliament may by law:

- (a) form a new state,
- (b) increase the area of any state,
- (c) diminish the area of any state and
- (d) alter the name of any state.

While the centre-state relations had an imbalance built into it, the 42<sup>nd</sup> Amendment made during the internal emergency (25<sup>th</sup> June 1975 - 23<sup>rd</sup> March 1977) further tilted the balance in favour of the centre. Under this amendment the centre has acquired the unlimited right to send troops into any of the states to counter a threat to law and order. This is one of the most sinister features of the subversive amendment. Even earlier such an action could be taken but only if a particular state was violating the Constitution or

was not able to govern itself. As a result of the amendment, however, the centre is empowered to send troops into a state irrespective of any breach of the constitution or threat to the stability of the state; in other words, the centre can now take over the state on its own definition.

### **Vulnerability of the States:**

The States general vulnerability to the centre has if anything increased since the commencement of the Constitution, which may be mainly accounted for by four factors.

Firstly, the imbalance between the responsibility given and the resources available, makes the states look increasingly to the centre for sustenance, and although the Constitution has visualized a finance commission to recommend transfers of financial resources, the states generally find their financial position uneasy, even shaky.

Secondly, the adoption of socio-economic planning in the country since 1950 has deepened the states' dependence on the centre, and this is well epitomized by the emergence of too conspicuous a position of the Planning Commission, constituted in 1950. The number, range and scale of activities have gone up under the various five-year plans necessitating increased public expenditure, and have in turn deepened the states' dependence on the centre.

Thirdly, the fact of the Congress Party remaining in power both at the centre and the states (except for brief durations in some states) for an unbroken period of years (1950-77) tended often to blur the constitutionally demarcated line between the two levels of the government and to transfer such centre-state problems which cropped up to the party network for resolution. The solutions sought were thus political, and the centre's relationship with a particular state came

to be determined very much on the personality of its political leaders and their equation with the leadership.<sup>3</sup> The States' position was getting systematically undermined under such situation, for in course of time, the political leadership of the states did not have any exalted stature and even depended for its survival and power on patronage from the centre, particularly from Indira Gandhi. Such an arrangement was hardly conducive to the building up of an equation or equality, and in the process the states have generally evolved traditions of submissiveness to the centre.

The fourth factor determining the centre-state relationship is the higher service itself. Though India is a federation, the relationship between the civil service of the two levels has put on the appearance of a hierarchical one, the reasons for this being largely institutional, psychological, and human. As is known the members of the all India services alternate between the central government and the state (to which they have been allotted at the time of their recruitment), and a posting under the central government is generally viewed as being more appealing. This attraction is powerful and pervasive, which tends to orient the administrative behaviour and action. The state civil servants are generally anxious to put up a correct' behaviour, while dealing with the central bureaucrats. In short, the civil service at the state level is too accommodating to the overtures from the centre and conducts itself in a subservient manner.

### **Demand to Restructure Centre-State Relations:**

There has been a demand for the restructuring of the centre-state relationship, the underlying intention being to lift the states from the present position of excessive dependence and

subordination and to give them a larger share of power and authority. This demand is a fairly long standing one but was stepped up in an organized way after the 1967 election when non-Congress parties came into power in several states. It has been revived after the 1977 assembly poll, and Tamil Nadu and West Bengal (and also Jammu-Kashmir) have been the most vocal spokesmen of this demand, though it is by no means restricted to the trio only. The West Bengal Chief Minister, Jyoti Basu, has publicly sought more powers for the states saying that his government was handicapped in bringing about any fundamental change in the socio-economic structure of the state in the context of its limited powers.

