

LEGALFOXES LAW TIMES

"CHANGING DYNAMICS OF CENTRE-STATE RELATIONS IN THE NEO-LIBERALISM ERA"

- By RASHI CHOUDHARY

ABSTRACT

The Constitution of India is a unique and the longest Constitution in the history of any sovereign state. It has efficiently functioned over the years with enshrined principles such as justice, equality, and its endeavour to promote fraternity. It declares India to be a sovereign, socialist, secular democratic republic along with the desire to establish a welfare state to secure these aspects as well as to uphold unity, integrity of the nation state.

The Indian Constitution did not expressly state India to be a 'federation', however if we look into article 1 of the Indian Constitution, it states that- India shall be a 'union of States'¹. This implicitly means that every Indian state is integral part of India and thus the states cannot break away from its Union. Indian polity is Quasi-federal in nature in the sense that the states are not allowed to secede from the union as in the case of a purely federal state functioning autonomously at centre and state level, and is neither a unitary government where all decisions run through the supreme power i.e. centrally run institution and others are required to follow, thus in this sense India combines both the features of federal and unitary form of government with sufficient centre-state autonomy, with a strong central government thus making it Quasi-federal in nature.

Given the complex relation which the centre-states share in India, there are bound to be disagreements, disputes regarding autonomy, subject matters/ jurisdictional issues, economic issues, legislative issues, or any dispute of like nature regarding decision making. Thus, the

¹The Constitution of India, 1950 art. 1

hon'ble Supreme Court of India comes into picture with its power under Article 131² of the Indian Constitution with original jurisdiction of Supreme court to determine and settle disputes that might arise between Government of India and one or more state, Government of India or any state/states on one side and one or more on the other on the matters which it deems fit and as per the provisions of Article 131. Apart from these aspects of dispute between centre-state, it also have the original jurisdiction to decide on question of law and facts to determine the existence and extend of legal right. In state of Karnataka Vs. Union of India, 1978³ Justice P.N Bhagwati said that- "There is no need for the Supreme court to show that any legal right has been violated when any suit under Article 131 is preferred to the court, rather it has to only show that it involves a legal question which has to be determined conclusively". However, Article 131 cannot be invoked to settle any dispute political dispute between state and centre that might arise if they are headed by different parties.

Thus, though this paper I wish to analyse, comprehend, articulate and arrive at possible conclusions regarding the changes that are taking place or which took place over the period of time in centre- state relations with legislative, judicial, political, economic changes that took place since independence. The concept of 'Neo-liberalism' which is the recent development of the 20th century, also referred to as the 'new-liberalism policy' post the liberalisation of India in 1990s which emphasis on the concept of market free capitalism, cutting trade barriers, international capital movement, leading to a free market competition altogether. Thus, there are bound to be disputes and disagreements regarding the incorporation of this concept of 'Neo-Liberalism' given the Quasi-Federal nature of the Indian Polity.

RESEARCH METHODOLOGY

The methodology followed in the quest of the above queries and for arriving at a conclusive suggestion for this research paper will be doctrinal research. Making reference to Journals, Media reports, citing Indian as well as Foreign Judgments, Case laws, related text, books, and all relevant study material.

²The Constitution of India, 1950 art. 131

³State of Karnataka Vs. Union of India, AIR 1978 SC 68 para 53: (1977) 4 SCC 608

INTRODUCTION

To study various aspects related to recent trends of changing dynamics of Centre-State relations with change in social, political, cultural and economic trends in India. Also, to analyse the role which the hon'ble Supreme Court of India plays with respect to any disagreements or disputes that arise between Centre-State and the approach followed by it. To analyse the past and present situation pertaining to the changing relationships, its reasons and above all the need for change in the present context since India being Quasi-federal in nature with a strong central government, also given the party politics which prevails in India with high degree of influence of centre in decision making and favouritism which we all are aware of thus the disputes and disagreements are bound to arise and determination of such question would be a real task for the Supreme Court to adjudicate and determine conclusively considering the needs of both the centre and state governments. Generally we see the principle of 'Harmonious Construction' being applied by hon'ble Supreme Court of India. Perhaps, it is worth raising queries about the implementation of the same, to check any abuse, biases by analysing the present and past changes that took place over the years.

