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# THE UNION AND THE STATES

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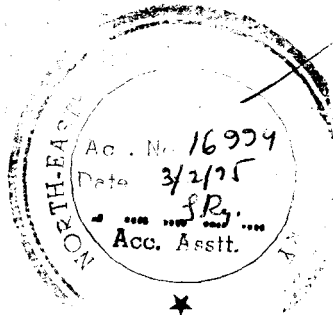
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## FOREWORD

The publication of the papers and the proceedings of the National Convention on Union-State Relations held in the beginning of April 1970 will, I am sure, be welcomed by all interested in the study and growth of our Constitution.

Since the Convention the subject of Union-State relations has been more and more under discussion. On the one hand there has been a demand for constitutional changes in the direction of giving greater autonomy to the States. Indeed the Rajamannar Report has outlined a number of proposals basing itself on the theory that India should move towards making its Constitution a traditional federation. On the other hand there have been happenings all over India pointing to the need for countrywide and unified action in regard to basic policies concerning agricultural development, industrial growth, ceiling laws, educational planning, inter-State river waters, power grids and a number of other matters.

The older federations have exhibited a general tendency towards a stronger, national and Central Government. It has been said that "nationalisation of sentiment" and a will to work together in resolving the problem posed by inter-dependence is responsible for the changing structure of federalism. What appears to have occurred is a remarkable *defacto* distribution of power between the units and the Centre sometimes called "cooperative federalism". This concept is said to consist of "a general approach rather than a specific programme. It visualises the national and State Governments as partners in the common function of serving the people". Perhaps in the adoption of such an attitude and not in constitutional changes conferring greater autonomy on the States lies the true solution of the various tensions which have from time to time emerged in our Centre-State relations. What appears to be needed is a spirit of common endeavour and a realisation in those who administer the Union and the States that they must work harmoniously to build a prosperous and united nation.

M. C. SETALVAD

New Delhi,  
9th November, 1972

## PREFACE

The Constitution of India has now been in operation for more than two decades. During the period the country has made significant advances on the path of planned progress. However, several unforeseen difficulties have arisen in the field of Union-State Relations. Strong differences of opinion have shown up even where the same political party happened to be in control at the Union and in the States. Where different parties controlled the administration at the Union and the State levels, the differences were naturally accentuated due to political motivations and as such demanded greater attention and understanding. The health of the entire body-politic and the successful working of a democratic system of government depend on evolving a broad national consensus between the Governments and the people in areas of public policy directed towards socio-economic changes.

There is today an imperative need to look, objectively and dispassionately, into the problem of Union-State Relations in all its ramifications, to identify the areas of tension and dissension, to study and analyse the multifarious stresses, strains and motivations and finally to seek to locate the conflict resolution mechanism available within our political system and the constitutional framework.

The Indian Law Institute, the Indian Institute of Public Administration and the Institute of Constitutional and Parliamentary Studies have long been engaged in the study of the various operational aspects of the federal system in India and have brought out a number of research publications in the field. In view of their common interest in the subject, the three Institutes decided to collaborate in convening a national convention on Union-State Relations in April 1970 in New Delhi. It was felt that it would be of value to look at the Union-State relationship as a dynamic nexus for development and change. The conveners hoped that a dialogue on the subject and an objective examination of the different points of view would lead to a better understanding of the nature of this relationship and to greater consensus. To organize the National Convention on Union-State Relations, a Steering Committee was constituted with Shri M. C. Setalvad as Chairman and two representatives from each Institute as members. Dr. J. N. Khosla, the then Director and Professor N. Srinivasan, then Professor of Political Science, represented the Indian Institute of Public Administration; Dr. S. N. Jain, the Acting Director and Professor Alice Jacob, Research Professor, represented the Indian Law Institute; and Dr. L. M. Singhvi, Executive Chairman and

Dr. Subhash C. Kashyap, Director, represented the Institute of Constitutional and Parliamentary Studies. The secretariat to the Convention was provided by the Institute of Constitutional and Parliamentary Studies. Shri M. C. Shah, then Research Officer at the Institute assisted the Steering Committee in making necessary arrangements for holding the Convention and also the editors in editing this volume.

The National Convention was held on April 3, 4 and 5, 1970. The sponsors were fortunate in securing the fullest cooperation from a number of eminent and distinguished participants which included Union Ministers, Members of Parliament, jurists, economists, political scientists and constitutional experts. This is evident from the fact that several participants took pains to contribute scholarly papers for consideration at the Convention.

The present volume contains the papers and synopses of observations made by the contributors and other participants at the Convention. Acknowledgements are due to *Seminar* for permission to reproduce Dr. C. D. Deshmukh's paper. The two papers by Dr. S. N. Jain and Professor Alice Jacob and one by Professor Jacob were published earlier in the *Journal of the Indian Law Institute*, and the paper by Dr. H. K. Paranjape appeared in the *Indian Journal of Public Administration*. The articles by Shri A. K. Chanda and Shri R. S. Gae are being reproduced from the Special Number of the *Journal of Constitutional and Parliamentary Studies* on "Union-State Relations in India".

Needless to add the usual caveat that the data and views presented in the papers and the synopses are the individual responsibility of the contributors and the participants themselves.

A select bibliography has been appended at the end to facilitate further study of the subject.

It is hoped this volume would be a welcome addition to the growing literature in the field of Union-State Relations.

New Delhi

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\*The positions and designations stated are as at the time of the national convention (April 1970).

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# 1

## CENTRE-STATE RELATIONS—THE ISSUES

*A Basic Working Paper\**

### INTRODUCTORY

'Unity in diversity' is an old theme of the political and cultural life of India. The strands in this theme are numerous and are woven into complex patterns. Yet if the scene is seen as a whole and steadily it becomes possible to unravel the strands and discern the basic realities and problems lying beneath the surface.

The elements composing this theme can be identified. The factors pressing for unity in the past have been political organization as a single state, attempted under various Hindu and Muslim rulers and achieved during British rule (the achievement was real despite the creation of Pakistan); the predominance of a single religious group; the English language; the establishment of communications; the freedom struggle; uni-party rule; the leadership of Mr. Nehru; an indivisible economy; and administrative unity emphasized sharply by the all-India Services. The elements providing diversity have been different languages, the presence of different religious and cultural groups, the emergence of different political parties and their success in different regions. The changing combinations of, and stresses on, these various elements provide the setting in which the theme of Centre-State relations is enacted.

Despite a common cultural heritage that could, without obliterating itself, assimilate alien cultures, the unity underlying India's diversity and her gradual emergence as a single nation, a purely centralized form of administration has never been a successful reality for long. Complete centralization attempted by the Mughal Emperors was only a partial success. The attempt by the British to impose domination from a central point proved more successful on account of the development of speedier means of communication. But they too in course of time realized that, while a strong central authority in India was essential, the Central Government could hardly be run efficiently if it did not take account of the varied needs and peculiarities of the different regions. Thus, although the Government was unitary, the concept of territorial administration was retained and the provinces were administered through Governors. Gradually, in response to the demand for self-Government

\* Contributed by the Indian Institute of Public Administration, New Delhi.

# 2

## CENTRE-STATE GOVERNMENTAL RELATIONS IN THE INDIAN FEDERAL SYSTEM\*

ALICE JACOB

Every federal constitution necessarily contains provisions regulating Centre-State relations.<sup>1</sup> These provisions must provide for adjustments in cases of conflict between the two co-existing authorities. There are generally four areas of potential conflict—the legislative, the administrative, the judicial and the financial. However, the Constitution of India provides for a single integrated judicial system and has thus eliminated the chances of friction between the Centre and the States in the judicial sphere. The purpose of this study is to examine the constitutional provisions and the working of the constitutional process with respect to potential conflict areas in Centre-State relations during the post-Constitution era.

