

New Pressures on Indian Federalism : Demand for State Autonomy

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I

The 1977 general elections proved to be a watershed in the political map of India. The thirty years' rule of the Congress at the Centre came to an end with the Janata Party coming to power. At the state level, the post-1967 scene has repeated itself. The political power is held by parties other than the Janata in many states, namely, West Bengal and Tripura (Marxist), Punjab (Akalis), Tamil Nadu (ADMK), Maharashtra, Orissa, Assam, Kerala and Andhra Pradesh (Congress). The resulting political scene has given rise in certain quarters to a demand for a fresh look at centre-state relations. The lead in this direction has come from the West Bengal Government which has adopted a 2,500 word memorandum suggesting changes to the Constitution.

The underlying assumption of this memorandum is that the Constitution is essentially unitary in nature and it is time that "federal principles are correctly understood and applied to help the multi-party democratic pattern survive." It has stressed that the issue of centre-state relations has assumed a new significance in the changed political context with different political parties in power in the states and at the Centre. This phenomenon has been described as "a welcome departure from the one-party authoritarian rule of the Congress." The main modifications suggested by the memorandum¹ are:

- (i) The preamble to the Constitution should be amended to include the word "federal" in the description of the Republic of India. Consequential changes should also be made replacing the word "union" by the expression "federation" in all places.
- (ii) Article 248 should be amended to ensure exclusive powers to the state legislatures to legislate on matters not included in the Union or Concurrent List. In other words, the residuary powers should lie with the states and not with the Centre. This is necessary to safeguard the autonomy of the states.

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1. The West Bengal Memorandum. The text of the *Document on Centre-State Relations* adopted by the West Bengal Cabinet on December 1, 1977 is found in *Indian Journal of Public Administration*, Vol. 23, 1117-26 (1977).

- (iii) Article 249 empowering Parliament to legislate on a subject in the State List on the ground of national interest should be deleted.
- (iv) While enlarging the scope of the states' sphere, the Union's authority in defence, foreign affairs including foreign trade, currency and communications and economic coordination should be preserved and strengthened. The role of the Union should be one of coordination. In areas such as planning, fixing of prices, wages, etc., the Union may not only coordinate but also issue general directions.

In the matter of planning, and economic coordination, however, the Union will have to conform to the general guidelines laid down by the National Development Council, in which the states will have representatives along with the Union. At present, neither the council nor the Planning Commission is specifically referred to in the Constitution. This lacuna may be closed by introducing a separate article stipulating the composition of the Planning Commission.

- (v) "Major modifications" have been suggested in matters regarding industrial licensing. The items relating to industries in the three Lists of the Seventh Schedule be modified in such a manner that the states should have exclusive powers in respect of certain categories of industries.
- (vi) Article 257-A which was incorporated into the Constitution by the 42nd Amendment Act and which empowers the Centre to deploy para-military forces of the Union in states without their consent should be deleted. The subjects of law and order and police should be fully in the sphere of the states and the Centre should not interfere.
- (vii) In order to end "the mendicant status of the States," the Constitution should provide for 75 per cent of the total revenue raised by the Centre to be given to states and the Finance Commission must decide on the principles on which the allocable revenue is to be divided among the states.

It should not be the job of the Finance Commission to decide on the proportion of revenues to be distributed between the Centre and the states. Its task should be only to fix the proportion each state should get from the total financial realisation by the Centre, 75 per cent of which is to be allotted to the states. Consequently article 280 (3) (a) should be amended to make clear the above point.

- (viii) The states should have more powers to impose taxes on their own and determine the limits of public borrowing in their respective cases.

- (ix) The Centre's right to tax property and income of the states in so far as such property is used for or income arises from trade or business of states, as provided in article 289 (2) and (3) should be dispensed with.
- (x) Article 302 which empowers the Union to restrict trade and commerce in a state should be deleted.
- (xi) The provisions in the Constitution regarding Presidential assent to state bills in articles 200 and 201 should be deleted so that the state legislatures would have supreme and plenary powers within their exclusive field.
- (xii) The composition of the Council of States (*Rajya Sabha*) should be altered to the effect that its members should be directly elected as in the case of the House of the People (*Lok Sabha*) and each state should have an equal representation, irrespective of size and population except those with population of less than three million. Both the Houses must have equal powers.
- (xiii) The significant suggestion as regards civil services is that there should be only Union services and state services and that recruitment to them be made by the Central Government and state governments respectively. The Centre should have no powers over the state services. Consequently, all-India services like the IAS, the IPS, etc., should be abolished.
- (xiv) Articles 356 and 357 which empower the Central Government to declare Presidential rule in the states should be deleted. In case of a constitutional breakdown in a state, provision must be made for the democratic step of holding an election and installing a new government as in the case of the Centre.
- (xv) Article 360 which empowers the President to proclaim a financial emergency and consequently to direct the administration of states should be deleted.
- (xvi) Article 368 should be so amended as to ensure that no amendment of the Constitution is possible without the concurrence of two-thirds of the members present and voting in each house of Parliament.
- (xvii) Article 3 which empowers Parliament to change the area of a state unilaterally should be suitably amended so as to ensure that the name and area of a state cannot be changed by Parliament without the specific consent of the state legislature.