CONCEPT OF NEO-LIBERALISM IN INDIAN CONTEXT: ECONOMIC IMPLICATIONS

The ideology of 'Neo-liberalism' draws its inference from the concept of 'Liberalism' in the 19th century in India and worldwide. Thus, we can say that it is a 20th century concept emphasising on- Economic liberalisation, deregulations of the economies from the governmental control and interference into the market, worldwide integration of economies-Globalisation, free trade, austerity and overall reduction of the role played by the government so as to increase or boost private investments in the market with enhanced role in the economy and society as a whole. However, these features of Neo-liberalism are constantly debated both on its functioning as a whole in the country as well as the inception of the concept itself.

However, the term ‘Neoliberalism’ is used in different sense depending on the country in which it is used. These geographical variation or distinction are the result of the wide interpretations, use and conclusions drawn out by various countries depending on its social, cultural, economic and political scenario. As an economic philosophy, the concept of neoliberalism emerged in Europe in 1930s as they attempted to review, revive and revisit the already existing central idea of liberalism which was fading away with time and losing its popularity. Following the Great Depression’ of 1930s which began in United States also led the countries to think economic policies with ‘Free Market Volatility’ so as to avoid any such economic failure in future and also to do away with the social consequences of such economic failure. Thus, this terminology was gaining a lot of significance around this time. This term entered into the common use by 1980s when economic reforms were undertaken by Chile, however it took a negative connotation as a policy. It was later in 1990s that the concept was interpreted by a bunch of scholars and economy analyst that the terminology stated gaining more acceptance. However, each country had its own set of pros and cons with different set of experiences with it.

Indian economy saw a major change in the 1990s with the ‘New Economic Policy’, commonly referred to as ‘NEP of 1990’. This brought altogether a transition in the Indian economy with the inception of the concepts such as- Liberalisation, Privatisation and Globalisation (LPG Model). The main aim of NEP was to create conditions for domestic as well as foreign markets to invest in Indian Economy and not just keep using its cheap labour, land and other natural resources. It also attracted Foreign Investment and capital in the Indian market so as to strengthen the position of Indian economy as a whole on the global front, to boost market competition from outside and attract investment in the market. To achieve this goal, the big business houses in India at that time made specific demands on the state which includes:

- Deregulation of private businesses which were majorly regulated by the Government.
- Privatisation of government businesses.
- Trade liberalisation to open more opportunities for Indian as well as foreign players in the market.
- Granting of permission to foreign capital to own businesses in India.
- Enactment of tax cuts and tariff barriers and other incentives for businesses.
- Reduction or complete withdrawal of government benefits for the poor and

- Complete freedom to hire and fire labour.

However, this ‘Neoliberalism’ through NEP is a multi-dimensional concept with not only economic implications but also has to comply with social and political aspects of a state too. It also has an ‘ideological aspect’ to it which emphasis on the popular acceptance by the people of this concept in their everyday life and how these economic changes affect them.

ANALYSIS OF NEO-LIBERALISM

Lots of deliberations and discussions about the impact of neoliberalism has been put forth by various scholars, authors, and economy analyst. It is a popular opinion that it has largely benefited the capitalist, big business chains and indeed helped the educated class and IT professionals to benefit from this global integration. It has also brought into foreign technology and capital in the Indian markets with cheaper machine made goods, giving consumers the right to choose which was earlier curtailed due to no or minimal competition in the Indian markets where goods were sold at higher prices. Cultural integration and a certain level of economic growth after neoliberalism are certainly the pros of this economic ideology.

On the other hand, there are a set of people, researchers, scholars etc., who are of an option that this concept of neoliberalism has caused a great gap or divide between the rich and the poor strata of the society. NEP has heaped unspeakable miseries on the bottom 700 to 1000 million people in India, which includes urban proletarians and semi-proletarians, and a large number of urban small-scale business owners, and peasants. It has produced massive economic inequalities between people along with unemployment for those who could not survive the severe market competition from the outside with machine-made, cheap and easily available goods. There was also seen the non-implementation of the protective labour law legislations which was the need of the hour. Peasants have lost their land to the big industrialist and real estate dealers who took this as an opportunity since farming was no more a viable option since cultivation cost was really high with no governmental support in form of subsidies. This has led to decrease in food

production and less per capita availability of food items. High indebtedness has led to stress sales across India. Thus, unarguably NEP or neo-liberalisation has over the years brought into light various aspects which differ from country to country as an economic policy and encashes both positives and negatives as a whole.

CURRENT SCENARIO: IDEOLOGY OF THE PRESENT GOVERNMENT

A major change in the Indian political scenario came when Mr. Narendra Modi sworn as the Prime Minister of India in 2014. There was a paradigm shift with respect to political ideology, socio-cultural changes along with economic changes as well. There was a major change with respect international politics- i.e., India's integration with the world economy. People of India started believing in the fact that it was this government led by PM Narendra Modi was keen in securing a significant position for India on the international platform. It proposed outward-looking role for India with initiatives like 'Make in India' to boost manufacturing and thus creating jobs and infusing capital in the Indian market.

