

FEDERALISM AND STATE AUTONOMY

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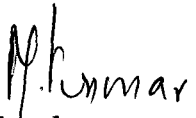
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CERTIFICATE

I certify that Mr. Ritesh Misra has pursued his research work and prepared the present dissertation entitled, "Federalism and State Autonomy" under my supervision. This work is the result of his own research and to the best of my knowledge no part of it has earlier comprised any other monograph, dissertation or book.

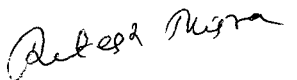

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Ritesh Misra

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CHAPTER - 1

INTRODUCTION

Classically, Federalism refers to the scheme of division of powers between the central and regional Governments whereby they are mutually independent of each other within their respective spheres. Most of the existing approaches treat Federalism simply as a polity in which powers are divided between various governmental levels. Greater and more important issues such as pluralism, decentralisation, devolution of powers and 'Autonomy' have not been given due attention in these theories even though they are inseparably linked with the Concept of Federalism. One of the major objectives of this dissertation is to focus on Federalism from a broader perspective.

In a Federation, the union and the units are supposedly equal partners in the federal set-up. However, a critical analysis of the provisions of the Indian Constitution and an appraisal of the actual working of the Indian Federal System reveals a tendency towards Centralisation. My main concern is to analyse why and how the Central Government exercises dominance over the States in India which has produced a feeling of discontent and neglect and has led to demands for more autonomy. I have attempted a historical - analytical study on the one hand of the centralizing tendencies in the Indian Federation and the demands in recent times for more autonomy by the States on the other.

Although the Government of India Act, 1919 introduced 'Dyarchy' or Dual Government in the provinces, it was the Government of India Act, 1935 which proposed a federation consisting of the British Indian provinces and the Princely States. The proposed Federation was suspended by the Viceroy in October 1939 as the Princely States, for whom it was optional to do so did not consent to join the Federation. However, the part relating to Provincial Autonomy was given effect to from October, 1937. Since the Governor-General at the Centre and the Governors in the provinces had wide ranging discretionary powers, provincial autonomy was a mockery. The Indian National Congress rejected the Act, which it considered against the interests of the people of the country. However, it contested the elections to prevent reactionary elements from capturing power and to educate the masses regarding the 'basic issues of Indian politics.'¹ The Congress got a majority in six out of eleven provinces and formed ministries in eight provinces, but these Congress ministries resigned in protest against the British Government's unilateral decision regarding India's participation in the Second World War. Political developments were now quick, such as the Quit India Movement (1942), the Cabinet Mission Plan (1946), and the Mountbatten Plan (1947), leading to partition and ultimate Independence of the Country.

1. Abdul Kalam Azad, 'India Wins Freedom', Orient Longman Publications, Bombay, 1967, p.11.

Independent India had its own Constitution framed by a Constituent Assembly which witnessed many interesting debates between the members. Those members of the Constituent Assembly who wanted a strong Union were dubbed as the 'Unionists' while members who wanted more powers to be given to the provinces were called the 'provincialists.' Among the prominent Unionists were Dr. Ambedkar, Jawaharlal Nehru, Alladi Ayyar and K.S. Santhanam, while leaders who advocated more autonomy for the provinces were H.N. Kunzru, H.V. Kamath, P.S. Deshmukh, S.K. Saksena and B.G. Kher.

The main reason advocated by Dr. Ambedkar and other leaders who shared the same point of view for granting extensive powers to the Centre was the size and diversity of the country and the need to combat the problems of Communalism. This was countered by the provincialists that diversity in the country was the very reason why decentralisation was the need of the hour. Dr. Ambedkar further said that extensive powers in the Union and Concurrent lists would 'enable the Union to meet the needs and to withstand the pressures of the times.'² Most of the members also agreed that the Centre should have paramount powers to meet the immediate goal of improving the standard of living of the people of the country and increasing

2. **Constituent Assembly Debates**, Volume VII, Government of India, Manager of Publications, New Delhi 1952, p.36.

industrial and agricultural productivity. This was contested by K. Santhanam who asserted that the welfare of the people was the responsibility of the provincial Governments.³