### **Tamil Nadu's Centre-State Relations Enquiry Committee**

The central action in setting up a commission to examine inter-governmental relations did not completely satisfy the States. At any rate, Tamil Nadu constituted in 1969, a Centre-State Relations Inquiry Committee under PV Rajamannar to inquire into this field and make recommendations for improving the relations. This committee submitted its report in 1971. The period 1966-70 was one of extreme political fluidity in the country making Centre-State relations a subject of controversy. The controversy was continuously fanned by the manner of use of Article 356 providing for President's Rule in the States. In a short period of four years 1967-71 there occurred eleven instances of President's Rule in the States. The seventies saw the reverse swing of the pendulum, and the Congress again became nearly the dominant party in the land. Questions of Centre-State relations thus ceased to be matters of public controversy and consequently got relegated to the background. The weakening of the hold of the Congress Party

and the coming into power of other parties in a number of States, since 1983, again revived this question. Pressed hard, the Central Government announced in August 1983, the constitution of a commission under the chairmanship of RS Sarkaria to go into Centre-State relations and recommend appropriate changes within the present constitutional framework. The commission submitted its report in 1988.

### **The Sarkaria Commission on the Centre-State Relations**

The Report relied heavily on the office of the Governor, considering him as the key functionary in ensuring cordial Central-State relations and the Commission did not approve active politicians being posted as Governors. Persons to be appointed as Governors should be eminent persons and should be from outside the State.

The Sarkaria Commission dwelt on the controversial Article 356 of the Constitution relating to the President's Rule in the States. It did not recommend ending it but sought mending it. Article 356 should be used sparingly after due warning has been given to the erring presidential proclamation has been considered by the Parliament. On the appointment of the Chief Minister, the Sarkaria Commission recommended a four step formula indicating the order of preference.

The main thrust of the Commission was an increased cooperation between New Delhi and the States. The Sarkaria Commission made a total of 247 recommendations of which 24 were rejected, 10 were not considered wholly relevant and 36 accepted with modifications. One hundred and nineteen recommendations are reported to have won the Government's full acceptance.

A persistent complaint of the States in India is the paucity of financial resources at their command, broadly speaking, the transfer of resources from the Centre to the State may materialize along three channels in India. The first is the constitutionally enshrined Finance Commission which lays down the formula for sharing of tax revenues. The second is the Planning Commission which allocates outlays for various sectors under Article 282 of the Constitution, and the third is classified as 'other transfers' by the Government of India. The Finance Commission has been set up merely under an executive resolution. Yet the latter has emerged as a more powerful body restricting in practice, the scope and functions of the Finance Commission which, sadly, finds itself reduced to the level of a body which merely determines the revenue gap of each State and provide for its filling up through a scheme of devolution - of - grants - in - aid and sharing of taxes and duties. This is plainly contrary to the intention of the constitution-makers, for as visualized by them, the Finance Commission was to be the most active and powerful body in regulating Central-State financial relations in India. What is more, the Finance Commission at present is deeply one-sided in its approach.

While it can examine the financial needs of the States, it lacks authority to look into the financial requirements of the Centre and to recommend funds to it. In other words, the Centre obliges the units to submit to a kind of discipline from which it itself stands released.

A reform is urgently called for in the selection of Governors of States. The Governor should not be regarded as a political representative sent to a State for surveillance. One must remember, he is as much committed to the oath of office as any other constitutional functionary. A person known for his proven

competence, objectivity and knowledge of the Constitution should alone be appointed to the post.

The dynamics of both democracy and development has significantly changed the framework in which the States now find themselves operating, thus signifying a need for a wide ranging re-examination of Centre-State relations so that they are enabled to have adequate powers as well as resources to meet their growing, even changing patterns of needs.

This is possible without weakening the Centre. The Sarkaria Commission Report, by all means, a conservative document, needs to be activated.

### **Zonal Councils**

Zonal councils, set up under the States Reorganisation Act, 1956, have as their avowed objective the development of 'cooperative working' to counter growth of acute State consciousness, regionalism and particularist trends.

The Chief Ministers' Conference dates from 1946, when Vallabhbhai Patel, the Home Minister in the Interim Central Government, convened the Premiers' Conference to secure agreement to the formation of the 'Central Administrative Service' (meaning the IAS) and the Indian Police Service. It has been meeting every year since then, the frequency in a particular year depending upon the gravity of issues warranting notice of the chief executives as well as the predilections of the central leadership.