### 1. LEGISLATIVE RELATIONS

#### A. UNION SUPREMACY

Chapter I of Part XI of the Constitution deals with the legislative relations between the Union and the States. Parliament has power to legislate for the whole or part of India and the State Legislatures have the power to legislate for the whole or part of individual States.<sup>2</sup>

\* This article is from the study on Indian federalism undertaken by the Indian Law Institute and is reproduced by courtesy from the *Journal of the Indian Law Institute*, Vol. 10, No. 4, October-December, 1968.

1. For a comparative study of federal provisions, refer to Peaslee, *Constitutions of Nations* (2nd ed. 1956).

2. Articles 245(1) and 245(2).

It is to be noted in this connection that entry 57 of List I expressly empowers the Union Parliament to legislate with respect to fishing and fisheries "beyond territorial waters". Whatever may be the position of extra-territorial legislation in international law, courts in India must give effect to such legislation. See Kania C.J.'s observations in *A. H. Wadia v. I.T. Commr., Bombay*, A.I.R. 1949 F.C. 18, 25 under the Government of India Act, 1935:

In the case of a sovereign Legislature . . . the question of extra-territoriality of any enactment can never be raised in the municipal Courts as a ground for challenging its validity. The legislation may offend the rules of International Law, may not be recognized by foreign Courts or there may be practical difficulties in enforcing them, but these are questions of policy with which the domestic tribunals are not concerned.

This view has been taken in England, *Jefferys v. Boosey*, 10 Eng. Rep. 681 (Ex. 1854) and in the Dominions, *British Columbia Electric Ry. Co., Ltd. v. The King*, (1946) A.C. 527 (Canada); *Craft v. Dunphy*, (1932) A.C. 156 (Canada).

## GROWING DEMAND FOR GREATER AUTONOMY

*K. Santhanam*

For some time now, the States have been becoming increasingly discontented with their role in the Indian federal system. Since the general elections of 1967, when non-Congress governments were formed in many States, the demand for greater autonomy has become insistent. The D.M.K. Ministry in Madras is the most militant among them. It may be remembered that the D.M.K. party started with the cry of secession but under the wise leadership of its late leader, Shri Annadurai, it renounced this objective at the time of the Chinese invasion of India and since then has been functioning as a democratic constitutional party but it has always stated that it would not be content till the State gets more autonomy. This demand has been insistently made ever since it assumed the Government of Madras in 1967. Recently, it has set up a Committee consisting of Dr. Lakshmanaswami Mudaliar, Dr. P. V. Rajamannar and Dr. Chandra Reddi to formulate precise proposals for enlarging the powers of the State. The demand can be split into four parts :

- (1) Enlargement of powers through a change in the Constitution,
- (2) Evolution of conventions by which the Centre would refrain from exercising its powers infringing State autonomy without the consent of the States,
- (3) Dissatisfaction with the existing financial relations, and
- (4) A shrinkage of autonomy resulting from planning.

Before I proceed to deal with each of these parts, I wish to make it clear that I am entirely with those who think that in view of the past history of India and the many disintegrating forces that we have inherited from the past or have emerged in the present as a result of the conflicting ideologies prevalent in the world of today, a strong Centre is indispensable if India is not to disintegrate and dissolve in chaos. But I do not agree with those who equate strength with the range of formal constitutional powers. On the other hand, I am emphatically of opinion that by taking upon itself too many obligations in relation to the vast population spread over the length and breadth of India, the Centre will become incurably weak. It is only through concentration on essential all-India matters and by refusing to share the responsibility in such matters with the States, while giving complete autonomy to the

## AD HOC FEDERALISM v. CONSTITUTIONAL FEDERALISM

A. T. Markose

The Supreme Court of India is the umpire of Indian federalism. The Constitution of India has conferred on it original jurisdiction to decide disputes between the federation and a unit or between the units *inter se*.<sup>1</sup> However, the judicial method is not suitable for settling all types of disputes. Only when a dispute involves a question (whether of law or fact) on which the existence of a legal right depends, as stated in article 131 of the Indian Constitution the judiciary is the appropriate forum for settling it. Many of the disputes that come up in a federation are not questions of the above type which can be decided by fact-finding and law-applying. There are many questions which may be broadly termed political in the sense that they have to be solved by applying 'policy' rather than settled law to facts found. There are also cases which from the point of view of policy may be considered as relatively stabilised and there are justiciable issues which are hardly suited for settlement through the ordinary courts in view of the great bulk and complexity of the subject-matter. Disputes between States about the share of waters in inter-State rivers is a handy illustration of the latter category. The judicial process may nearly be drowned in the flood of data and details involved in the claims to use of water for irrigation, navigation, industrial and domestic purposes, hydro-electric projects and a host of other things. There are also many questions, like inter-State border disputes, which are not best solved by adjudication at the High Courts or the Supreme Court. The Constitution of India has excluded the jurisdiction of the courts in a number of cases of the above type and provided for special machinery to solve them.<sup>2</sup> It is the view of the present writer that permanent tribunals should be set-up to settle all such disputes.

### BORDER DISPUTES

The question of border disputes between the States may be considered first. The policy adopted, rightly or wrongly, to reorganise the

1. See article 131.

2. Proviso to article 131, and articles 257(4), 258(3), 262(2), 280, 290 and 363.

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## UNION-STATE RELATIONS —A BALANCE OF POWER APPROACH

*J. D. Sethi*

The approach to the study of Union-State relations or federalism adopted in this paper cannot be clearly located under any one of the classifications of the subject to be discussed in the Convention. Nevertheless, I present below a brief summary of my approach, which can be defined as balance-of-power theory. Every approach or theory is based on some assumptions and these must be kept in view in evaluating it.

This approach is more analytical than prescriptive or narrative. Yet it is not a neutral scientific theory; policy conclusions can always be drawn, but only in strict relevance to the analysis. The basic premise of the approach is that every society can be looked upon as a balance of power system. The balance may be stable or unstable, static or dynamic, functional or dysfunctional. Analysis of the given balance of power does not suggest its approval or disapproval, though to change or make a balance work towards the achievement of definite objectives cannot be ruled out.

A written constitution does no more than provide a framework, ground rules, set of restraints or stimuli for the power system and political activity. Power centres may have constitutional as well as extra-constitutional legitimacy. No hard and fast rules exist about the division of power between different foci. Even the most written constitution cannot create a stable structure of power because new centres of power keep emerging all the time challenging the old ones. In the historical development of a nation there often occur phases of clash between constitutional provisos and social and political realities. The Indian Constitution provides a fairly elaborate scheme of the relationships and division of power, economic, financial, legal, administrative, between the Centre and the States. Yet serious difficulties keep cropping up every day, particularly with respect to the powers of the Governors, prorogation of Legislatures, right of dissolution, dismissal of Ministers, the role of CRP, allocation of funds for Central projects etc. Many new difficulties will arise as the situation changes. It is so because the Indian Constitution, though heavily written, is massively ambivalent on certain crucial matters. For answers to contemporary problems and crises it is worse than useless to delve into the statements and intentions of the

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## A NOTE ON APPROACHES TO THE STUDY OF CENTRE-STATE RELATIONS

*D. L. Mazumdar*

This short note does not pretend to make any substantive contribution to the debate on Centre-State relations in this country, but is essentially a plea for a clear preliminary identification of the arena on which this debate is to be carried on. In other words, it designedly eschews any substantive comments on the legitimacy or structure of Centre/State Powers in our polity or on the manner in which these powers are exercised, but is concerned primarily with the approach to the study of the problems relating to these issues.

