

The Role of Consultative Machinery in Union-State Relations

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I

THE CONSTITUTIONAL EDIFICE of India is neither unitary nor federal in the strict sense of the term. In the case of *State of West Bengal v. Union of India*,¹ the Supreme Court adopted a functional approach inasmuch as it held that the autonomy implicit in the division of powers on which the federal structure of the Union rests is essentially a functional devolution rather than a conferment of sovereign rights. The Constitution is well-balanced. While it provides maximum possible autonomy to the states, it vests in the Centre adequate powers to ensure the unity and integrity of the country. The solution of the problems of centre-state relationship lies in "the working of the provisions of the Constitution by all concerned in the balanced spirit in which the founding fathers intended them to be worked."

The centre-state relationship was generally smooth till about the time of the general elections of 1967,² though the balance remained tilted in favour of the Centre. With the coming into power of parties, in several states, different from the party ruling at the Centre, emergence of coalition governments with different ideologies and programmes, and increasing defections in legislatures, the federal polity of India is being

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1. A.I.R. 1963 S.C. 1241.

2. Centralised federalism in India has been the result of five outstanding factors : (a) monolithic parties which control the state organisations through their national organs. (b) Congress rule at the Centre and in all the states from 1950 till 1967 with minor exceptions. (c) the towering father image of Jawaharlal Nehru as the prime minister from 1950 till 1964. (d) introduction of national planning as the medium for rapid economic growth in the country. (e) continuing emergency of foreign aggression with actual occurrence of Chinese aggression in 1962 and Pakistani aggression in 1965 and 1971.

subjected to strains. Some sections of the elite and social groups are mounting pressure for reorganisation of state boundaries and for decentralisation of power.³ The growth of regional and sub-regional identities, the upsurge of regional aspirations and demands and the uneven spread of benefits of development between different states and sometimes within the same state have accentuated tensions.⁴

The solution to the problem of the centre-state relationship lies in cooperative federalism and this calls for a continual consultation between the Centre and states. To quote from a political scientist :

In all important acts of state, legal as well as administrative considerations enter and if our objective is wise, equitable and stable government, then present tendency to canvass in public purely legalistic arguments should be moderated by due regard for the practical requirements of statesmanly administration. The field where the need is the greatest is in the field of the relations of the Centre and the States and here the administration can build up (1) a highly centralized organisation accustomed to order and ensure obedience to orders, or (2) a clearing-house issuing advice and letting state governments and the law taking their own course or (3) a more statesmanly practice or delicate negotiation, conference and discussion by which political clashes and constitutional deadlocks may be averted without prejudice to any legitimate interest. The last is the best and requires most arduous labour from specially well-equipped personnel.⁵

The provisions of the Constitution not only make consultation desirable but also inevitable. Provisions empowering Parliament to legislate

3. 164 *Seminar* 10-28, April 1973 : see, in particular, the first six articles dealing with Federal Reorganisation.
4. The main issues which have led to stresses and strains are : use of discretionary powers by the Governor in appointment and dismissal of ministries and in convening, proroguing and dissolving the assemblies, the Governor's role as the head of the State; the declaration of the President's Rule; deployment of Central Reserve Police to protect the central property; use of Hindi as national language; the demand for constitution of new states on grounds of economic backwardness and cultural and linguistic differences; inter-state boundary disputes; inroads made into jurisdiction of the states by centralized planning; meagreness of the resources of the states and the demand for larger financial assistance and powers and for flexibility in utilizing central grants; constitution of food zones; location of industrial plants; creation of new all-India services and the like.
5. Bhaskaran, *Reform of Public Administration in India* in B.B. Majumdar (ed.) : *Problems of Public Administration in India*, 43-44, cited in Shriram Maheshwari, "The Centre-State Consultative Machinery in India," 16 *I.J.P.A.* 430 (1970).

in the state area on the request of two or more states, the scheme of financial relations between the Centre and the states together with a provision for Finance Commission, grants-in-aid under article 282, the scheme of centre-state administrative relationship alongwith provisions for all-India services, the creation of several agencies, e.g., a body under article 307 and Inter-State Council under article 263 are designed to promote inter-governmental cooperation and consultation is unavoidable. Even outside the Constitution a number of agencies have been created either by statute or by administrative decisions to bring out cooperation at various governmental levels. Further, despite the fact that a vast area is allocated to the Centre, such vital subjects as agriculture, education, health, law and order, police and prisons have been assigned to the states, and to lead the nation forward the Centre must have whole-hearted cooperation from the states, and for this, it will have to resort to consultation and not dictation, particularly at a time when the states are challenging central supremacy. The Concurrent List covers about 50 subjects on which both the Centre and the states have the authority to legislate. This, in turn, underlines the need for constant consultation between the Central Government and the state governments at various levels.

The states would continue to demand a greater autonomy for themselves. The political complexion of the administration at the Centre and the states would be widely diverse. With the increase in the number of coalition governments at the states (and even at the Centre) the centre-state relationship would be subjected to greater stresses and strains. All this makes consultation in the true sense imperative. So far, one-party dominance, the towering personalities of Nehru and other freedom-fighters and some other factors had created circumstances not quite favourable for the consultative process to grow in the true sense.

