CENTRE-STATE RELATIONS: A BROAD PERSPECTIVE

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By

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The largest experiment ever undertaken in human history in the art of democratic living has been carried on in India since 1950. Never before, and nowhere else, has more than one-seventh of the human race lived together in freedom as a single political entity. The uniqueness of this phenomenon is rendered even more impressive by the fact that till 1950 India was never a united country.

In such a situation it is not only natural but inevitable that differences and disputes should arise between the Centre and the 22 States that constitute the Union, and even between the States *inter se*. The problem must be resolved in a spirit of goodwill and with farsighted vision.

There is no doubt about the great injustices done by the Centre to the States; but it must be remembered that the injuries done to the States

are, in a sense, self-inflicted. The Centre is nothing but the States in their federal garb: the Parliament and the Central Government consist of none but the elected representatives of the States (barring the handful of nominated members). The real authors of the injustices are the self-centred representatives of the States who, after being elected to Parliament, have betrayed the true interests of the very States which returned them.

The Constitution provides for a co-operative federation of States with a bias in favour of the Centre. Such a bias, within reasonable limits, is necessary, having regard to the conditions prevailing in our country. The essential question is—what are the reasonable limits within which the constitutional bias in favour of the Union should be contained?

The approach to the problem of Centre-State relations must be governed by the following basic considerations which aim at reconciliation of conflicting viewpoints:

(1) A national consensus should clearly remind the Centre that it has not inherited the Viceroy's mantle of Paramountcy. What is needed at the Centre today is not an authoritarian government but the moral authority to govern. And the Centre would have no moral authority to govern unless it displays a sense of constitutional morality, particularly a sense of justice and fairness towards the States.

(2) We do need a strong Centre. But a strong Centre is in no way inconsistent with strong States. On the contrary, by definition, a strong Union can only be a Union of strong States.

(3) Where a paramount national interest dictates a line of action, the narrower viewpoint of a State or the parochial attitude of a municipality must not stand in the way.

For instance, the States should be persuaded in the national interest to agree to the substitution of sales tax by additional excise to be levied by the Centre and fairly distributed among the States—thus providing the States with the same growing revenues as they would derive from sales tax after deducting the cost of collection. Similarly, the States should revoke the power granted by them to their municipalities to levy the antiquated octroi, and resources should be raised for the local bodies in more civilized ways. Delays at check-posts range from 30% to 45% of the effective travelling time of commercial vehicles. The 15,000 check-nakas where octroi or entry tax is collected in different States result in 15% of fuel consumption being wasted and are tantamount to 80,000 trucks being rendered idle.

But these laudable reforms can and should be effected without detriment to the self-respect or the resources position of the States and the municipalities. The Constitution never intended

that the Chief Ministers of the States would have to be on a perpetual round of pilgrimages to New Delhi supplicating the Centre for its discretionary bounties.

(4) As far as possible, the grievances of the States should be redressed by building up salutary conventions and traditions which are in conformity with the true spirit of the Constitution, rather than by amending the Constitution. There are good reasons why constitutional amendment should be treated as the option of the last resort:

(a) The Constitution is intended not merely to provide for the exigencies of the moment but to endure through a long lapse of years. We should get accustomed to a spacious view of the great instrument. The Constitution was meant to impart such a momentum to the living spirit of our national identity that the Union of States may remain indestructible beyond our times and in the days when our place will know us no more. Therefore, in dealing with a constitution, the wisest principle to act upon is that when it is not necessary to change, it is necessary not to change.

(b) If the Constitution is worked in the right spirit, there would be no need to consider any amendment so far as Centre-State relations are concerned. The problem has

arisen today in an acute form because over a period of years the Centre has acted in a manner which at best has been contrary to the spirit of the Constitution and at worst has been tantamount to a fraud upon the Constitution. Many people hastily assume that the working of the Constitution has revealed its grave shortcomings, whereas the truth of the matter is that it is a noble Constitution which has been worked in an ignoble spirit. The words of Dr. Ambedkar in the Constituent Assembly were both prophetic and true: "I feel that the Constitution is workable: it is flexible and it is strong enough to hold the country together both in peace and in war time. Indeed, if I may say so, if things go wrong under the new Constitution the reason would not be that we had a bad Constitution. What we would have to say is that Man was vile."