The provisions of the Constitution relating to the Federal set-up which were most keenly debated were the Emergency provisions, Centre-State Fiscal relations and certain specific articles such as Article 3 and Article 249. B. Das said that the inclusion of emergency provisions had made the President 'new Frankenstein'.⁴ However, the view of the Unionists was that these powers were to be used by the President in the last resort. Referring to Article 3 of the Constitution which gives the Centre power to change the names of States and the right to alter their boundaries or to divide a State into a single state, B.G. Kher, the then Prime Minister of Bombay, said that if the 'Centrists' had their way, then there would be only two lists - Union and Concurrent.⁵ Article 226 of the Draft Constitution, which was incorporated into the final Constitution as Article 249 was criticised for being inconsistent with the Federal set up. However, Dr. Ambedkar countered this criticism by saying that this provision increased flexibility as parliament now had the power to legislate on 'exclusively

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3. Constituent Assembly Debates, Volume III, p.55.
 4. Constituent Assembly Debates, Volume IX, p.517.
 5. Constituent Assembly Debates, Volume III, p.45.

provincial subjects in normal times, if they became a matter of national concern.'⁶

Ultimately, the Constituent Assembly adopted the Constitution on the 26th of November, 1949. The drafted Constitution was federal in form. Dr. Ambedkar, while introducing the Draft Constitution said, 'Federalism means the establishment of a Dual polity. The Draft Constitution is a 'Federal Constitution, inasmuch as it establishes what may be called a Dual Polity. This Dual polity under the Constitution will consist of the Union at the Centre and the States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.'⁷

The first improvement that the Constitution had over the Government of India Act, 1935 was that it was not imposed by an alien ruler, but was the product of the people of the country themselves. Furthermore the 1935 Act had given wide ranging discretionary and over-riding powers to the Governor-General and the Governors, but the Constitution formally divided power between the Centre and the States in 3 Lists : Union, State and Concurrent. This is under Article 246 in the Seventh Schedule of the Constitution.

Here a question may be raised as to whether Federalism merely means a scheme of division of powers or something

6. **Constituent Assembly Debates**, Volume VII, p.36.

7. **Constituent Assembly Debates**, Volume XI, p.976.

much broader, whether it is simply a theory enshrined in the pages of the Constitution or it is a theory which should be put into practice. For instance, the Constitution gives a prime position to the Finance Commission as a vehicle for deciding the nature of centre-state fiscal relations, but in practice, the Finance Commission has been relegated to secondary importance by the Planning Commission, which is an extra-constitutional body.

A review of the existing literature on the subject reveals that a great deal of focus has been given to the scheme of division of powers, which is the classical concept as enunciated by K.C. Wheare. An analysis of the writings of various authors would put them into three categories. The first category of writers would include constitutional experts like D.D. Basu and M.V. Pylee who provide a legalistic interpretation of Federalism. Their work is no doubt useful 'from the point of view of analysing the Constitutional provisions per se, but their works throw very little light on the functioning of the Indian Federal polity.

The second category of writers include 'historians' who have been charged as such since their literature is more of a focus on the historical perspective than on analysis. Emphasis has been given by them to the actual working of the

Indian Federation in various stages and importance is given to chronology rather than to analysis. The writings are more of a narrative nature than an in-depth study.

Finally, a third category of writers has authors such as Rajni Kothari, Paul Brass and Morris-Jones who are analytical in their work. Importance has been given by them to the concept in its different dimensions, and their research has analysed the subject from the point of view of different perspectives. These writers are also original and offer novel viewpoints. For instance, there is almost a consensus of opinion that more frequent use of Article 356 indicates a strong and authoritarian centre, but Paul Brass disagrees by saying that increasing frequency of use reveals a weak centre as it is unable to exercise control over the states and thereby has to resort to drastic measures.⁸ Similarly, Rajni Kothari presents an original view that there is a direct co-relation between the fragility of a state and its repressive nature, and the more weak a State is, the more repressive it becomes.⁹

A lacunae of existing literature on Federalism is that the emphasis is only on the issue of granting more powers to the States. This by itself is not enough since Devolution of territorial powers will not automatically ensure an

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8. Paul Brass, 'Ethnicity and Nationalism : Theory and Comparison' Sage Publications, New Delhi, Newbury Park, London, 1991.
 9. Rajni Kothari, 'State and Statelessness'. *Mainstream*, New Delhi, Annual Number 1991.

increase in democracy or even an increase in Federalism. The Federal idea is as much an idea of union as one of dispersal of powers. Federalism is not the same thing as States Rights or State Autonomy, although the latter is a necessary condition of a more efficient federal structure and a more democratic political structure. Kothari believes in greater State Autonomy as fulfilling one of the necessary conditions.¹⁰ But there are many other conditions, such as politics of co-operation, negotiation, arbitration and even persuasion, if need be, which should be met to translate State Autonomy into a truly liberating force.