The West Bengal Memorandum is clearly reminiscent of the efforts of the DMK Government of Tamil Nadu culminating in the appointment of the Centre-State Relations Inquiry Committee (popularly known as the Rajamannar Committee) in 1969. This Committee submitted its Report in 1971 wherein it stated that its recommendations were being made with a view to maintaining "the essential framework of the Constitution and not jeopardising the integrity of the country".² The intention was not to "grasp this sorry scheme of things entire" and to shatter it to bits and "then remould it nearer to the heart's desire" but to effectuate such changes as would make the Constitution truly federal.

However, a perusal of the Committee's recommendations reveals that if they were acted upon, the provisions of the Constitution dealing with centre-state relations would have been considerably modified. In the writer's view, the West Bengal Memorandum has taken its hue basically from the recommendations of the Rajamannar Committee. Its views on articles 81 (composition of *Rajya Sabha*), 200, 201 (Presidential assent to state bills), 248 (residuary powers), 249 (Parliament's power to legislate on state subjects in the national interest), 302 (Parliament's power to regulate intra-state trade), 356, 357 (Presidential rule in the states), 360 (declaration of financial emergency) and in respect of status of the Planning Commission and financial devolution between Centre and states, are identical with the Rajamannar Committee's recommendations.

The Rajamannar Committee pointed out that the evolution of unitary trends in India was due to the above noted constitutional provisions, to Congress (one-party) rule in both the Centre and the states, to financial dependence of the states on the Centre and to the role of development planning and the Planning Commission. The West Bengal Memorandum more or less agrees with this viewpoint although there is a change in emphasis. It says that though the Constitution of India, which was promulgated in 1950, was described as federal, in its true nature it is unitary. Its provisions made the Centre a more dominant partner vis-a-vis the states. During the last two and a half decades, persistent efforts have been made to encroach upon the limited powers of the states. It adds:

All manner of pressures have been used sometimes formally through the power of the Centre, sometimes indirectly by denying finances and other resources etc., to non-Congress Governments, and by applying pressure on the Chief Ministers of the Congress Party

2. See the *Report of the Centre-State Relations Inquiry Committee* vii (1971). See also M.C. Jain Kagzi, "A Critique of the Rajamannar Committee Report", in Alice Jacob (ed.) *Constitutional Developments since Independence*, I.L.I., 254-81 (Tripathi, Bombay, 1975).

through the organisation and leadership. During the last ten years, the Centre's tentacles have further spread to the States even in the sphere of law and order, which is formally a state subject, through the creation of the Central Reserve Police, the Border Security Force and the Industrial Security Force etc. By the 42nd Amendment to the Constitution, education which was a State subject, was transferred to the Concurrent List. The process has now reached a stage when it threatens to reduce the States to the status of subordinate departments of the Centre under the aegis of the Central Home Ministry.³

II

The sum total of the West Bengal Government's recommendations modelled on the Rajamannar Committee recommendations, would bring about a fundamental change in the Constitution. Is this warranted at this stage of the country's social, economic and political evolution? Is there any absolute federal principle in any of the world's federal constitutions as assumed by the West Bengal Memorandum? A cursory examination of the federal constitutions of the world would reveal how much they differ in numerous features and how difficult it is to find in them a common thread which can be characterised as the basic features of federalism. As has been said, "If there is such a thing as a strict, pure or unqualified federal principle, then the hard fact is that there are no federations and no federal constitutions."⁴ The Founding Fathers in fashioning the Constitution were not obsessed with any abstract federal design but gave to the country an instrument which is workable. Undoubtedly, there is a conscious tilt in favour of the Centre. This could not have been otherwise in the light of the country's various linguistic groups, religion, diversity and political demands. The main purpose was to create a strong Central Government which would knit the country into a homogenous Nation. As very aptly observed by Ambedkar, the aim was to create a Constitution which would be unitary or federal according to the exigencies of the situation.⁵ It was so framed that in normal times it could work as a federal constitution and in times of crisis or war as a unitary one. The Founding Fathers wisely gave a Constitution suited to the requirements of the country. If it showed strain in its working, the fault probably lay not in the Constitution but in those who worked it.