II

Consultation takes place at various levels. It is both formal and informal. The Governor who is responsible to the President represents one channel of consultation between the central and state governments. The Governors' Conference which is an annual feature is a forum where the Governors inform the President (the prime minister also attends the conference) about the affairs of their respective states. Another level of consultation is that of chief ministers with the prime minister. Since 1967 this conference has emerged as a powerful forum to discuss and regulate centre-state issues. Consultation at the official level is another

form which involves chief secretaries and departmental heads of the states and senior officials of the Centre.

Some of the institutions serving as consultative agencies are provided in the Constitution. Besides, there are a network of conferences and councils set up by the Central Government. Some of them, like the zonal councils, are statutory in origin. Most of them have been constituted by executive resolutions. The conferences take place at political, administrative and professional levels, *e.g.*, the National Development Council, the chief ministers' conference, the chief secretaries' conference, *etc.* The number of such conferences and councils is now fairly large.

The Planning Commission and the National Development Council constitute important consultative agencies. Nehru believed in development planning as a positive bond that would hold the country together. In pursuance of this, institutions such as the Planning Commission and the National Development Council were set up. Although no statutory basis was provided for them, they have come to play a vital role in the working of the federal system in India. The working of these institutions has shown communication gaps between the Centre and the states. For example, after debating the Fourth Five-Year Plan, the National Development Council approved the plan by a general consensus. Considerable controversy, however, developed when the Planning Commission put forward a proposal for special assistance outside the plan to nine states which were expected to have large deficits on non-plan account. The states which were not benefiting from this scheme felt that they were being made to suffer for having managed their finances better and that this scheme was a kind of bonus to improvident states. Fears were also expressed in some circles that the provision would be used for giving discretionary assistance to states, and that this would be provided on political grounds. However, when the Centre provided an adequate explanation, the criticism was mollified and the plan proposals, including the scheme of special assistance, were broadly approved. The moral from this is that there must be a much better organised and continuous dialogue between the Centre and the states.

The importance of consultative machinery in solving centre-state problems has not yet been fully recognised in India. It has mostly been utilised in matters covered under the State List and in cases where the Centre wants its decisions to be endorsed by the states. When Parliament legislates on matters within the Union List, usually the states are neither consulted nor informed. When Parliament legislates on matters within the Concurrent List, the states are generally kept informed and copies of Bills are sent to them but no regular consultation is made before the

enactment of the legislation. However, when a state legislates in the concurrent sphere, it usually consults the Centre to avoid any conflict with the Centre. The approach in regard to consultation should be "more tactical than technical." For instance, unilateral decisions of Central Government in regard to the increase in pay and dearness allowance of its civil service causes considerable embarrassment to the states when pressures are brought to bear on them to raise emoluments of the state employees. Prior and full consultation between the Centre and the states will be very helpful. True, the states are also to be blamed to some extent as they are not free from mental reservations while having consultations with the Centre.

The effectiveness of our consultative machinery has suffered on account of some common shortcomings. The inefficient handling of agenda and agenda papers, the preparation and circulation of minutes of the meetings, the tardy manner in which meetings are conducted and absence of vigorous follow-up actions after the meetings have greatly impaired the effectiveness of our consultative machinery.⁶ A study of the consultative machinery in the field of centre-state relations notices some further defects and arrives at certain conclusions:⁷

6. These shortcomings have been pointed out in various studies on public administration. The following observations from Shriram Maheshwari's study, *supra* note 5 at 444-46 are illuminating :

The meetings are convened at short notice. The agenda papers are not made available to members well in advance to enable them to come prepared for discussion. Often, the agenda papers are distributed on the day of the meeting itself...The agenda notes are copious in size, generally poor in quality and draftsmanship, lacking in pointedness and are not much enlightening on the problems and issues under examination...Nor is there any felicitous compilation of the agenda for the meeting. A tendency much in evidence is to clutter it with trivial items, which has the effect of eclipsing the momentous issues figuring on the agenda in addition to being wasteful of the members' time. Moreover, the meeting becomes unwieldy in size, because each member brings to the meeting a number of officials apparently to assist him many of whom have hardly any contribution to make. This happens because a member of the conference may not have the requisite confidence in his own ability to deal with the items on the agenda of the meeting and also because of a widespread craze for trips to Delhi (or to hill stations where several conferences meet). Furthermore, not all who come to a conference make it a point to be present in all its sessions. Generally speaking, the representatives avail of their chance to present their views after which they silently retire, apparently leaving it to the junior officers in their retinue to be present in the sessions. As an aggregate consequence of not being well-led and well-fed, the discussions become, on occasions, desultory and not even germane to the issues under discussion. The minutes of meetings, loosely drafted and not always free from ambiguity, are circulated very late which is unhelpful for keeping track of what was actually done in the meeting. Nor is there a systematic or vigorous follow-up of decisions taken by the body.

7. *Id.* at 448-49.