The current Prime Minister's mantra, with its major political ideology is of "Minimum Government and Maximum Governance" and vikas(development) is a part of the same neoliberal agenda. On international trade and foreign investment front, the government's track record has largely been protectionist. While the government has liberalised FDI norms in certain sectors, the unilateral termination of 58 bilateral investment treaties (BITs) is an assault on a liberal foreign investment regime premised on protecting the property rights of foreign investors. The disrespect towards protecting property rights of foreign investors has been showcased in the new Indian Model BIT adopted in 2016.

Despite the entire process of global integration, the plight which the marginalised Indians faced has led to a lot of people's movement all over India. There has been constant protest regarding denial of people's constitutional rights and freedom as a whole where acquisitions are taking place for high-end infrastructural projects and favouritism to corporate culture and interests.

Here, what has to be understood is the fact that the concept of 'neoliberalism' is not altogether the problem, but it is the implementation and negligence of few strata of the society which

raises question with regard to such inequalities and increasing poverty levels over the years. The impact which these policy have on the people of any nation state are different and totally dependent upon the ideology of the political party in power. This is quite evident from the fact that India had never been seen this active as a global participant in international relations as it is now with the NDA government in power.

EVOLUTION OF CENTRE-STATE RELATIONS

*"Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source."*⁴

- Dr. B.R.Ambedkar, Chairman, Drafting
Committee of the Constitution of India

There has been a long history of centre-state relations in India given the vast disparity, diverse culture, languages and interest which people have is what has shaped India today. Pertaining to such diversities, it is really important to maintain unification of the entire country and be committed towards the idea of growth and development with modern identity and nation building as a whole. The framers of our constitution were committed on establishing a strong centre with federalism as the functional instrument to build a strong nation state with sufficient state autonomy as well. Thus, what we have today is a 'Quasi-federal' structure with a strong central government. We can trace the relationship between the centre and states into 4 phases.

- First phase- 1950 to 1967
- Second phase- 1967 to 1977
- Third phase- 1977 to 1989
- Fourth phase- 1989 onwards till date.

FIRST PHASE (1950-1967)

"CENTRE PLAYING A DOMINANT ROLE"

⁴ Commission on Centre-State Relations Report "Evolution of Centre-State Relations in India", March 2010

Party politics play a very crucial role in the working of any nation state. It is the politics of the country which determines and influences the working of the it. Initially in India we can say all influences and position of dominance was indeed enjoyed by the congress party. Congress party was in power both at the central and thestate level. It was an era where Mr. Nehru's ideology had played an important role in strengthening the politics of congress at the centre. Thus, if at all any issue arose between the centre and the state, it was resolved as an 'internal matter' without much hassle since both at centre and states it was the congress party only who had its government functioning. The dominance of central government at that time was also quite relevant from the fact that, the Planning Commission and the National Development Council(NDC) were put in place by the central government through an executive resolution to look into the matters of centre dominance over the states instead on the contrary they served as an instrument for the centre to assert its dominance over the states. Where the planning commission was entrusted to look after the policies of education, healthcare, sanitation, social welfare etc, the NDC was responsible to look after 'cooperative federalism' and proper coordination between the centre and the states so that thepolicies could be implemented wisely. Though it was a clear dominance of the centre, congress party undertook measures such as consultation, accommodation and consensus to strike a balancing act in this Congress regime. Congress party also took the initiatives to send mediators from the centre as 'Congress Observers' to mitigate any dispute that might take place at local and regional level.

Thus, the first phase of Indian Federalism was marked by dominance of a single party over the states as well the central politics of the entire country.

SECOND PHASE(1967-1977)

"42ND AMENDEMENT TO THE CONSTITUTION"

This phase saw a radical change in the Indian politics, where it was forthe first time that Congress party saw an overwhelming reduction in its majority to simple majority at centre and had lost elections in many states to opposition and coalition governments. Thus, the relevance of the fourth general elections is of importance. The congress party attempted to regain its political power through means such as 'defection' and article 356.