### I

If one ignores the discussions of the pre-Constitution years or the protracted debates during the making of our Constitution, one may not be far out to take the view that, at no time in the post-Constitution years of our recent history, has serious and continuing interest in the study of Centre-State relations been so marked and widespread as in the years since 1964. Indeed our contemporary preoccupation with the problems arising out of these relations and our involvement in the many debates on this subject may, for the purposes of this Note, be divided into two phases—namely, the first phase between 1964-67, and the second phase since 1967 onwards. The incipient conflicts arising out of the exercise of Centre/State powers in the early sixties slowly gained strength from 1964 onwards, and appears to have assumed serious dimensions during the three years. It is unnecessary to enter into the circumstances which sparked off this effervescent interest in the study of Centre-State relations, but they are known to all perceptive students of the present Indian political scene. The dominating factors in this development, as is now generally recognized, have been the slow but steady erosion in the political authority of the Centre in relation to the States, alongside of not only a rapidly growing awareness of State power on the part of political activists in the States but also of its aggressive postures, stemming largely from this doctrine of the Centre. Those basic changes in the pattern of our all-India politics, of which the above

## CENTRE-STATE RELATIONS IN THE FIELD OF AGRICULTURAL DEVELOPMENT

*N. Srinivasan*

### I. THE ROLES OF THE CENTRE AND THE STATES IN AGRICULTURAL DEVELOPMENT UNDER THE CONSTITUTION

The major concern of the makers of the Indian Constitution was to devise a workable and democratic system of government suited to the vital needs of the country of unity in diversity and of development. On the one hand they gave to the federal system which they were establishing a unitary bias and on the other they provided for a great deal of interaction between the Central and the State Governments. They deliberately chose to describe the new system of Government as a Union rather than as a federation. Departing from classical models they provided the closest links between the Centre and the State emphasizing their inter-dependence, rather than their separate and independent character. These features of the Indian Constitution make it significantly different from the older federal constitution. The Indian Constitution gives practical shape to a new concept of federalism known as co-operative or creative federalism. As pointed out by a recent writer on federalism, the distinguishing characteristics of the new federalism are : "the practice of administrative co-operation between general and regional governments upon payments from the general governments, and the fact that the general governments by their use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions."<sup>1</sup>

In determining the Centre's powers, India's national leaders were largely influenced by their views of the immediate and vital problems of the country. A Memorandum of 1947 to the Cabinet enumerated these problems as "an agricultural production policy, price control of agricultural products, the establishment of central higher technical institutions, food distribution and the setting up of administrative machinery for agricultural and industrial development."<sup>2</sup> It was felt that the Central Government

1. A. H. Birch, *Federalism, Finance and Social Legislation*, pp. 304-306.

2. *Comments on the Provisions contained in the Draft Constitution of India*, Constituent Assembly of India, 1948., p. 2.

## CENTRE-STATE RELATIONS IN THE FIELD OF INDUSTRIAL DEVELOPMENT

P. N. DHAR

### CONSTITUTIONAL POSITION

The framers of the Indian Constitution could not have envisaged all the tensions and problems that would arise on account of a programme of planned industrial development. Nor could they have provided for these problems even if they had been able to anticipate them. For economic growth is a dynamic process and it often tends to have a logic of its own.

How has industrial development proceeded in this country under the federal constitutional system, which defines the powers and functions of the Federal and State Governments? Under the Seventh Schedule, which lists Union, State and Concurrent powers separately, jurisdiction over industries is assigned to the States, except over industries (a) declared by Parliament to be necessary for defence or war and (b) 'the control of which by the Union is declared by Parliament by law to be expedient in the public interest'. The second exception is a crucial one and has provided the justification for the Industries Development and Regulation Act of 1951 which is the basic law governing the Central Government's activities in the field of industrial development. This exception gives omnibus authority to Parliament to regulate and control industries in the national interest. And since economic and social planning is a concurrent subject, as it should be, it has resulted in some intrusion from the Centre into affairs otherwise earmarked for the States and extended Central control over national industrial development.

The control through national economic planning has been further reinforced by (a) the preponderant share of the Centre in industrial financing, (b) the development of heavy industry which under the nationally accepted strategy of development became the core of the plans, and (c) the provision of aid and advice to the States in the development of small-scale and village industries.

These developments have led to exaggerated complaints about the 'violation' of the Constitution. Mr. Santhanam complains that "Planning has superseded the federation and our country is functioning almost like a unitary system in many respects".<sup>1</sup> Mr. Chanda, maintaining

1. K. Santhanam, *Union-State Relations in India*, 1960.

## CENTRE-STATE RELATIONS IN WATER RESOURCES DEVELOPMENT\*

S. N. JAIN  
AND  
ALICE JACOB

### INTRODUCTION

The economic prosperity of a country is based on the development of water resources, particularly of river waters, therein. Intensive exploitation and utilization of river waters is most essential to the development of agriculture and industry in a country like India where the rainfall is low and undependable. In most parts of the country, rainfall is concentrated in the four monsoon months, June to September; the remainder of the year is practically dry. The average rainfall in the country is about 45 inches, but the variation is from as much as 5 inches in the desert areas of Rajasthan to nearly 500 inches in the hills of Assam. Further, even the rainfall of traditional monsoon months is erratic and subject to wide variations.<sup>1</sup> Consequently, successful cultivation is not possible without the aid of irrigation in one form or another. Since India's economy is predominantly agricultural, the harnessing of the water resources and rivers for beneficial purpose of irrigating the dry land has assumed great significance in independent India. The development of river waters was begun by the British rulers in India. They only laid the ground work of modern irrigation in India. With the attainment of independence, considerable importance was given to the tapping of water resources in the country. This feature is reflected in the successive Five Year Plans of the country. The expenditure outlay on irrigation and power has been steadily increasing. In the First Five Year Plan, the expenditure on irrigation from surface and under-ground waters was Rs. 385 crores, in the Second Plan it was Rs. 475 crores and in the Third Plan Rs. 845 crores. Even so, at the beginning of the Fourth Plan, only about 37 per cent of the usable

\*Some of the material for the paper was collected by Shri S. C. Jain, Research Associate, Indian Law Institute for which the authors are grateful.

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1. Dr. K. L. Rao, "A National River Grid with a Grand Feeder Canal", *The Hindu Weekly Magazine*, August 24, 1969.

## CENTRE-STATE RELATIONSHIP IN THE FIELD OF HEALTH AND FAMILY PLANNING

*Gian Prakash*

*and*

*Dev Raj*

Centre-State relations in our times have been subjected to considerable stress and strain. Undiluted federalism in the narrow legalistic sense of completely autonomous States with exclusive jurisdiction untouched by the Centre is a thing of the past. Even in the United States born of an act of free volition on the part of sovereign States, that gave to a federal Centre the bare minimum of functional jurisdiction retaining the residuary powers to themselves, the federal Government has come to exercise authority in a manner beyond the comprehension of the framers of the Constitution. The New Deal of 1930s gave a fresh turn to State-federal relationship in the face of a national economic crisis. More recently the federal Government has promoted and financed gigantic projects of community facilities, such as water supply and drainage, rapid mass transit system and express-ways, urban renewal and housing to meet the challenges and undesirable manifestations of phenomenal urban expansion; practically bypassing the State Governments.