The focus of my study therefore will be to find out the co-relation between Centralisation in the Indian Federation and subsequent demands for more powers by the States. For this, I have divided my work into four chapters. **The First Chapter** presents some theories regarding Federalism since it is desirable to examine the concept of Federalism before embarking on the task of explanation and analysis. These theories generally fall into two categories. They either approach their subject with static models of Federalism or they consider Federalism a dynamic process of evolution where a reconciliation is brought about between the forces of unity and diversity.

10. Rajni Kothari, 'State Against Democracy: In Search of Humane Governance', Ajanta Publications, New Delhi, 1988, pp.144-145.

The **Second Chapter** deals with the centralizing tendencies in the Indian Federation. A brief historical background is given since every Federation comes into existence not simply as theory but out of necessity for it is created out of the exigencies of an actual historical situation. In this Chapter I have focussed on the Constitution's unitary features and on the working of the Indian Federation after 1965 since Centralisation took place at a much more rapid pace in this period.

The **Third Chapter** deals with the different dimension of State Autonomy demands in the Indian polity as well as the response of the Indian State to these demands. I have focussed on Pluralism, Delegation, Decentralisation and Devolution of powers as essential components of a federal set up.

The **Fourth Chapter** examines specific demands for State Autonomy by certain States such as Punjab, Assam and Jammu and Kashmir. I have sought to explain that the problems in these States is an illustration of their desire for more autonomy.

For my research, I have consulted both Primary and Secondary sources.

CHAPTER - 2

THEORIES OF FEDERALISM

Federal forms of Government are gaining in popularity throughout the world as this governmental system seeks to reconcile the principles of national unity and regional autonomy. Not only the U.S.A., which is the classical home of federalism, but many other countries such as India, Canada, Australia and Switzerland also have federal governmental structures. However, the term Federalism has been interpreted differently by different writers. In this chapter, I propose to present different theories of Federalism since before undertaking the task of explanation and analysis, the term Federalism should be properly understood in its different dimensions. Further, empirical knowledge without a sound understanding of theory would be of no use for it is theory by which we bring our evaluative concerns to the understanding of Federalism.

Although the Federal form of government is not uncommon, the term Federation has been variously defined by different writers. Broadly speaking there are four different theories of Federalism : Classical Theory, Sociological Theory, Dynamic Theory and Bargain Theory. These theories attach importance to Federalism either as a Constitutional process whereby there is distribution of power between the Union and the Units or as a dynamic process where a reconciliation is brought about between the forces of unity and diversity. Thus Federalism is

considered to be a static model or it is viewed as a dynamic process of evolution.

(i) The Classical Theory

Writers such as A.V. Dicey, A.F. Freeman and more recently, K.C. Wheare, are the major exponents on the Classical or Traditional Theory of Federalism. All of them agree that the most important feature of Federalism is that the Central and Regional Governments should be completely independent of each other's control and that they should be restricted within the limits of their jurisdiction by a written Constitution which is the Supreme law of the land.

A brief elaboration of the views of these three main advocates of the Classical Theory is required to put their understanding of the Concept of Federalism in the proper perspective which would throw more light on the subject. According to Dicey, a Federal Government is one in which the powers of the State are distributed among a number of co-ordinate bodies each originating in and controlled by the Constitution. Federalism is a political contrivance intended to reconcile national unity with maintenance of State rights.¹ While agreeing with the basic thesis laid down by Dicey, Freeman adds that a Federation must have two important characteristics. 'On one hand, each of the

1. A.V. Dicey, *Introduction to The Study of the Law of the Constitution*, Macmillan Company, London, 1939 p.157.

members of the Union must be wholly independent in those matters which concern that member only. On the other hand, all must be subject to a common power in those matters which concern the whole body of the members collectively. Each member is perfectly independent in its own sphere.'²

K.C. Wheare explained the traditional theory of Federalism in his classic work. **Federal Government**. Wheare's objective was to analyse the Federal systems of different countries and to find out the common features of such systems. On the basis of his findings, Wheare concluded that the essential feature of a federal system was the distribution of powers between the Union and the Units. To quote Wheare, in a federal system, the powers of the Government 'are divided between a Government for the whole country and Governments for parts of the country in such a way that each Government is legally independent within its own sphere. In particular, the legislature of the whole country has limited powers, and the legislatures of the states or provinces have limited powers. Neither is subordinate to the other; both are co-ordinate.'³ An analysis of Wheare's arguments reveals that he has given maximum attention to the law-making powers of the State and thus for him, the essence of Federalism is the duality of

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2. A.E. Freeman, **History of the Federal Government in Greece and Italy**. Macmillan Company, London, 1893, p.3.
 3. K.C. Wheare, **Modern Constitution**, Second Edition, Oxford University press, London, 1966, p.19.

legal sovereignty.⁴ This distinguishes a Federation from a Confederation in which the State Governments are legally superior and from a Unitary system in which legal superiority is enjoyed by the Central Government.