During the period 1967-1971, the centre-state conflict was at its peak. The Central government refused to accept assertions of rights by the non-Congress state governments. But the most important factor during this period was the emergence of regional forces to fill up the vacuum created by the weakening of the Congress party. Mrs. Gandhi used the Congress dominance to make the centre stronger. The major development in this phase was the 42nd constitutional amendment which made centre even more powerful at the expense of the state. However, this resulted in the infamous Emergency of 1975-1977 and it was after this that we saw a paradigm shift in the Indian polity from single party system to multi-party system and formulation of coalition government.

THIRD PHASE(1977-1989)

“SARKARIA COMMISSION”

It was for the first time since independence that in 1977 elections that congress has lost its power at the centre. Janata party took charge which believed in the ideology of decentralization of economic and political power. Notwithstanding, the main demonstration of this administration was the excusal of nine state governments administered by the Congress on the plausible contention that they had lost individuals' confidence as reflected in their presentation in the 10th Lok Sabha race. It additionally rejected Article 357(A) through the 44th Amendment Act which enabled to send armed force and paramilitary powers for managing any grave lawfulness circumstance in the states. The Congress came back to control in the mid-term political race in 1980 and it excused the Janata party governments in nine states utilizing a similar probable contention like by its forerunner. In various states like Andhra Pradesh, Tamil Nadu, Karnataka, West Bengal, and so forth., government was shaped by the provincial gatherings which requested more self-sufficiency. The Akali Dal in Punjab too upheld these requests. The four southern states announced the arrangement of a local board to brace the interest for more self-governance. This prompted the arrangement of Sarkaria Commission to investigate the inside state relations. The Rajiv Gandhi government attempted to assemble collusions with the local gatherings because of political impulses as observed in Rajiv-Longwal settlement and the Assam accord. Be that as it may, he likewise attempted to unify powers by calling the gathering of District

Magistrates to manage them, consequently bypassing the state governments. He likewise rehashed this by presenting the Panchayati Raj Bill and Jawahar Rojgar Yojana.

FOURTH STAGE(1989 ONWARDS)

"ERA OF MULTI-PARTY SYSTEM"

The 1989 general political race was a milestone throughout the entire existence of Indian polity as it introduced the era of multiparty framework and started the cycle of more prominent federalization. With the annihilation of the Congress party, this political race finished one gathering rule at the inside and denoted the start of alliance government at the middle. The local gatherings turned into a necessary aspect of the government bureau and began standing up for themselves in an intense way at the inside. This cycle of more noteworthy federalization, for the accommodation of study, can be isolated into the Political federalization and Economic federalization.

CONSTITUTIONAL RELATIONSHIP

The Indian constitution provides for dual polity with a clear distinction of roles and functions between the centre and the state where each of them enjoys autonomy within their own sphere. Since the Indian federation is not a result of independent units where the states are permitted to secede from the centre, the constitution of India assures and take sufficient care to regulate various dimensions related centre-state powers, functions and autonomy. Thus, maintaining harmony.

The relations between centre and state are divides as:

- 1. Legislative relations (Article 245 to 255)**-Legislative relations basically deal with the legislative aspects and talks about the subject-matter as provided under the Union list, State list and Concurrent list within which the Centre and the states exercise autonomy while making rules and regulations. Union list (99 subject matters) mentions those subject matters in which the Union/centre has the autonomy to makes rules, the state list (61subject matters) covers those area where the state government has the power to

legislate and the concurrent list (52 subject matters) covers those areas where both the state and the centre are entitled to make laws on such matters as listed under the current list. The constitution vests the Residuary powers with the central government which includes the subject matters which do not form a part of any of these three lists. Article 245 empowers the centre to give directions to the states in certain cases in regards to the exercise of their executive powers. Article 249 empowers the parliament to legislate with respect to a matter in the State List in the national interest. Under Article 250, the parliament becomes empowered to make laws on the matters related to state list when national emergency (under Article 352) is in operation. Under Article 252, the parliament is empowered to legislate for two or more States by their consent, these are some of the provisions indicating towards the Quasi-Federal nature of the Indian Polity.

2. Administrative relations (Art. 256 to 263)-Administrative Relations are dealt under Article 256 to 263 between the centre and the states. Article 256 states that "the executive power of every State shall be so exercised as to ensure compliance with the laws made by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose". The constitution lays down various provisions to secure cooperation and coordination between the centre and the states.

These include:

- (i) Article 261 states that "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State".
- (ii) According to Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- (iii) Article 263 empowers the President to establish an inter-State Council to inquire into and advise upon disputes between states, to investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.

(iv) As per Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the inter-state freedom of trade and commerce.