The Chief Ministers' Conference discusses the whole range of matters concerning the States except, of course, the five year plans, for which the appropriate forum is the National

Development Council. The demarcation between the two bodies has been, however, indistinct. The Chief Ministers' Conference has repeatedly discussed the food problem in the country, a subject which may equally appropriately be discussed in the National Development Council. The Chief Ministers' Conference meets more frequently than the National Development Council and is convened as and when some problem considered to be of sufficiently wide importance as to deserve the direct attention of the Chief Ministers arises. It usually holds a two-day session. The Prime Minister presides over the Conference, which is also attended by other Central Ministers concerned with the agenda of the meeting. The items for the agenda are submitted by both the Centre and the States, although in practice, the initiative has always rested with the Centre.

The Chief Ministers' Conference is potentially an important forum for the discussion of issues and harmonization of relationships between the Centre and the States.

### **Inter-State Council**

Consequent upon strained Centre-State relations since 1967, a demand has been made for the establishment of an Inter-State Council charged with the responsibility of considering Centre-State Relations. In a federal polity in view of large areas of common interest and shared action between the constituent units, coordination of policies and their implementation become extremely important. Article 263 of the Indian Constitution envisages establishment of an institutional mechanism to facilitate coordination of policies and their implementation.

In pursuance of the recommendation made by the Sarkaria Commission on Centre-

State Relations, the Inter-State Council (ISC) was set up in 1990 through a Presidential Order on May 28, 1990.

The ISC is a recommending body and also has been assigned the duties of investigating and discussing such subjects, in which some or all of the States have a common interest, for better coordination of policy and action with respect to that subject. It also deliberates upon such other matters of general interest to the States as may be referred by the Chairman to the Council.

Prime Minister is the Chairman of the Council. Chief Ministers of all the States and Union Territories having Legislative Assemblies, Administrators of Union Territories not having Legislative Assemblies, Governors of States under President's rule and six Ministers of Cabinet rank in the Union Council of Ministers, nominated by the Chairman of the Council are members of the Council. Four Ministers of Cabinet rank nominated by the Chairman of the Council are permanent invitees to the Council. The Inter-State Council was last reconstituted on December 7, 2006.

The Inter-State Council has so far held 10 meetings. In its first 8 meetings, the Council had focused its attention on the 247 recommendations made by the Sarkaria Commission on the Centre-State relations, and had taken a view on all the recommendations. Out of 247 recommendations, 179 have been implemented, 65 have not been accepted by the Inter-State Council Administrative Ministries/ Departments concerned, and only 03 recommendations are still at different stages of implementation.

The Council has also considered other public policy and governance issues; these are:

- (a) Contract Labour Appointments;

- (b) Blue Print of an Action Plan on Good Governance;
- (c) Disaster Management-Preparedness of States to cope with disasters; and
- (d) Atrocities on Scheduled Castes and Scheduled Tribes and Status of Implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989.

### **Commission on Centre-State Relations**

By its Resolution of 2<sup>nd</sup> April 2007 the Government of India has constituted the Commission on Centre-State Relations chaired by Madan Mohan Punchhi, former Chief Justice of India. A comprehensive review of Centre-State Relations was undertaken by the Sarkaria Commission in the mid-eighties. As the polity and economy had undergone profound changes in these two decades posing new challenges for government at all levels and calling for a fresh look at the relative roles and responsibilities of each level and their inter-relations; the commission had been entrusted with this task and asked to make recommendations that would help to address the emerging challenges.

The commission commented "India today presents the picture of a functioning democracy performing reasonably well in economic development but unable to sustain good governance for the welfare of all people, particularly weak and marginalized sections. The Union in theory continues to be strong in constitutional terms, but in practice it is unable to deliver the way it could have done. The states could have become strong not so much in governance but in politics and power play. The Panchayats remain weak despite all good intentions. In this milieu, centre- state relations

present a mixed picture of promise and performance far from its full potentials. (1)

**Source : (1) Report of Commission on Centre- State Relations : Vol-II: Constitutional Governance and the Management of Centre- State Relations.**

### **Suggestions for restructuring of Centre-State Relations**

**1. Articles 355 and 356:** Articles 355 and 356 of the Constitution should be amended, in order to incorporate safeguards to prevent their misuse.

**2. Appointment of Governors:** The current process of appointment of Governors by the Central Government should be changed. The Governor should be appointed by the President from a list of three eminent persons suggested by the Chief Minister of a State.