The emerging relationship between the Centre and the States is, therefore, a product not only of constitutional provisions and their interpretations, but of national exigencies and developmental processes in the field of transport, communications, education, health and housing, etc. The requirements of the welfare state and the formulation of economic and social policies and programmes involve co-ordination and planning on a national scale. This has naturally meant a new approach and the adoption of extra-constitutional devices for regulating Centre-State relationships. There has been a growing feeling about Central in-roads into fields of State powers and functions and it has been alleged that the process of planning and plan financing has virtually reduced the State Governments to the position of field agencies of the Government of India. It is proposed in this paper to examine the working of Centre-State relationship in India in the specific field of health programmes to identify the factors that have conditioned, for good or evil, the working relationships between the State Governments

## CENTRE-STATE RELATIONS IN EDUCATION

V. K. R. V. Rao\*

## SIGNIFICANCE AND URGENCY

The significance of a proper understanding of the Centre-State relations in education is obvious because it is on this understanding that the proper development of education in the country will depend to a large extent. The problem is also being widely discussed during the last three years. Even prior to Independence and especially thereafter, a demand has gradually grown in all parts of the country that there should be a national system of education and a national education policy with certain common objectives and major programmes. When this demand seemed to have reached its peak and gathered the largest strength, the Fourth General Elections created a political situation which revealed how limited was the real Central authority in education—a fact which had hitherto been disguised by the accident of a single political party being in power in the Centre as well as in the States. This sudden contrast that has developed between the deepening desire for a National Education policy on the one hand and the realisation of the lack of constitutional authority to formulate and implement it effectively on the other, adds a unique urgency and poignancy to the discussion. It is, therefore, no wonder that the problem continues to hold public attention in all major educational debates.

## A HISTORICAL PERSPECTIVE

What should be the ideal Centre-State relations in education at present or in the years ahead—this is the question to which we are all striving to find a satisfactory answer. It is not at all easy to do so, especially because the usual tools of educational analysis—historical review, comparative evaluation or a consensus of the current opinions on the subject—all seem to fail to provide a clear answer that would find a substantial measure of support all round.

For instance, Central-State relations in education over the last 170 years have presented an extremely variegated picture in our country. Prior to 1833, we had a period of *total decentralisation* when all the three Presidencies of the British Empire followed their own educational

\*The view expressed here are the personal views of the author and do not necessarily represent the views of the Government of India.

## UNION-STATE FINANCIAL RELATIONSHIPS\*

D. T. Lakdawala

The States in India derive a substantial part of their income from tax-sharing, grants and loans from the Union Government. In 1967-68, the States on the whole obtained 38% of their revenue expenditure and almost the entire capital expenditure from Union transfers (*vide* tables I and II). It has been argued that this militates against an important principle of federal finance, of the responsibility on each layer of raising its own resources to meet the expenditure decided to be incurred on its functioning, and that therefore there is a need of either giving the States additional sources of revenue, or of reducing their functions. The distribution of functions between the Union and the States depends on the competence and suitability of each layer to discharge them. Since many of the economic and social services need close local guidance and supervision, and the Indian Constitution has in its distribution of functions amply provided for the role of the Union Government and the preservation of the all-India interests, no scope apparently exists for a change in functions in favour of the Union Government. But on the first count, there seems some *prima facie* scope.

## DISTRIBUTION OF TAX POWERS

A comparison of the tax powers of the Union and State Governments with similar distributions in other federations leads one to the feeling that the present distribution in India unduly favours the Union Government. In no other established federation is the right to levy direct taxes, *i.e.* income-tax, corporation tax and estate duties (with few exceptions) so exclusively denied to the States. It may, therefore, appear worthwhile to try for a more balanced distribution of the tax powers. The power to levy a tax must, however, follow its economic allegiance. Where the basis of a tax is nationwide and its rate progressive, empowering the regional units to levy it can only mean inadequate and inefficient use of the power. What really matters from the view-point of revenues is not the power to levy a tax but the use to which this power can be put. And here, the facts are very revealing. The regional layers have been able to get only small proportions of the

\*My grateful thanks are due to my colleague Mr. K. V. Nambiar for his help in collecting data and for his suggestions for improvement.

## CENTRE-STATE RELATIONS IN PLANNING\*

*H. K. Paranjape*

One advantage of having a number of States working together in a federation in a country like India is that the total territory which is included within common customs boundaries, and having a common currency, etc., is extensive enough to provide a large market so that the benefits of the economies of large-scale production and division of labour are easily available. At the same time, especially when it is a federation of people living over a large geographical area, with population running into crores, and having considerable diversity in potential resources, economic and social organization and the level of economic progress already achieved, there are bound to be a number of difficulties in the way of evolving an economic policy which would be of equal benefit to the various parts of the country. This creates difficult Centre-State and inter-State problems in any federation. They become specially acute where, as a result of the adoption of economic planning, the State assumes considerable responsibility for the development and operation of the economy. Centre-State relations then assume some additional dimensions.

Many special problems then arise, an important one being : How can the country formulate a national development plan which tries to obtain the maximum advantage from having a large area under one Government but which, at the same time, is sufficiently firmly rooted in the diverse regions and areas of the country, taking note of both their potentialities and the needs and aspirations of the people belonging to them. In other words, just like the problem of reconciling economic growth with reduction in inequalities among different classes of citizens, there is also the problem of ensuring a rapid rate of economic growth and at the same time preventing an accentuation of inequalities among different regions and States. How does one formulate a plan and ensure its proper implementation in such a way that it remains a National Plan and at the same time integrates various State plans together so that they are consistent with and complementary to each other ? Further, how is this to be achieved in a democratic system

\*In the formulation of an early draft of this paper, my colleague Dr. S. K. Goyal played a significant part. He could not, however, participate in the final formulation. Shri P. J. Vernekar rendered valuable assistance in the preparation of the paper.

## UNION-STATE RELATIONS—FINANCIAL IMPLICATIONS

*C. D. Deshmukh*

Any review of the course of relations between the Centre on the one hand and the States, on the other, during the last two decades, especially under the Constitution promulgated within three years of the advent of independence in India, is likely to be erroneous if it ignores the basic fact that the Indian Constitution is not, and was never intended to be, anything even broadly resembling a federation. A true federation is essentially one in which the federating units come together to form a federation by virtue of a compact and agree to surrender specified sovereign powers to the union they wish to form.

The Republic of India has two categories of federating units, *viz.*, the former provinces and the erstwhile princely states. The political status of the former was gradually raised by the British Parliament as a result of the successive, somewhat reluctantly taken, steps to grant self-government, short of complete independence, to India between 1909 and 1935. The bitter pill of tardy self-rule was sought to be sweetened by the grant of larger autonomy to the provinces, and since the bulk of the process took place while India was still undivided, checks and balances were not forgotten : the creation of a separate province of Orissa, with a Hindu majority, *e.g.*, to balance the separation of Sind, largely Muslim, from the old province of Bombay.

### LEGISLATIVE SCHEDULE

In regard to the schedules of legislative powers, the Constitution by and large followed the Government of India Act, 1935, under which the provinces were, in essence only partially and imperfectly, autonomous units of a unified administration, with their powers defined as a matter of administrative convenience. The old British India, bereft of the portion that formed Pakistan after partition, was one political unit in essence. To this were added the old princely states that had elected to accede to the Union, while theoretically free to continue each one as a sovereign state on the withdrawal of the paramount power, the British Crown. Here certainly there was the formal reality of a federation by compact. But paramountcy had over the century of British power deprived the princely states of any true sovereignty and its well-known

## THE FINANCIAL ASPECT OF UNION-STATE RELATIONS

*A. K. Chanda*

Union-State relations have now come under severe strain. The core of dispute is resources. Ever since the Constitution was made, the States have felt deprived, more so, financially than politically. All Chief Ministers, past and present alike, have at one time or another felt the crunch. So long as the Congress was in control of the Union and all the States, there were occasional whimpers about the inadequacy of financial assistance given but no challenge to the Centre's authority or a demand for loosening its hold.

But all this changed almost overnight in early 1967. The General Elections which demolished the monolith of Congress power also destroyed the subservience to the States of the Centre. The non-Congress governments were not prepared to go along with the Centre in its political and economic policies, not even agree on national priorities. They had distinctive political ideologies and socio-economic programmes of their own which they proceeded to shape without regard to resources available. Mr. Nambudiripad made minatory noises in Kerala and demanded a redefinition of Union-State relations; a cry, that was soon taken up by DMK in Madras and UF in West Bengal.