3. Financial relations (Article 264 to 293)- The Constitution deals with the centre-state financial relations in Article 268-293 of Part XII. The Constitution has provided the union government and the state governments with the independent sources of revenue. It allocates the powers to centre and the states in the following way:

- (i) The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.
- (ii) The state legislatures has exclusive power to levy taxes on the subjects mentioned in the State List
- (iii) Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.
- (iv) The parliament has exclusive power to levy taxes on the matters related to the residuary subjects.

However, in case of tax revenue distribution:-

- Article 268 states that duties are levied by the Union but are collected and appropriated by the States.
- Service tax levied by Union and collected and appropriated by the Union and the States (Article 268-A).
- Taxes levied and collected by the Union but assigned to the States (Article 269).
- Taxes levied and collected by the Union but distributed between the Union and the States (Article 270).
- Surcharge on certain duties and taxes for purposes of the Union (Article 271).

Under Article 275, the parliament is authorized to provide grants-in-aid to any state as parliament may determine to be in need of assistance, and different sums may be fixed for different States.

Under Article 282, the union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Under Article 352, during the operation of national emergency, the distribution of revenues between the centre and the states can be altered by the president.

Under Article 360, during the financial emergency, the executive authority of the Union shall give directions to any State to observe such canons of financial propriety as may be specified in the directions and to the give the directions as the President may deem necessary and adequate for the purpose.

The important recommendations of the first administrative reforms commission related to the centre-state relations are:

Establishment of an Inter-state council under Article 263

1. Decentralization of powers to the states as much as possible.
2. More transfer of financial resources to the states.
3. Arrangements for devolution in such a way that the states can fulfil their obligations
4. Advancement of loans to states should be related to as 'the productive principle'.
5. Deployment of central armed forces in the states either on their request or otherwise.

During state emergency, under Article 356, President's Rule can be imposed in event of the failure of constitutional machinery in a state.

"OUR MISSION YOUR SUCCESS"

RELATIONS BETWEEN CENTRE-STATE IN THE PRESENT CONTEXT

As we have already discussed about the types of relationships which the centre and state can share with regard to political situations, economic parameters and those functions and duties which the constitution imposes on them so that they could act within their independent spheres thus making the implementation easy. However, due to constant evolution of the relationship between these two, the relationship they both share keeps on changing given the changes that take place and are implemented economically, culturally and politically. Here we are going to

discuss these changes with regard to the present context and the role which the hon'ble Supreme Court plays in regulation of such relationship vis-à-vis Article 131⁵.

CHANGES IN THE ECONOMIC RELATIONS

When in 2014, the NDA led alliance by Mr. Narendra Modi took charge, at this point of time the Indian economy was already combating with the problems of fiscal deficit and current account deficit of 2013 where the Rupee has crashed significantly after this twin deficit problem creeping up. Since then, after taking charge the government has taken a lot of steps to stabilise the economic situation of the country and control inflation. Various initiatives undertaken on the part of the government has led to the economic growth and development of the country as a whole. The 'Make in India' initiative by the Modi government has increased the manufacturing activities in India and thus creating more employment.

Another major change which came and has significantly affected the centre-state relations is the implementation of GST which is perhaps the biggest fiscal reform post-independence. It has changed the taxation system, its collection and the way in which businesses are conducted. To empower usage of GST and make its implementation more viable, the Constitution of India was amended, whereby central and state governments ceded their individual forces of tax collection. At present, under the mutual forces of tax assessment, a qualified flexibly is burdened by the two governments. This sort of government participation is extraordinary. The Constitution likewise constituted the GST Council—a body comprised of the account pastors of states and the Centre. Each part of authoritative organization is managed together by all the unique state governments and the central government. While the contribution of endless constituents makes the whole cycle of organization and policymaking somewhat disorderly, the participation is functioning admirably. This has proclaimed another rush of cooperation and coordination between all administrations.

GST is a work in progress. There is an earnest need to streamline and support the enactment. There are a few stages that likewise should be taken to improve the expense organization system. As of date, citizens are thoughtfully presented to various appraisals, requests, reviews, and so

⁵The Constitution of India, 1950 art. 131

forth., in each state. In the event that this isn't checked, it will prompt a material upsurge of prosecution, which thus will build vulnerability to legitimately affect the venture atmosphere.

A growing number of states-especially those ruled by non-NDA partiesare becoming less willing to play along, this is causing difficulties in holding GST Council meetings and reaching agreement on the architecture of the GST regime are indications of the challenges ahead in realising a vision of cooperative federalism. These challenges have become much greater following demonetisation. Not only have many states complained about the expected hit to their revenues caused by it (Kerala's finance minister recently estimated the state's revenues would decline by 40 per cent), but the political fallout of demonetisation has made Centre-state relations a much testier issue.