3. Memorandum, *supra* note 1, clause 2 of the Document.

4. K.H. Bailey, *Summary Report of Proceedings—International Legal Conference*, New Delhi, 1953-54, p. 29 quoted in M.C. Setalvad, *The Indian Constitution, 1950-1965*, 5 (University of Bombay, 1967).

5. VII C.A.D. 33-4. See also Austin, *The Indian Constitution: Cornerstone of a Nation* 186-216 (Oxford, 1966).

Federalism in the Indian context has to reconcile state autonomy with the paramount objective of maintaining the unity of the country while keeping in mind the history of political anarchy which prevailed after the dissolution of the Mughal Empire till the establishment of the British rule. The West Bengal Memorandum's basic design seems clearly to remove the constitutional bias in favour of the Centre, make the powers of the states plenary in their fields and keep the Centre's powers to the minimum. In the complex task of governance, it would be idle to expect a typical classical federation anywhere in the world. It is the Central Government which is the dominating partner in terms of powers and finances in the leading federations of the world. This is as it should be. If history is any guide to us, in India also the central government should not be weakened directly or indirectly. This is not to suggest that the aspirations of the states to blossom in their own spheres should be dampened. In the writer's view cooperative federalism seems to be the panacea for the grievances of the states. While the Centre's powers should not be diminished, it is essential that the constitutional, extra-constitutional and statutory institutions devised so far for tackling and solving the centre-state issues should be made more effective.

III

Though the division of powers is the essence of federalism, the people are one and the Centre and states operate on the same people. Hence, there is a great need for inter-governmental cooperation for minimising friction between the Centre and states.

The Constitution has envisaged the setting up of an Interstate Council to effect coordination among the states and between the Centre and the states. While the Constitution is silent as regards its composition, it specifically lays down the duties that may be assigned to this institution. The duties are to inquire and advise upon disputes between states, to investigate and discuss subjects of common interest between the Centre and states or between states *inter se* and to make recommendations for coordination of policy and action relating to such subject. The Council may either be permanent or *ad hoc*. In the past, this power has been used to constitute a Central Council of Health, a Central Council of Local Self Government and four regional Sales Tax Councils in the East, West, North and South.

The feasibility of having a permanent Interstate Council instead of *ad hoc* bodies has engaged the attention of several high powered commissions set up to examine the whole spectrum of centre-state relations. The Study Team of the Administrative Reforms Commission recommended the setting

up of the Interstate Council to deal with all issues of national importance in which the states are interested. Such a Council would render superfluous National Development Council, National Integration Council and the many functional Conferences such as the Chief Ministers' Conference, Finance Ministers' conference, Food Ministers' Conference etc. which exist. It observed:

The advantage of a single body is that every problem can be viewed by it in the perspective of the whole. This integrated look, necessary in fashioning basic policies of national importance, is missing in the dispersed system operative at present.⁶

The Study Team was not in favour of entrusting the Council with discussion of interstate disputes. On the other hand, it felt that, "saddling the proposed Council with functions in the area of disputes would prevent it from giving full attention to the various problems of national concern which it ought primarily to consider."⁷ The proposed council should meet at regular intervals but its recommendations are to be advisory only.

The Administrative Reforms Commission agreed with its Study Team on the need for such a body but differed from it as regards its composition and the scope of its functions. The A.R.C. wanted the Council to have broad terms of reference and be free to discuss and resolve both inter-state and centre-state differences. Its decisions are to be advisory though these "must be able to carry weight with the Centre and the State Governments." The Commission recommended that the Council be set up initially for a period of two years. Its continuance subsequently may depend on the experience of its functioning.⁸

The Rajamannar Committee also recommended the setting up of a permanent Interstate Council. But its scheme envisaged the Council to be a super cabinet of India whose decisions would ordinarily be binding on both the Centre and states. It is to be consulted on all matters of "national importance" or which are to affect one or more states. It should also be empowered to discuss every bill of "national importance" or which is likely to affect the interests of one or more states, "and its views on drafts of these legislative measures should, as a rule, be placed before the Parliament at the time of introduction of the Bills."