West Bengal government, in particular, refused to entertain the Centre's request for an inquiry by a retired Supreme Court judge into the firing inside the Gun and Shell Factory perimeter. And later demanded the withdrawal of the Central Reserve Police from its territory. Mr. Nambudiripad refused to respond to the request of Mr. Chavan to meet him to discuss his reported statement to subvert the Constitution. But for the reason that they were dependent on the Centre for financial assistance, even to remain viable, their assertion of sovereignty might well have been far more aggressive.

Finance being the foundation of all governments, it soon became the focal point of controversy and the demand grew for the revision of the financial provisions. Some of the Congress States also joined in to give the demand weight and urgency. It is necessary, therefore, to reassess these provisions, review the background against which they were formulated and evaluate the need for constitutional amendments.

## UNION-STATE RELATIONSHIP

*Ajit Prasad Jain*

## STRESSES AND STRAINS IN A FEDERAL SYSTEM

The spectrum of Union-State relationship in India covers the widest ground in political, economic and administrative fields of activities. A growing and dynamic concept, the relationship goes on varying with the changing conditions. The normal activities of the States (non-Plan) by and large have followed the pattern laid down by the Constitution, liberal use of discretionary grants under article 282 notwithstanding. However, on the planning side the concentration of vast Plan resources in the Centre, the Planning Commission (with its formidable machinery of perspective division, planning cells and study and evaluation groups) and the haphazard working of the National Development Council have caused serious inroads into spheres exclusively assigned to the States.

The Constitution-makers were, no doubt, aware of the possibility of different political parties concurrently ruling at the Centre and in the States, but the uninterrupted rule of the Congress at the two top levels throughout the country for full two decades created in the ruling party a sense of complacency and in the opposition of frustration. Thus the results of the 1967 General Elections came as a sudden and rude shock difficult for the Indian polity to absorb. Beginning with five States consequent on the General Elections results, non-Congress coalition governments extended their rule to nine States, inhabiting two-thirds people of India.

The Congress Party which had till then provided to free India an extra-constitutional machinery to sort out problems *inter se* the Centre and the States, a process which not only retarded the growth of in-built checks and balances within the administrative machinery but produced what may be considered as aberrations, could no longer fulfil the task of co-ordination between the Centre and the States. Not that there had existed no tensions between the States and the Union during the one-party rule of the Congress but they were resolved unostentatiously without attracting the gaze of public criticism.

Tensions and conflicts between the federal authority and the constituent states are not peculiar to the Indian political system. They have existed in almost all federal and semi-federal states, for the local

## ANOMALIES IN THE SCHEME OF FISCAL-NEED GRANTS IN INDIA

*M. P. Jain*

A very important item for consideration of the Finance Commission in India is the grant to be made to a State needing fiscal assistance. The need for such grants arises because the economies of the regions in a federation differ from one another in ways which have an important bearing on the relative capacity of the several State Governments to provide services. These differences arise because of several factors, *e.g.*, area, climate, topography, natural resources, size of population, productive capacity and levels of income and expenditure. In addition, there may be differences among the States in the average rate of economic growth. The differences among the economies of the States give rise to fiscal inequalities. This inequality manifests itself in several ways: capacity to raise revenue from taxation; capacity to provide services to the people. One of the values sought to be achieved by a scheme of federal finance is that disparities among the regions do not become too pronounced, that the backward areas are helped, by transfer of finances to them, to come to a comparable level with the more advanced areas in a federation. To leave a poor State to its own resources will either result in condemning its people to a low level of services or to an unduly high incidence of taxation. Such a result is bound to create jealousies and tensions in the body politic. Therefore, it has come to be recognised in practically all federations that a process should continuously be working so as to enable each State to provide comparable social services at a comparable tax incidence *vis-a-vis* the other States in the federation. Many techniques have been adopted for this purpose and the system of 'fiscal-need' grants is only one such technique. Fiscal-need grants constitute an important technique for making inter-governmental financial adjustments in a federal system. Under article 275, the Union Government in India is to give grants to the States in need of assistance. This provision lays down no criteria for judging whether a State is in need of assistance, and if so, to what extent.

### THE AUSTRALIAN EXPERIENCE

The idea of 'fiscal-need grants' has been borrowed from Australia. It might, therefore, be helpful to see as to how it has been put into practice there. Section 96 of the Commonwealth Constitution provides

## UNION-STATE ECONOMIC RELATIONS

*J. D. Sethi*

In a general way the argument *per se* for any radical financial devolution loses much of its weight when it is pointed out that between 1951-52 and 1969-70 the proportion of States' shared taxes and grants-in-aid to their total resources has increased from 22 per cent to 37 per cent and, in absolute terms, from Rs. 87 crores to Rs. 1,037 crores. If in these statistics we add Central loans given to the States, the ratio increases from 29 per cent to 50 per cent and magnitudes from Rs. 160 crores to over Rs. 1,821 crores. The overall resources of the States increased five times and those of the Centre almost six times, whereas the Central assistance to the States increased nine times. No one can say that this is a small measure of financial transfers to the States.

Today the combined resources of the States and the Centre are evenly balanced and it appears that if past trends of gradual transfer of resources from the Centre are maintained—there is no policy yet in sight that may reverse them, except the sheer lack of finance itself—in a decade or so the scale would decisively be tipped in favour of the States. For some years now, the Centre's own revenues and expenditures have become extremely inelastic and thus any re-classification of revenue heads on the principle of elasticity will be operatively meaningless. The Central Government has been left with little manoeuvrability to re-allocate resources in any new direction because it just cannot augment resources any more until the growth rate picks up once again in the non-agricultural sector. Ironically, or not quite so, it is in such a static framework—and static is the word—that political pressures for re-allocation are mounted against the Central Government which today has neither policy nor guts left to take decisions on any rational principles. With a continuing shift in the national income in favour of agriculture, it is the States' resources which should, presumably, acquire elasticity. The States, however, are unwilling to oblige the country for obvious political reasons.

There is no particular economic virtue in having one or the other ratio of the overall division of resources between the Centre and the States, unless it can be shown that such a ratio is justified on grounds of functional responsibility, efficiency, optimality, or any other criterion. These criteria are violated totally by the Centre as well as the State Governments. One could go a step further and say that whatever the

## POLITICAL AND ADMINISTRATIVE RELATIONS

*P. Govinda Menon*

There has been considerable controversy among jurists and political scientists as to the nature of the Indian Constitution. Doubts have been expressed as to its proper classification and whether it should be described as federal, quasi-federal or unitary with subsidiary federal features.

Whatever may be merits of this theoretical controversy it cannot be gainsaid that there are different units of Government each with its own Legislature and its Executive. Thus authority is divided and division necessarily postulates the possibility of friction and conflict.

It has become fashionable to assert that the problem of Centre-State relations in India is of a relatively recent origin occasioned by the results of the last General Elections held in 1967. Such a statement would not be strictly accurate.

Even during the time when the Government of India Act of 1935 was in operation and India was under the sovereignty of the British Crown there were differences between the Central Government and the erstwhile Provincial Governments. In this connection reference may be made to the suit filed by the Governor-General in Council against the Province of Madras<sup>1</sup> wherein the validity of certain provisions of the Madras General Sales-tax Act, 1939 was challenged. The judgment of the Federal Court being adverse to them, the Central Government went up in appeal to the Privy Council which affirmed the decision of the Federal Court.<sup>2</sup>

The fact that the Central Government and a State Government are being run by members of the same political party does not necessarily rule out the possibility of conflict, though in such cases the party machinery also has a voice in resolving the differences. But it is not unknown for disputes even in such cases to come to court. A well-known example is the suit filed by the Government of West Bengal while a Congress Ministry was in office against the Central Government challenging the validity of certain provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957.<sup>3</sup>

1. (1943) F.C.R. 1.
2. (1945) F.C.R. 179.
3. *State of West Bengal v. Union of India* (1964), S.C.R. 37.

## ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND THE STATES\*

R. S. Gae

### I. BASIC STRUCTURE OF THE CONSTITUTION

The question whether the Constitution of India is truly a federal or unitary constitution is really a debatable issue. Dr. Wheare holds the view that 'the Constitution is quasi-federal'.<sup>1</sup> Dr. Munshi, a distinguished jurist, calls our Constitution 'a quasi-federal union invested with several important features of a unitary Government'.<sup>2</sup> This view is not shared by many jurists.<sup>3</sup> According to Sir Ivor Jennings, 'India has a federation with a strong centralising tendency'.<sup>4</sup> As regards the structure of our Constitution Dr. Gajendragadkar, former Chief Justice of India, observes that 'though it partakes of some of the characteristics of federal structure, it cannot be said to be federal in the true sense of the term'.<sup>5</sup>

Our Constitution was basically erected on the foundations of the Government of India Act, 1935 and derives directly from the said Act, drawing primarily from the British Constitution and to some extent from the constitutions of other foreign countries like the U.S.A., Canada, Australia and Irish Free State. A minority judgment of the Supreme Court has said that our Constitution adopted 'a federal structure with a strong bias towards the Centre'.<sup>6</sup> The majority judgment, while dealing with the true nature of the Constitution, has said that the result of the

\*This article is the result of an academic study of the subject by the author and is in no way connected with his official position. The views expressed in the article are the personal views of the author.

1. K. C. Wheare, *Federal Government*, Fourth Edition, London, Oxford University Press, (1963), p. 27; Wheare, *Modern Constitutions*, Oxford University Press, (1964), pp. 29 and 51.

2. K. M. Munshi, *The President under the Indian Constitution*, Bombay, Bharatiya Vidya Bhavan (1967), p. 1.

3. See Alexandrowicz, *Constitutional Development in India*, London, Oxford University Press (1957), pp. 158 and 159 and Granville Austin, *The Indian Constitution—Cornerstone of a Nation*, Clarendon Press Oxford, (1966), p. 186.

4. Ivor Jennings, *Some Characteristics of the Indian Constitution*, London, Oxford University Press (1953), p. 1.

5. P. B. Gajendragadkar, *The Constitution of India—Its Philosophy and Basic Postulates*, Bombay, Oxford University Press (1969), p. 67.

6. *State of West Bengal v. Union of India*, (1964) 1 S.C.R. 371, p. 448.

## THE GOVERNOR

*Ajit Prasad Jain*

The office of the Governor, as conceived by the constitution-makers, was endowed with potentialities to develop as an instrument for forging a live and dynamic link between the Centre and the States. The Governor is appointed by the President and holds office during his pleasure ; thus he represents the Centre in the States. He occupies the highest place in the State's political set up and is a part of the State Legislature. The Governor is the head of the executive, and all executive orders are issued in his name. The Governor must, however, in the normal discharge of his functions, act on the advice of the Council of Ministers. The Constitution expressly makes a mention of the Governor's discretionary powers, but the nature and the scope of those powers are not defined. The Governor's decisions as to whether a particular exercise of power falls within the scope of his discretion and the validity of the exercise of discretion cannot be called in question in a law court. Thus there are impregnable safeguards built round the Governor's discretionary powers, which makes a cautious use of those powers all the more necessary.

## DISCRETIONARY POWERS

The Governor is given the power to appoint the Chief Minister, but the procedure for the selection is left to the discretion of the Governor. The Ministers hold office during the pleasure of the Governor. Can the Governor in exercise of his discretion withdraw his pleasure and dismiss the Chief Minister? What is the process for ascertaining whether a Chief Minister has lost the support of the majority of the legislators? Should it be done on the floor of the House or by counting of heads by the Governor? Whether the Governor can reject the advice of the Chief Minister to appoint new Ministers, if there are reasons to suspect that the Chief Minister has lost the majority? Can the Governor force the Chief Minister to advance the date fixed for the meeting of the Assembly? If the Chief Minister refuses to listen to the Governor, what is the remedy open to him? These are some of the questions which have cropped up already, and the multiplication of small parties in State legislatures, none of which enjoys the support of the majority, and the growing trends towards defection are likely to give rise to more vexatious situations.

## ROLE OF GOVERNOR IN THE CENTRE-STATE RELATIONS IN INDIA

R. B. Tewari

### I. INDIAN FEDERALISM

The idea of federalism in governance of States was introduced in the world as a matter of expediency. The history of mankind is witness to the fact that 'security' has been the prime consideration which conditioned the human behaviour and also of the political institutions in which human beings organized themselves. This idea did not have a sudden start. In ancient times, there were Greek City States which had their own centralized system of maintaining relations with foreign powers. In India also there existed several *Sanghs* (federations) of smaller Hindu States. The system of federations was in general preceded by confederations which in course of time, were found to be loose organizations, and states, therefore, turned to a form of polity in which there lay greater unity and community of interests and design. Generally, the system of federalism is adopted for obvious reasons of creating an institutionalized power whose primary function would be to safeguard the interests of member-states *vis-a-vis* the foreign powers. The responsibilities of the centre in a federation have in modern times increased and now it is concerned with economic planning, social welfare, health and education for the federation as a whole. The collective strength of the states embodied in a union is far greater than that of single individual states. In India, federalism did not have an abrupt beginning. There were well-marked trends since the establishment of the British rule in India towards greater decentralization and federation.<sup>1</sup> When India achieved Independence the fundamental problem before the Constitution-makers was to choose between a unitary or a federal set-up in the country. There were two shades of opinion in the Constituent Assembly. One favoured a strong centralized government whereas the other was for a strictly federal structure. Ultimately a federal framework with a strong Centre was preferred. India was constituted into a sovereign

1. See, Bombwall: '*The Foundations of Indian Federalism*', 1967, p. 29: "The Constitution makers of free India were inevitably influenced by the fact that the trend of constitutional development in India, since the initiation of a policy of decentralization after the Mutiny and more unmistakably, since the introduction of partial provincial autonomy under the Montford Reforms, has been in the direction of federalism."

PRESIDENTIAL ASSENT TO STATE  
BILLS—A CASE STUDY\*

*S. N. Jain*  
and  
*Alice Jacob*

The Constitution of India provides for a federal framework of government with powers divided between the Centre and the States. The federal concept as adopted in India has considerable deviations from the concept of classical federalism. The Constitution confers wider powers on the Centre than the States in the legislative, administrative and financial fields. The law-making powers are distributed between the Parliament and the State legislatures. However, the powers of the State legislatures are not co-ordinate and independent of Parliament in every respect. For instance, the Constitution under certain circumstances prescribes the consent of the Central executive for a State Bill to become law. Further articles 200 and 201 empower the State Governor—a Presidential nominee to reserve in his discretion a Bill passed by the State legislature for the consideration of the President who may either assent or withhold assent to the Bill. Thus both under the mandatory and permissible provisions of the Constitution the States have been sending Bills for the assent of the President. A study of such Bills was made by the Indian Law Institute for the years 1961 and 1966. The purpose of this note is to examine the degree of Central control over State legislation as emerging from the study of such bills. The following questions may be relevant to the issue on hand :

1. What is the procedure adopted for the President's assent to the Bills ?
2. What are the grounds on which the Centre scrutinizes the State Bills before the assent is given ?
3. Does the Centre prescribe conditions subject to which the assent is given ? What is the constitutional validity of such conditions ? Does the Centre through its power of veto of State legislation dictate policies to the States ? Has the operation of the provision for Presidential assent affected the legislative autonomy of the States ?