CHANGES IN POLITICAL RELATIONS

A new approach 'Team India' hailed by Modi's government after its incorporation to resolve the constant centre-state spat and work jointly towards common goal of growth and development. There have been a tremendous change in the training and institutional design of federalism over the most recent two years. Along with the rationalisation of centrally sponsored schemes, the focus has nowmoved towards more perceivedinterest of state governments to have more self-governance over their spending choices.

The other major institutional innovation related to federalism was the abolition of the Planning Commission. The government argued that the 'Niti Aayog' would oversee a transition from a top-down, Centre-to-state policy flow towards a genuinely cooperative partnership between the two. At the very instance of the incorporation of the Niti Aayog in February 2015, Modi urged in its very first meeting that the states to embrace a spirit of 'competitive, cooperative federalism' in which they would compete with each other to improve governance, working for the goal of "Sabka Saath, Sabka Vikaas". However, there are signs that the Centre-state relations are becoming increasingly politicised in ways that threatens and undermine the promised goal of a more cooperative form of federalism. The issue of religion-'Hindutva' has always been a concern for many leaders andespeciallyfor the non-NDA political groups. This is notthreaten secularism but also causing ideology spat between the centre and state.

As there has been a growing number of states—especially those ruled by non-NDA parties—are becoming less willing to play along and establish cooperative federalism. Some of them are more vocal, like West Bengal, which has long proved the thorn in the side of Central governments maintaining its autonomy, independence as far as possible and are openly criticizing the central power for its actions. It is becoming apparent that partisan divides between the NDA and non-NDA ruled states are starting to overshadow the vision of cooperative federalism promoted in the first half of Modi's term in office.

The growing lines of partisan tension between the Central government and the states look rather different to the recent past when Opposition-ruled states were frequently some of the strongest in implementing flagship central programmes. This was because state governments were able to claim credit for them in a period during which there was not such a centralising momentum and during which state politics maintained a good degree of autonomy from the national level. In this context, there were few regional takers for the idea of a 'federal front', floated periodically by Mamata Banerjee. The current drift towards political centralisation provides Opposition-ruled states stronger incentives—along with greater fiscal autonomy—to undermine, or drag their heels over the implementation of central policy priorities. Whether it also drives them closer together politically will become clearer over the coming year.

This government has given new impetus to discussions of cooperative federalism. That said, the need to maintain a balance between regional autonomy to design and implement policies in ways that respond to local priorities, alongside the space for authoritative action by the Central government, are critical issues for India going into the new year.

CHANGES IN RELTIONS DUE TO THE PANDEMIC-COVID-19

The COVID-19 Pandemic poses another challenge and revealed the faulty system in line due to competitive environment around the world politically, economically. However, due to the stress of working and constantly deteriorating economic situation around the globe poses a great challenge to the governments at both national and international levels. This crucial time indeed require the Centre-State cooperation to work together as one unit to abate this situation keeping their differences aside. The centre-State disputes are mounting over issues like the management

of the disease, the management of the lockdown, a roadmap for lifting restrictions so that normalcy returns, and allocation of financial resources to meet the health, social and economic challenges etc.

Though, Health is a subject matter falling under the state list, we have been seeing the pro-active role which the centre is playing given the contiguous nature of this pandemic. Hence the move to invoke the antiquated Epidemic Diseases Act, 1897, and declare Covid-19 a ‘national epidemic’. Another concern which the state governments have is with regard to the use of the Disaster Management Act, 2005, to declare a national lockdown. This Act gives the Centre sweeping powers of with regard to administrative and financial control. And states are feeling the heat in the rules and regulations that have been framed for the lockdown.

The allocation of financial resources is another major concern and the reason for brewing tension between the centre and the states. The states are falling short of revenue due to national lockdown and closure of shops especially the major revenue generation items including alcohol, petroleum product sale etc. and Centre had particularly been strict about banning alcohol. Also, since there are only a limited vehicular movement, petrol sales have crashed. This loss of revenue of the states have caused revenue impoverishment for the states. Punjab chief minister Amarinder Singh recently complained that he stands to lose Rs 6,000 crore because of the ban on alcohol and asked whether GoI will compensate him.

To deal with the issue of migrant labourers also, the centre directed the state governments to take all steps to provide food and shelter to them where already the state governments were falling short of revenue. Some states were of an opinion that using the Central government is using the excuse of a national epidemic to restrict the administrative and financial powers of state governments, even as it expects them to tackle the health emergency on their own.