(c) Today a crisis of national identity broods over the country. We are in the throes of our re-birth as a single nation. Emotions are running high in Assam, the Punjab and some other States, and the still small voice of reason has been silenced. The forces of passion and ignorance are in the ascendant. At such a juncture, to open the door of constitutional revision may involve a grave danger to the unity and integrity of the country.

Industries and Economic Development

The States would have made far greater progress if the scheme of the Constitution had been respected in the field of economics. There are three significant Entries in the State List: (a) Industries, (b) Trade and commerce, and (c) Production, supply and distribution of goods. The Union List permits Parliament to legislate in respect of "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". Thus, the basic scheme of the Constitution is that industries and commerce should remain State subjects and should be dealt with primarily by the States; and that it is only those industries, the control of which by the Union is expedient in the public interest, that must be regulated by the Centre.

Parliament passed the Industries (Development and Regulation) Act in 1951, specifying those industries which in the public interest would have to be controlled by the Centre. The Act as originally drafted was fair and reasonable and rightly gave control to the Union over those industries which were vital to national development. However, in course of time, more and more industries were added to the Industries (Development and Regulation) Act till the basic constitutional scheme has now been patently subverted.

Without any amendment to the Constitution, "Industries" has been nefariously transformed into a Union subject and has ceased to be a State subject. Today at least 93 per cent of organized industries, in terms of the value of output, have been brought under the bailiwick of the Union. Even items like razor blades, paper, gum, matchsticks, household electrical appliances, cosmetics, soaps and other toilet requisites, fabrics and footwear, pressure-cookers, cutlery, steel furniture, zip fasteners, hurricane lanterns, bicycles, dry cells, TV sets, agricultural implements—have all been brought under the Centre's control! There can be no doubt that this is an indefensible violation of the Constitution. It is imperative that the States should regain their legitimate powers over industries and commerce. The late Professor D. R. Gadgil strongly pleaded for "the State's insisting on obtaining for itself greater measure of freedom and latitude of planning". He added, "Present rigidities in this regard and the stranglehold, over all activity, of the Centre and its agencies and officials, make impossible any real progress."

The true position of the States in commerce and industry, according to the unmistakable mandate of the Constitution, can and should be restored; and for this purpose no amendment of the Constitution is needed. All that is necessary is to delete various items in the First Schedule to the Industries (Development and Regulation) Act. If only industries which are crucial to the

national interest were controlled by the Centre and the States were given their rightful jurisdiction over the rest of the field of industry and commerce, those States which have a balanced and pragmatic outlook on economic problems would benefit tremendously. In order that the nation may not suffer as a result of any States not permitting industries to come up, the Centre may reserve to itself the power to start, or license the starting of, industrial units in such States. In other words, the position should be that the Centre may step in where a State will not allow industries to commence or develop, unlike the position today where the Centre has the veto where the States want industries to start or grow.

Over-centralization has been one of the main reasons for our poor rate of economic growth which is one of the lowest in the world: since 1950, our per capita income has increased only 56% in real terms.

President's Rule

Under art. 356, President's rule can be imposed in a State "if the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution".

This power has been grossly abused and President's rule has been imposed on the States more than 70 times. All States, except Sikkim, have been given at one time or another doses of this pretentious curative. Several cases where President's rule has been imposed by the Centre in a partisan spirit for party ends have already passed into history.

The Rajamannar Committee in its Report published in 1971 recommended deletion of art. 356. The other view is that the article would continue to serve a useful purpose if it is invoked bona fide in appropriate cases only. It may be better to retain the article while devising some machinery to prevent its misuse.

K. Santhanam, deprecating the imposition of Presidential rule whenever a state ministry is defeated, observed, "Ordinarily, when a Ministry is defeated and an alternative Ministry cannot be formed, the proper course should be immediate dissolution and re-election so that people of the State would have a chance to decide for themselves. It is only where law and order cannot be maintained and the legislature cannot function in peace that Presidential Rule can be really justified. In the discussions in the Constituent Assembly on article 356, it was emphasised by many speakers that except in cases of civil disorder, Presidential Rule should not be imposed without first a dissolution and general elections."

Appointment of Governors

There has to be a Governor for each State (art. 153). The Governor is appointed by the President (art. 155) and he holds office during the pleasure of the President (art. 156).