CENTRAL RESERVE POLICE AND UNION-STATE  
RELATIONS IN INDIA

*Amal Ray*

Among the new areas of tension between the Centre and the States in India, the one which has attracted national attention is the police administration. In particular, the acute controversy on the use and the role of the Central Reserve Police force has served to raise an important constitutional issue. However, its analysis in terms of law alone may bar an adequate understanding, for in this issue law and politics are intimately mixed up.

An impact of the new alignment of political forces upon Indian federalism has been a bitter controversy between the Centre and the States on the issue of their respective administrative spheres. A political party system of diverse hues and complexions, which has recently emerged in India, has served to breed different attitudes of the Governments to law and order. At the time of the Central Government employees' strike in September 1968, the Government of Kerala argued that the proposed strike would not pose any law and order problem in the State, but the Centre took an altogether different attitude and hurriedly despatched several Central Reserve Police Units to Kerala to safeguard its installations. In Durgapur and Cossipore also, at the root of New Delhi-West Bengal confrontation, lay their attitudinal differences. Thus much of the legal deputation between the Centre and the States has its origin in their political conflict. What is then necessary for both sets of Government is to come to terms with political realities, while treating the Constitution as a broad framework within which mutual adjustments are possible. However, more time must elapse before the edges of the ideological warfare become somewhat blunt to pave the way for the adoption of certain agreed norms to guide the Centre-State relations in India.

In September 1968, at the time of the Central Government employees' strike in Kerala, the Centre, as we have noted, sent Central Reserve Police Units to Kerala for protection of its offices and property there. Since no consent of the State authorities was sought, Namboodiripad considered the Centre's action as an encroachment upon

## LANGUAGE AND UNION-STATE RELATIONS

S. A. H. Haqqi

## THE LINGUISTIC PROBLEM

The reorganisation of States on a linguistic basis left unsolved, and has even given rise to some new conflicts and tensions, especially relating to the rights of linguistic minorities, the claims of various States on areas of bordering States, and the role of Hindi as the official language of the country.

The question of the rights of linguistic minorities and border disputes are, however, closely related, for in both cases the genesis of the problem lies in the deep attachment of the people to their language and literature, their anxiety about or fear of being submerged and of being at a disadvantage in the new linguistic set-up. The linguistic problem—the presence of the several languages in the country, the need of and the search for a *lingua franca*—has become a part of the political game : “the manoeuvring to impose a certain favoured language over others or by suppressing other languages through orders, laws and chauvinistic appeals in the name of patriotism, national unity and the smooth running of administration”. The linguistic problems are also sometimes, as in the case of Urdu and Punjabi, given a communal twist and their solution is, thus, made all the more difficult. Language, however, has nothing to do with the faith or ideology of a people ; it is only a means of communicating one’s thought and feelings and of acquiring knowledge, and as such it is a treasured possession not of a particular group or community but of all mankind. Language, or rather the choice of Hindi as the official language of the country, has been the source of not merely animated discussion and heated controversy, but also bitter wrangling between those who stand to gain and others who stand to lose if Hindi becomes the official language in the fullest sense of the word.

India is a new nation with an old civilization, dating back to the dawn of human history ; a multi-lingual and multi-racial Union of States as large as Europe excluding the Soviet Union ; a parliamentary democracy wedded to the ideal of a welfare State, but with an under-developed economy. “In India”, as the historian of Indian culture, Professor Abid Husain has observed, “past traditions and present circumstances favour the growth of a peculiar type of nationhood which is federal more in the cultural than in the political sense—which promotes a common national

## **PART II**

### **VIEWS AND REACTIONS**

# 1

## INTRODUCTORY

M. C. SETALVAD

Till the General Elections of 1967, the problem of Centre-State relations was in the background. In substance there was one party in power at the Centre and in most of the States and many important questions arising between the Centre and the States were solved at the party level. Even during this period many conventions arose to help smoothen the working of the constitutional machinery and give the States an effective opportunity to express their views on matters vital to the nation. We had the growth of the National Development Council and the Chief Ministers' Conferences and several other bodies. However, after the elections of 1967, the question of Centre-State relations came acutely before the public eye. It has also loomed large in public discussions and in the press ; and numerous conflicting views have been expressed. There is a tendency, on the one hand, to readily suggest amendments to the Constitution to smooth over the difficulties which are supposed to have arisen. On the other hand, there are a large number who take the view that the Constitution is sufficiently comprehensive and what is really causing trouble and friction is our failure to work it in the right spirit and in the right manner.

As has been said by the Supreme Court of India, the Constitution of India is not truly federal in character. The basis of distribution of powers between the Union and the States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue, especially those which tend to maintain the economic, industrial and commercial unity of the country, are left to the Union. Various factors have led our Founding Fathers to frame a constitution with a distinctly unitary bias. As was stated by Dr. Ambedker in the Constituent Assembly, they wanted a strong Centre, "stronger than the Centre created under the Government of India Act, 1935".

The circumstances which moved them to create a powerful Centre have recently been greatly emphasised. Our linguistic States have led to such acrimonious disputes that very responsible persons have started talking of reversing these linguistic divisions and moving to a unitary State. There have been other divisive factors which have led the people think far more of the status of their States than of the unity and integrity of the country and of the Indian Union. Some publicists have

## POLITICAL PARTIES ON UNION-STATE RELATIONS

### SWATANTRA PARTY

M. R. MASANI

We look upon our Constitution as somewhat of a tight Federation where the powers of the Union Government are more than in most other federations and the autonomy of the States is somewhat less. This emphasis of the Constitution became evident even during the days of the Constituent Assembly.

If I may recall a little incident, in the relevant committee which was drawing up the three Lists, I remember the tug-of-war I had with Pandit Jawaharlal Nehru who wanted Planning to be a Union subject, while I wanted Planning to be a State subject. Of course I lost ! We believe, therefore, that there has been a little too much of the truncating or eroding of the powers of the States. A statement of policy adopted by my Party as far back as 1960 stated that, "contrary to the plain intention of the Constitution, the ruling party has steadily drawn to the Centre increasing authority so that the States have little more than the power of Local Boards, depending on the Centre for almost everything. The Swatantra Party will seek to correct this and restore to the States the measure of autonomy provided by the Constitution."

Now, we still hold the view that there has been a little too much of centralized control even in spheres which belong to the States. Industrial licensing policy is one example ; the fixing of ceilings on rural holdings and the attempt at uniformity could be another ; and there are many other examples that could be given.

We do not, however, believe that the Constitution needs any change. We believe that the Constitution, if properly worked in a spirit of give and take, can meet the needs of what we want, which is some more autonomy for the States. In trying to explain this attitude, we are influenced by two major factors. One is the size of the country and its population—its multi-racial, multi-religious and multi-linguistic composition, and the national tradition—and the other major factor which indicates our support for States' rights is the cause of freedom. We believe that for a country of this size, certain checks and balances are essential. One of these is the Supreme Judiciary, independence of

## INDUSTRIAL, AGRICULTURAL AND OTHER FUNCTIONAL RELATIONSHIPS

B. N. GANGULI

In my judgment there are three important issues. First of all there is the problem of a proper review of the constitutional provisions relating to agricultural and industrial development with special reference to Centre-State relations. After the Constitution was adopted there has been a spate of legislation and quite a number of policy decisions at the Central level which had either regulatory or positively directive implications. I think it is important for us to sort out our ideas with regard to the total impact of the constitutional provisions and the subsequent legislation and policy decisions which have followed from the provisions of the Constitution.

Secondly, the economic development has a logic of its own. I think it is worthwhile for us to discuss whether the logic of the constitutional provisions has been consistent with the logic of the economic development if I may put it this way. This is a very fundamental issue which goes beyond the limits of the technicalities of the Constitution.