What is required was a politically savvy approach where the centre could have made the broad guidelines for the management and arrange for finances to tackle the health and economic emergencies overwhelming the country, and keep the inter-state supply chain functional so that there are no shortages and economic activity doesn’t die completely. the Centre could have distributed responsibility for tackling the grave challenges ahead, and recent tensions would have subsided.

ROLE OF SUPREME COURT VIS-À-VIS ARTICLE 131

As the federal Court of the country, the Supreme Court of India plays a vital role in deciding disputes that arise between the Centre and State. Such power of the Supreme Court is conferred by the Constitution of India as ‘Original Jurisdiction’ of the Supreme Court to decide and settle disputes. Original Jurisdiction means to hear and decide the dispute at first instance. It decides the disputes arising between different units of the Indian Federation comprising:

- Centre and one or more states; or
- Centre & any state/states on one side and one or more states on the other; or
- Two or more states.

However, there are certain aspects which should be complied with while invoking the original jurisdiction of the Supreme Court. It requires that the dispute arisen should involve a ‘substantial question of law or fact’ to the extent that there has to be a determination of the legal rights of the parties involved in the dispute. Thus, any political dispute, disagreements or any political spat should not be the issue to approach the Supreme Court.

Also, any suit brought before the Supreme Court by any citizen against the Centre or State/States cannot be entertained under this article⁶. Disputes pertaining exclusively to ordinary business or commercial transactions are outside article 131⁷.

Another point to be noted with respect to invocation of Article 131 of the Constitution is that if there is any alternative remedy for the dispute in question available under any other article of the Constitution, then Article 131 cannot be invoked and the dispute has to be settled as per the remedy available in the other Article. For Example:- Where any dispute between Centre and State arises regarding water sharing issues of any sort, then reference has to be made under Article 262 of the Indian Constitution and not Article 131. Article 280 where the matter is referred to the Finance Commission where any dispute regarding economic matters arise. Article 290 which deals with adjustment of certain pensions and expenses between the Centre and the State.

⁶ State of Bihar Vs. Union of India, AIR 1970 SC 1446

⁷Union of India Vs. State of Rajasthan, AIR 1984 SC 1675: (1984) 4 SCC 238

A recent development which took place in this regard was when the Kerala Government filed a law suit in Supreme Court challenging the Citizenship Amendment Act (CAA) 2019, under the provisions of Article 131 of the Indian Constitution. The contention on behalf of Kerala Government was that it violates the basic structure of the Indian Constitution and threatens the fundamental principles of secularism, equality, and freedom. The CAA 2019 grants Indian citizenship to persecuted non-Muslim minorities viz. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who migrated to India from Afghanistan, Pakistan and Bangladesh on or before December 31, 2014.

Article 256 of the Indian Constitution provides that the states must comply with the laws made by the parliament. Kerala government stated that under CAA it would be compelled to comply with its provisions because of Article 256. However, the government considers CAA to be unreasonable, arbitrary, irrational and violative of fundamental principles.

Hence the issue raised was with regard to questions of legality that whether the state can challenge the Central Laws under Article 131.

- If a State can claim that its legal rights are violated even if some fundamental rights of some individuals within the State gets violated, and
- Also, what are those legal rights which have been violated?

However, in the West Bengal government's case in 2017, the Supreme Court proclaimed that the State government cannot ask for any remedy related to Fundamental rights. The case was filed under Article 32 of the Constitution challenging the validity of the 'Aadhaar Act'. The Court also held that, "Fundamental rights are available to individuals: citizens or non-citizens against the State (under Article 32 or Article 226) and not to the State entities."

LEGISLATIVE COMPETENCE

The law can be challenged if it exceeds the legislative competence of the framing authority. The competence in question can be checked by making a reference to the subject-matters as stated in the three lists that are provided under the Indian Constitution.

The Court can also check whether any particular law violates any kind of right- Constitutional or a Fundamental Right. The petition filed by the Kerala Government does not challenge any legislative competence but rather talks about the violation of Fundamental Right. Had the same

claim be filed by an individual regarding the violation of Fundamental Right, the SC would have looked into the legality of the matter.