According to the Judgment of the Supreme Court delivered on May 4, 1979 in *Dr. Raghukul Tilak*'s case, the relationship of employer and employee does not exist between the Government of India and the Governor, and the Governor's office "is not subordinate or subservient to the Government of India". While this is the true constitutional position, we have systematically devalued various constitutional institutions including the office of the Governor. In practice the Governor has been reduced to virtually the same position as that of the Resident Agent in a Native State in the days of British Raj. Several Governors have debased their high office by lending their services to fulfil the partisan objectives of the political party in power at the Centre.

One of the difficult questions is—how to restore the Governorship to the high status envisaged by the architects of the Constitution. The Rajamannar Committee made the following recommendations:

> "The Governor should be appointed always in consultation with the State Cabinet. The

other alternative will be to make the appointment in consultation with a high power body specially constituted for the purpose.

The Governor should be rendered ineligible for a second term of office as Governor or any other office under Government. He should not be liable to removal except for proved misbehaviour or incapacity after inquiry by the Supreme Court.

A specific provision should be inserted in the Constitution enabling the President to issue Instruments of Instructions to the Governors. The Instruments of Instructions should lay down guidelines indicating the matters in respect of which the Governor should consult the Central Government or in relation to which the Central Government could issue directions to him. Those Instructions should also specify the principles with reference to which the Governor should act as the head of the State including the occasions for the exercise of discretionary powers."

President's assent to State Bills

A Bill passed by the State Legislature is presented to the Governor and the Governor has to declare "that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President"

(art. 200). The President may direct the Governor to return the Bill to the State Legislature with a message requesting reconsideration of the Bill; and if it is again passed by the State Legislature with or without amendment, it is presented once more to the President for his consideration (art. 201), but in no case is the President bound to give his assent.

The object of the Constitution-makers in enacting these provisions was simple and clear. While the constitutionality of any State legislation can always be challenged in a court of law, its wisdom cannot be; and, further, it is better to prevent a clearly unconstitutional measure from reaching the statute book than to have it struck down later by the court. A Governor is expected by the Constitution to reserve only such Bills for the President's assent as are patently unconstitutional or palpably against the national interest. In practice, Governors have been known to surrender their judgment and act as the deferential subordinates of the Central Government in exercising their extraordinary power. Moreover, the Centre's own record in enacting legislation is not such as to justify the belief that it is superior to the States either in wisdom or in knowledge of constitutional limitations.

The Rajamannar Committee recommended repeal of that provision of art. 201 which permits the Governor to reserve any Bill for the

consideration of the President. However, this power may be usefully retained, if its indiscriminate use can be checked by some machinery, e.g. by providing mandatory guidelines in the Instrument of Instructions to the Governor.

Extra-constitutional authorities

Among the extra-constitutional authorities, the Planning Commission takes the palm. "Economic and social planning" is in the Concurrent List. But no law has been enacted by Parliament in exercise of this power. The Planning Commission is a body without any constitutional or legislative sanction.

The Chairman of the Fourth Finance Commission in his Supplementary Note to the Report described it as a "quasi-political body". K. Santhanam observed that the Planning Commission had set up a sort of vertical federation, thus displacing the territorial or horizontal federation established by the Constitution. The Study Team appointed by the Administrative Reforms Commission observed that planning at the hands of the Planning Commission had the result that "the three horizontal layers of administration, represented by the lists of central, concurrent and state subjects, have been vertically partitioned into plan and non-plan sectors; and . . . within the plan world, the compulsions and consequences of planning have tended to unite the

three horizontal pieces into a single monolithic chunk from the centre although operated in respect of concurrent and state subjects in the states". Dr. K. Subba Rao was of the view that the Planning Commission "functions in violation of the provisions of the Constitution . . . The Centre through the Planning Commission controlled not only the State sector of the plan but also their implementation". The Rajamannar Committee was of the view that the "Centre is able to impose its will on the States in the formulation and execution of the Plans by virtue of the non-statutory grants under article 282, which are dependent on the absolute discretion of the Centre. It will thus be seen that the process of Planning and the activities of the Planning Commission have a very deleterious effect on the autonomy of the States particularly in spheres exclusively allotted to the States by the Constitution".

The above quoted words of criticism are fully justified. Today there are two types of grants made by the Centre to the States—(i) grants-in-aid of the revenues of the States as recommended by the Finance Commission (art. 275); and (ii) discretionary grants by the Central Government (art. 282) which are usually made in accordance with the recommendations of the Planning Commission. Of the total grants disbursed by the Centre to the States, only 30% is as per the recommendations of the Finance Commission, while the remaining 70% represents discretionary

grants given to the States on the advice of the Planning Commission.