The third issue which may be the major focus of attention to my mind is the entire question of the legitimacy of practices, conventions and procedures which have determined the pattern of Centre-State relations in the field of agriculture and industrial development. Do these practices, conventions and procedures tend to generate avoidable tensions? If so, how to rationalise them in order to minimise tensions?

I have come to the conclusion over the years that our debt management procedures and practices in respect of Central doles granted to the States have a very important bearing on the problems that I have summarised and they have been an important source of friction and tension as well. They have wide implications for industrial and agricultural development.

S. N. JAIN

Agriculture is a State subject under the Constitution but in spite of the fact that the Constitution has not assigned direct responsibility to the Centre in the field of agriculture, the Centre has to play a dominant role to ensure overall control of the national economy. However, planning for agricultural development is essentially a task of

## PLANNING AND DEVELOPMENT

D. DESHMUKH

It is recognised that it is not always easy to keep financial relations and planning into water-tight compartments, so that it will be permissible to bring in financial relations along with planning if it seems to be relevant. The issues which arise in the field of planning are as follows :

1. *The Constitutional position*—In view of the experience in the last 20 years or so, does the Constitution need to be amended so as to provide for a better basis for Union-State relations in these fields? Should this take the form of greater devolution of financial powers to the States in view of the large gap between the finances required for carrying out the functions allotted to the States, and the financial resources available to them for mobilization? Should anything be done to put Central assistance under article 282 under semi-judicial authority as is the position regarding the assistance provided under other articles?
2. *Planning agency*—Is it necessary that the position of the planning agency for the country as a whole be put on a statutory footing? Or, should the present organisation—a non-statutory Planning Commission under the control of the Union Government and a National Development Council working through Conventions—continue?
3. *Political relations and planning*—Is it possible to ensure effective development planning when different political parties rule in the different States and at the Centre, and this is combined with political instability? Is it possible to depoliticise development planning to any significant extent?
4. *A weakening Centre and planned development*—The political weakness of the Union Government has already in the past resulted in financial irresponsibility by some States as evidenced by large unauthorised over-drafts on the Reserve Bank. Pressure by different States has led to difficulties regarding rational choices in matters like the location of the fifth steel plant. Support for bank nationalisation by some States is accompanied by a demand that they should have an effective participation in control over the banks. There is also a demand that the

## FINANCIAL RELATIONS

N. SRINIVASAN

Whichever aspect of the Union-State financial relations one may study, whether it be development planning, or the administration of various functions, such as agriculture, education, health and so on, one always comes across the financial problem as the crucial problem in those areas, apart from the administrative problems. Therefore in a sense financial relations are all pervasive in the field of Union-State relations. The fundamental cause for the pervasiveness of financial difficulties and questions would be found in the low productivity, the absence of development, and the general paucity of resources. A second major cause is to be found in the fiscal policies of the Government.

The issues requiring solution are: tax powers of the Centre and States, the devolution of resources, loans to States and finally coordination of the investment policies of the principal financial houses in the country, e.g. Reserve Bank of India, L.I.C., I.F.C. etc. The questions which need to be answered are: Is the constitutional distribution of tax powers in Lists I and II the right one? Does it not tilt the balance very much in favour of the Centre? If so, what is the remedy? Can any of the items of taxation be changed from List I to List II so that States may have resources adequate to their needs? Should the Centre consult the States in regard to taxation which affects their interests? Are the grants under article 275 made on the recommendations of the Finance Commission adequate to meet developmental expenditure in the States? It has been suggested that grants under article 282 must be reduced to the minimum and grants under article 275 should be maximised. Can this be done? Is the present system of loan assistance to the States, its proportion to total Central assistance, its purpose, terms and conditions, conducive to the growth of responsibility and effective use by the States? If not, what alternative means would secure the proper use of loan assistance?

The States are presently suffering from a very heavy burden of debt. To pay even the interest on the loans, they have to borrow again. Could this burden of the debt be lessened? What methods should be adopted to lighten this burden? How is a re-scheduling to be brought about? What are the methods of coordinating the investment policies of the principal financial institutions in this country, i.e., Reserve Bank of India, L.I.C., I.F.C. and the rest?

# 6

## POLITICAL AND ADMINISTRATIVE RELATIONS

J. N. KHOSLA

The issues in the field of political and administrative relations will have to be considered not only in the light of constitutional law but also having regard to the newly emerging political realities. The Office of the Governor has become rather controversial. He can be thought of as a link between the Centre and the States and, secondly, as the constitutional head of the State Government. We may ask ourselves if it is possible to keep the two roles separate? In case of a conflict which of the two roles should prevail? Can any guidelines be prescribed for the Governor's relations with the Centre and with the State Cabinet? Can the powers of the Governor to act in his discretion be defined in detail and with some degree of precision in the Constitution or in a statute or should these be left to convention? It is alleged that partisan use is made of the Governor's power in the event of a failure of constitutional machinery in the States. Could the use of these emergency powers be regulated by prescribing the manner and conditions of their exercise to prevent any partisan use? What safeguards can be suggested to assure that the emergency powers are used for the purposes for which they have been provided? The Governor is at present appointed by the Centre. The States claim a voice in his appointment. Some have even suggested that he should be elected by the people, so that he could be really independent. What suitable alternative method can be suggested for appointing Governors?

Problems of maintenance of law and order and the posting and use of the Central Reserve Police force in the States for the protection of Central property have strained Union-State relations in recent years. It is pertinent to ask: Can there be two parallel agencies for the protection of law and order and property within the legal and constitutional framework? If so, what are their specified fields of operation? Again, if the Central Reserve Police force has an independent role, how is it possible to reconcile it with the constitutional delineation of Central and State spheres as is to be found in the Seventh Schedule? Secondly, what are the precise implications of the vast powers of the Centre under articles 256 and 257 to give directions? If the Centre has a separate administrative machinery for safeguarding its establishments would it not make the Centre's directive power to issue directives meaningless? Besides, would not the use of this machinery whittle down the exercise of the State power in the maintenance

## CONCLUSION

ASOKA MEHTA

I think in the seventies and eighties, we will have to move simultaneously in two directions which apparently appear to be contrary. It will be necessary for us to achieve more and more of integration and also recognise and accept a multiplicity of authority. This is what is happening in many countries of the world today. In western Europe on one side we are witnessing a remarkable development of supra-national bodies and institutions; while inside the nation States, for the first time, there is a great deal of ferment and old entities and historical personalities are clamouring to assert themselves. Whether it is Italy or France or Spain or Germany or Great Britain, these developments are taking place and most of these countries are engaged in finding out how these two pulls, which as I said appear to be contrary but are in fact complementary, are accepted and adjusted. It seems from the discussions in the Convention that we have taken for granted that we shall have to work in this country in the seventies and eighties on the basis of a two-layered State—the Centre and the States. I do not know if that assumption will be validated by history.

I am not referring to decentralization of administration. In my own State, for instance, we have democratically functioning Zila Parishads and Panchayat Samities but I am not referring to them at all. I think what has happened in Assam is symptomatic of what will have to be done in many other States of India. The millions of tribal people have a personality of their own, and it is unlikely that they will agree to submerge those personalities in the linguistic personalities on the basis of which most of the States have been carved out. Even in the linguistic States there are stubborn historical entities.

What is happening in Andhra Pradesh today to my mind is merely symptomatic of what is likely to happen in many other parts of India. I think institutional innovations, constitutional devices, will have to be thought of whereby we may be able to have different levels of autonomy or different degrees of functional integration. One way of course is to have a larger number of States. The other way is what has been done in Assam, where some of the powers have been distributed between the State Legislature and the Legislatures of the autonomous regions. I feel that if our large States are to work harmoniously, we may have to be prepared to consider providing some kind of opportunities for regional personalities

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