1. [T]here appears to be a surfeit of consultative bodies in certain fields...For instance, agriculture and matters allied to it are considered by the Conference of State Ministers of Agriculture, the Conference of State Ministers of Community Development, the Conference of State Ministers of Cooperation, the Development Commissioners' Conference, and the Conference of Agricultural Secretaries. In addition, the National Development Council, the Chief Ministers' Conference and the Conference of State Ministers of Irrigation and Power often meet to deliberate on agriculture. There is a case for rationalization....
2. Ministers' conferences, in particular, have become devalued consequent on a *flux* in the country's politics. This indeed is disheartening causing as it does a setback to democracy. As the Centre-State problems are political in the ultimate analysis, they ought to be resolved by the political leadership.
3. Almost all major areas of administration are deliberated upon by both the ministers' and the secretaries' conferences. In such cases an insistence on holding the secretaries' conference before the corresponding ministers' conference would be conducive to a more meaningful functioning of both. A proper scheduling of the conferences which appears to be completely neglected at present is overdue.
4. At present, the State ministers and civil servants spend too much of their time on visits to Delhi, thereby causing work to suffer and pile up. This is a grave matter needing the personal attention of the chief minister himself.
5. Many dimensions of consultation have been added up because of lack of clarity of the policy itself or lack of, or deficiency in, comprehension of the policy. If sufficient thought were given at the stage of policy-formation itself, many subsequent exercises in consultation would have become wholly redundant.
6. Consultation as developed in the field of Centre-State relations shows greater interplay of economic forces than is commonly realized. Indeed, consultation is a political instrument keyed to a sharing of economic benefits by all concerned and in this game the familiar party labels tend to become indistinct and blurred.
7. Consultation presupposes a spirit of give and take, which is possible if both the Centre and the constituent states show a measure of flexibility in their mutual dealings without wandering away from the perspective. The Centre's attitude has remained marked by undue rigidity and, also, by a feeling of superiority. The states, too,

have not always shown the requisite degree of responsibility in their utterances as well as in actions.

Article 263 of the Constitution dealing with the establishment of an Inter-State Council occurs in Part XI of the Constitution relating to the "Relations between the Union and the States" and falls under the head "Coordination between States." It provides for the appointment by the President by order of an Inter-State Council if it appears to him that public interest would be served by its establishment. The main purpose underlying article 263 is to enable the creation of a regular and recognised machinery of inter-governmental consultation and coordination. The various conferences and councils, mentioned earlier, are essentially *ad hoc* in nature though they serve a useful purpose of providing communication channels for our federal system. As observed above, the main reason for lack of effectiveness of the existing consultative agencies is that they are regarded as merely peripheral appendages to the federal system. An Inter-State Council under article 263 could become a national institution of central importance and could provide an "umbrella for various kinds of consultations in different fields and through different means." It could subsume the various conferences and councils.

Article 263 has not been duly invoked and only a few bodies of minor importance (the Central Council of Health, Central Council of Local Self-Government, four Regional Councils on Sales Tax) have been constituted under it. The Administrative Reforms Commission while recommending the creation of Inter-State Council, observed :

Almost all the persons, including those from the Opposition parties, who appeared before us, stated that in the altered political scene after 1967 General Elections, an Inter-State Council was necessary to discuss problems relating to Centre-State relationships. During the last two decades, no such demand was made by political parties or Chief Ministers because many of the problems were discussed and settled at informal meetings between the Chief Ministers and the Prime Minister or between the ministries of the States and the Central Government. Even now informal and *ad hoc* conferences are held for discussing and resolving the points of disputes. However, these informal conferences have not fully satisfied the concerned parties. The feeling persists that these conferences do not lead to effective and precise discussions.⁸

8. The Administrative Reforms Commission, *Report on Centre-State Relationships* 33 (1969).

The Central Government has shown reluctance to the formation of Inter-State Council. The Union law ministry in a memorandum submitted to the Administrative Reforms Commission had taken the position that the Inter-State Council under article 263 was mainly to look into disputes among the states themselves and the whole field of centre-state relations did not come within its purview. The Central Government seems to apprehend that some states may use the council platform to undermine its position and feels safe in keeping the consultative machinery *ad hoc* and with narrow terms of reference. This has led to an observer to comment :

The illusion that the absence of an institution for ventilating problems and for discussing disputes would itself act as a contraceptive is cosy and comfortable, but it is at the same time wholly unrealistic. Disputes and controversies cannot be prevented or wished away by an escapist and overcautious exclusion of the function to inquire into and advise upon such disputes from the range of the functions to be confided to the Inter-State Council.⁹

Being an advisory body and relatively free from politics, the recommendations of the Inter-State Council may receive a greater respectability and credibility. The Administrative Reforms Commission recommended that this council should consist of the prime minister, the finance and home ministers, the leader of the opposition in the Lok Sabha, five representatives, one each from the five zonal councils and such central cabinet ministers or chief ministers as are concerned with a particular subject under discussion. To begin with, such a council, as recommended by the Administrative Reforms Commission, may be set up for a period of two years and a decision may be taken for its continuance in the light of the role it plays, its performance and achievements.

9. L.M. Singhvi, "Co operative Federalism: A Case for the Establishment of an Inter-State Council," in Singhvi (ed.) *Union-State Relations in India* 216-17 (1969).