One cannot over emphasize the importance and advantage in having a formal standing body such as the Interstate Council in examining the

6. See the *Report of the Study Team of the Administrative Reforms Commission on Centre-State Relationships*, Vol. I, 300 (1968).

7. *Id.* at 303.

8. See the *Report of the Administrative Reforms Commission* 33-34 (1969).

differences between the Centre and states and states *inter se*. It seems to the writer that the present political situation is propitious for such a Council with representatives of the Centre and the states in a continuous formal dialogue. It would serve as a forum for constant communication between the Centre and the states. This presupposes that the Council should have its own secretariat. However, under the constitutional framework, its recommendations cannot but be advisory in nature. But a convention could be evolved that its recommendations should be accepted. It is not too late in the day to set up the prime institution envisaged by the Constitution for effectuating the principles of cooperative federalism.

The Planning Commission and the National Development Council, the two extra-constitutional bodies set up by the resolutions of the Central Government in 1950 and 1952 respectively, have assumed a very important role in the realm of economic planning. The Planning Commission formulates the plans (five year, annual and the rolling plans) and the NDC, as the highest deliberative body in the field of planning, gives guidelines to the planning process. But criticisms have often been raised as to the manner they operate. The Planning Commission has been characterised as the "super economic cabinet"⁹ identifying itself closely with the Central Government and imposing its will on the states. The NDC as a representative body of the Centre and the states has functioned more by fits and starts than as a regular and important element in the planning set up.¹⁰ Often it has merely been used to "rubber stamp" the decisions of the Planning Commission. The advocates of state autonomy have vehemently criticised the close association of the Planning Commission with the Centre and have demanded a constitutional or statutory status for it. Merely conferring such a status on it would not mean much. The critics forget that the Plans deal with many functions within the exclusive competence of the Central Government. It is the Centre which is in charge of monetary policy, foreign trade, foreign exchange, foreign aid and other important fiscal areas and these factors are important in the formulation of economic plans. Further, the plans also affect other matters directly under the control of the Centre such as railways, minerals, industries, shipping, interstate transport and interstate communications. The development finance for the states, the backbone of planning and implementation is provided to the states by the Centre. For all these reasons, the Commission has to work more closely

9. See Chanda, *Federalism in India: A Study of Union-State Relations* 282 (Allen & Unwin, London, 1965).

10. See the *Interim Report of the Study Team of the Administrative Reforms Commission on the Machinery for Planning Commission* 8 (1967).

with the Centre than with the states.¹¹ But then the states are also in continuous dialogue with the Commission over their plan formulation and implementation. The grievance of the states in this connection could be remedied by making the NDC more effective operationally. It should operate continuously and its work should be systematic. It is necessary that in all matters regarding plans and particularly central-state or inter-state relations in planning, the Planning Commission should seek guidance from the NDC. The Council should prescribe guidelines for the formulation of the plans, consider the plans as formulated by the Planning Commission and assess the resources required for the implementation of the plans and suggest measures for raising them.

The Zonal Councils set up for the five zones under the States Reorganization Act, 1956, constitute a well-conceived forum for promoting cooperative federalism. They can be of use in the present political situation where different parties are in power at the Central and state levels. Communication and personal contacts between the Central and state political leaders are important and these councils could be further activated to promote discussion on all problems of vital importance not only between the Centre and the states but also between one state and another.

IV

The drastic changes suggested by the West Bengal Memorandum may not be acceptable to the Central Government.¹² Differences and disputes are inevitable in a polity where powers are divided between two levels of government. Owing to the historical evolution of our Nation and other factors as the size, religion and language groups of the country, the Centre has to be strong to ward off the centrifugal forces at work. At the same time the Centre has the bounded obligation to accommodate the aspirations of the states. In this context a conscious effort may be made by the Centre to set up Interstate Council and further activate the National Development Council and Zonal Councils.

11. See Alice Jacob, *Centre-State Governmental Relations in the Indian Federal System* 10 *J.J.L.I.* 617 (1968).

12. See Kuldip Nayar, "Centre Cold to Basu's Autonomy Campaign," *Indian Express*, 1.1.1978 at p. 1. "The suggestions of Mr. Basu may largely go unheeded because any step to give more powers to the States is generally considered a movement towards impairing the unity of the country and ultimately affecting the welfare of all sections of the Indian people." Prime Minister Morarji Desai reiterated his opposition to a national dialogue on centre-state relations, while replying in the *Rajya Sabha* to a debate on the Presidential address to both Houses of Parliament. See *Statesman*, 28.2.1978.