To remove this distortion of the constitutional scheme, it is necessary that even discretionary grants under art. 282 should be dealt with by a constitutional authority like the Finance Commission, and not by the Planning Commission.

Financial Relations

Any fair-minded and impartial observer can have no doubt that having regard to the growing responsibilities of the States, the distribution of taxes and revenues is very unfair to the States and far too favourable to the Centre.

Taxes on income are levied and collected by the Government of India and distributed between the Union and States [art. 270(1)]. But the expression "taxes on income" does not include corporation tax [art. 270(4)]. "Corporation tax" means any tax on income which is payable by companies and for which no credit is given to the shareholders who receive dividends from the companies [art. 366(6)]. As a result of the changes made by the Finance Act, 1959, all income-tax paid by limited companies must now be treated as corporation tax, and consequently the States are not entitled to any share of it.

Union duties of excise may be shared between the Union and the States but only

"if Parliament by law so provides" (art. 272). The Chairman of the Fourth Finance Commission referred to the possibility of making a constitutional amendment placing excise duties on the same footing as income-tax, that is, making excise duties also compulsorily divisible between the Union and the States.

Even when a tax or duty is compulsorily divisible between the Centre and the States, the Union has the right to levy a surcharge which is excluded from the divisible pool (art. 271). In exercise of this power the Centre levies a 12½% surcharge on income-tax exclusively for its own benefit.

The Seventh Finance Commission had recommended that 40% of the central excise duty should be transferred to the States. In the last three years the Centre stopped raising rates of excise on items like petroleum, iron and steel, aluminium and coal, but only raised the prices. The entire benefit of this increase in prices goes to the Centre which is the producer and seller of the goods. According to a recent speech of the West Bengal Finance Minister, by raising prices instead of excise the Centre gathered additional revenues of Rs. 6500 crores in which the States are not entitled to a share, whereas, if the excise had been increased, Rs. 2600 crores would have come to the States as per the recommendation of the Seventh Finance Commission.

The States must be given a legal right to a larger share in the tax revenues collected by the Centre, instead of having to rely upon the discretionary largess of the Union under art. 282.

Inter-State Council and Constitutional Conventions

The formation of an Inter-State Council as envisaged in art. 263 of the Constitution is long overdue. The Conference of the Council of Chief Ministers held on March 20, 1983 on the initiative of the Karnataka Chief Minister, was a significant constitutional development. Active co-operation among the States should be institutionalized and States must solve their inter-State problems by mutual discussion and negotiation. For example, problems regarding electricity, water and rivers should be sorted out by the States themselves without the intervention of the Centre. Imaginative co-operation between the States would be a most fruitful way of counteracting excessive domination by the Centre.

An unfailing index to the maturity of a democracy is the degree of its respect for unwritten conventions. If due observance of healthy conventions is a fair criterion of maturity, the Indian democracy must be regarded as being still in its swaddling clothes. Not only have we failed to build up any conventions, but we have

thrown to the winds even those norms of decency and decorum in public life which prevailed in India when we became a Republic.

Dr. K. Subba Rao wisely observed: "Unless the party that happens to be in power in the Centre develops conventions to shed its party affiliations in the matter of its relations with the States, the federal Government cannot effectively function in our country".

The Only Lasting Solution

Those who are in favour of major constitutional amendments to re-define relations between the Centre and the States, must come to terms with one profound truth.

The only satisfactory and lasting solution of the vexed problem is to be found not in the statute-book but in the conscience of men in power. The long-suffering States can be given redress not by a change of law but by a change of heart. The ultimate guarantees of a fair deal to the States are the individual conscience of the representatives they return to Parliament and a vigorous and well-informed public opinion.

There is no substitute for public education and dissemination of information on vital issues. In the words of Thomas Jefferson, "If a nation expects to be ignorant and free, it expects what never was and never will be."

We must get away from the fallacy of "the legal solubility of all problems". In a constitution what is left unsaid is as important as what is said. Our constitutional equilibrium can be preserved only by Obedience to the Unenforceable.

The survival of our democracy and the unity and integrity of the nation depend upon the realization that constitutional morality is no less essential than constitutional legality. Dharma lives in the hearts of public men; when it dies there, no constitution, no law, no amendment, can save it.

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