VIOLETION OF THE CONSTITUTION

The law can test if there has been any act which is ‘Ultra Vires’ to the Constitution. In this regard the following doctrines are applicable which are developed by the Hon’ble Supreme Court over a period of time. The doctrines include:

- Basic Structure Doctrine: This basically signifies that there can be no changes or amendments to the basic structure of the constitution as these principles are the fundamental or core on which the existence of the constitution stands.
- Pith and Substance Doctrine:Pith means ‘true nature’ or ‘essence of something’ and Substance means ‘the most important or essential part of something’. It basically implies that when the court looks into the matter where it has to test whether the particular law belongs to a particular subject matter, the Court looks into the ‘Substance’ i.e., the essential features of the matter. It basically analysis the contents of lists as provided under the Constitution thus checking any ‘incidental encroachment’ either by the Central or the State government to resolve such dispute.
- Doctrine of Colorable Legislation: The literal meaning of Colorable Legislation is that under the ‘colour’ or ‘appearance’ of the power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on. Simply put, it means the when the legislature does not possess the power to make law but indirectly makes law on it.

FUTURISTIC APPROACH

The Supreme Court of India acting as the Guardian and the interpreter of the Constitution is entrusted with wide powers. It protects the rights and liberties of the citizen and also aims to uphold the value of the constitution. Given the fact that India already has a backlog of cases to be dealt with and not to mention the numerous PILs filed in the SC,there has to be certain scrutiny done with regard to the nature of disputes which the Supreme Court must entertain.‘Politically motivated pleas’ with respect to Centre-State dispute should be completely discarded by the SC, instead efforts should be made to resolve them within the political arena. Another

recommendation is with regard to the role played by the parliamentarians or the representatives of the states, they should speak-up while the laws are enacted and made rather than make an issue later on. Federalism is a two-way path and thus to maintain the principles as enshrined in the Constitution. States must refrain from defying the implementation of the laws made by the legislature otherwise this could lead to breakdown the constitutional machinery. For instance in case of Motor Vehicle Amendment Act, 2019, the subject matter and provisions of which falls under List-III of the Seventh Schedule, both Parliament and State Legislature can form a law. The States cannot outrightly reject the framed Central law by not implementing its provisions. Hence, States are bound to implement the Central laws until and unless they are declared as void and unconstitutional by the Higher Courts of the country.

CONCLUSION AND SUGGESTIONS

The relationship between the Centre and the States is one of the most crucial aspects for any Country having Federal or Quasi-Federal form of Government. It is the concept of Cooperative Federalism' which is required so as to achieve the adequate levels of growth and development of the country by avoiding any disputes which might hinder this process altogether.

One of the main problems which causes disagreements, differences between the Centre and States is the financial imbalances regarding the revenue and expenditure policy. There are a lot of examples where the States are complaining about the lack of funds released on the part of Central Government due to party-politics where different parties are ruling at the Centre and the State level or any other reason whatsoever. Here to resolve this issue, what can be done is the allocation of these financial resources in the most adequate way with proper compliance with all the provisions and a check should also be there for the same. Also, to resolve any of these issues between Centre and States 'formal Institutions' can be constituted with this regard. The role played by the Inter-state councils, National councils should be strengthened at all costs. They lack the proper implementation which leads to disputes. Thus, upholding the recommendations of these institutions would lead towards more democratic stability and thus leading to the path of growth and development.

More and more representation should be given to parties at the Central level so that all opinions are well noted and taken into consideration so as to arrive at a well-informed decision or policy for that matter. In this way the era of ‘Multi-Party’ system plays a crucial role.

Boosting the spirit of common goals of growth, development and well-being of the country and its citizens should be inculcated rather than wasting all this time fighting.

Another important aspect is with regard to the role which the Governor plays. His appointment is in the hands of the Central government, however it is the Governor only who gives assent to the bills passed by the state assembly or to withdraw the assent and recommend it to the President Under Article 200. This power could be misused where the content of the bill does not comply or ally with the ideology of the Central Government. Thus, this misuse should be prevented. Since the Governor of any state exercises a lot of powers including imposition of President’s rule, dismissal of the State Government, thus giving the state government a say while appointing the Governor would help to avoid any such allegations of biases and somewhat reduce the problems. Also, we cannot ignore the fact that the issues and conditions of each state are not same, thus for the smooth and efficient functioning of the respective states, they should be given sufficient autonomy to appoint those candidates who would be able to tackle the problems and find possible solutions or else asking the state governments as to what kind problems they face and subsequently electing the suitable person.

India’s model of Centre-state relationship is quite asymmetric. Given the vast diversity which India has, differences between Centre and States are bound to arise. But asymmetric federalism works. So overall it’s a positive model. The problem is that It at many instances leads to policy paralysis, which can only be handled by effective linkage mechanisms and boosting the sprit of ‘Cooperative Federalism’.