**3. Legislative Powers for States:** Residuary powers of Legislation should be placed in the State List. A process of consultation between the Centre and the States needs to be institutionalized on legislations under the Concurrent List. The Constitution should also be amended to set definite time-limits for receiving the assent of Governors or the President in the case of bills passed by the State Assemblies.

**4. Treaty - Making Powers:** The Constitution should be amended to make legislative sanction mandatory for any international treaty. Before signing international treaties, which have implications for the States, consultation with the States and concurrence of the Inter-state Council should also be made mandatory.

**5. All India Services:** The State Governments should have greater role in the

administration of the Rules and Regulations of All India Services.

## Financial Issues

1. **Devolution of Central Taxes to States:** 50% of the total pool of collection of Central taxes should be devolved to the States.

2. **Powers of Taxation:** The States should be allowed to tax certain services including some services which are currently being taxed by the Centre. Central surcharges and cesses should be made a part of the divisible pool. A suitable model for the proposed Goods and Services Tax should be evolved to ensure a fair share for the States, especially keeping in mind the interests of the Special Category States.

3. **Market Borrowing by States:** Article 293 of the Constitution should be amended to provide more flexibility and autonomy to the States in regard to market borrowing. The share of market borrowing of the States should be increased from about 15% currently to 50%.

4. **Tax Concessions:** Central tax exemptions need to be urgently reviewed and the plethora of exemptions progressively phased out. The Centre should compensate the States for the losses and distortions arising out of tax exemptions. The Centre as well as the States should set some collective limits to tax concessions in order to safeguard against a race to the bottom.

5. **Debt Relief and Conditionalities:** Debt relief for the States on account of the Central loans should not be tied to any conditionality. Conditionalities imposed upon the States like the passage of FRBM Act should be withdrawn. Debt relief should be worked out in a State specific manner, especially with regard to loans

from the NSSF. The debt of the Special category States should be settled in a one time manner.

6. **Centrally Sponsored Schemes:** The formulation and implementation of all Centrally Sponsored Schemes under the State subject should be transferred with funds to the States along with broad guidelines and minimum conditions.

7. **Devolution to Local Self-Governments:** A target minimum level of Local Self- Government expenditure to GDP should be set.

8. **Accountability and Transparency:** Accountability and transparency in governance should be improved through people's participation in policy planning and their implementation. Entries like private corporate groups or NGOs which have not democratic accountability should not play any direct role to play in governance.

## Institutional and other Issues

1. **Inter-State Council:** The Constitution should be amended to make the decisions of the Inter-State Council binding on the Union Government.

2. **NDC and Planning Commission:** The National Development Council should be granted Constitutional status. The Planning Commission should act as an executive wing of the NDC. The Planning Commission should allocate adequate funds for State-level projects having national implications and ensure inter-state balance in Central investments, in CPSUs Railways, National Highways, Ports, Airports etc.

3. **Finance Commission:** In determining the terms of reference of the Finance Commission the views of the States should be taken into account.



4. **RBI and Public Institutions:** The States should be involved in the functioning of Reserve Bank of India as well as national level public financial institutions such as NABARD, IDBI and public sector banks.

5. **Special Category States:** The differential benefits given to these States in terms of the non-Plan Gap Grant and Normal Central Assistance should continue. The debt of these State Governments should be settled in a one time manner without any conditionality.

6. **Mineral Policy:** In view of the inter-State competition over mineral resources, there is a need to set some common norms regarding extraction of minerals.

7. **National Calamity Relief Fund:** The present scheme of the National Calamity Relief

Fund should be changed in order to increase the corpus of funds for the States.

### **Conclusion:**

India is not a genuine federation but a quasi-federation or a pseudo-federation reflecting features of a unitary state. A strong central government is indispensable for the maintenance of unity, solidarity and integrity of India. The pattern of Centre-State Relations in India should be based on cooperation and harmony and an attempt should be made to create a co-operative federalism.

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Dr. Padmalaya Mahapatra, Reader, Public Administration, Utkal University, Vani Vihar, Bhubaneswar.