Wheare further stipulates that a Federation must have the following characteristics; There must be a Constitutional division of legal authority; The Constitution should not be amendable by the Central or Regional Governments alone; there should be an arbiter, usually the Supreme Court, to resolve disputes between the Central and Regional Governments; and the Constitution should be the Supreme law of the land. Wheare divided the Constitutions or governmental systems of various countries as federal, quasi-federal or unitary according to the degree by which they meet these characteristics. Following his own criteria, Wheare asserted that the Indian Constitution provides 'a system of government which is quasi-federal ... a Unitary State with subsidiary federal features rather than a Federal State with subsidiary unitary features.'⁵ This is because even though the Indian Constitution provides for a division of the law making power, in practice the Central Government dominates over the regional Governments in this field.

4. K.C. Wheare, *Federal Government*, Third Edition, Oxford University Press, London, 1956, p.10.

5. Wheare, K.C. (London, 1956), p.28.

The limitation of the traditional theory is its rigid character. It is outdated since factors such as the emergence of the welfare State, national planning and development and the need for industrialization demand inter-dependence and co-operation between the Central and regional Governments. It is longer possible for the different levels of government to pursue independent courses of action as envisaged by Dicey, Freeman and Wheare. Furthermore, the social, economic and technological developments in the recent past have influenced the federal character of the state in such a manner that the classical distribution of powers is no longer possible. As has been pointed out by A.H. Birch, a critic of Wheare, 'the tremendous growth of concurrent powers in the last part of the nineteenth century and during this century has brought about an overlapping of Governmental functions so that it is difficult to see the various levels of Government restricted to their own spheres.'⁶ For instance, in India, the Constitution has provided for a Concurrent List, where both the Central and the State Governments are empowered to make laws on items enumerated in this List. Thus the dualism of legal sovereignty on which the traditional legal conception of Federalism rests does not help us understand the functions of the federal polity in many countries today.

6. A.H. Birch, *Federalism, Finance and Social Legislation in Canada, Australia and the U.S.*, Oxford University Press, London, 1955, pp.290-291.

(2) The Sociological Theory

Since the classical theory is quite rigid in its definition of a federal system, scholars have attempted to redefine Federalism in different ways and one such attempt is the Sociological analysis of the Governmental Structure. This theory contends that Federalism is in essence a phenomena of social diversity rather than merely enumerating the powers of the various levels of Government in a Constitution.

The most prominent advocate of the Sociological theory is W.S. Livingston. According to him; the essence of Federalism lies not in the constitutional or institutional structure but in the society itself. The Federal Government is a device by which the federal quality of a society is articulated and protected.⁷ For Livingston, Federalism is not merely an institutional concept but more a functional one and thus any theory which asserts that there are certain inflexible characteristics without which a political system cannot be federal ignores the fact that institutions are not the same thing in different social and cultural environments.⁸

The Sociological theory also emphasizes that various social diversities, such as, religion, race, language,

7. W.S. Livingston, *Federalism and Constitutional Change*, Oxford University Press, London, 1956, p.2.

8. *Ibid.*, pp.6-7.

nationality," difference in economic interests and dissimilarity of social and political institutions produce a federal system. These diversities which exist, in differing degrees in all societies are said to be reflected in political phenomena which Livingston calls 'Federal Instrumentalities'. A fair number of these must emerge before it would be reasonable to describe the political system as a whole as Federal.⁹

The very nature of the Sociological theory which treats 'Federation' not as an absolute but a relative term precludes it from even attempting to classify various federations. Unlike the Classical theory, its criteria for describing a Constitution as Federal or not is by analysing how the constitutional institutions function rather than merely finding out whether the Constitution has envisaged such institutions or not. Further, this theory suggests that a society's real nature can be examined only by observing how various institutions function in it. The operation and not the form should be analysed and the forces that determine the manner of operation are even more important and should be closely analysed.

Thus Federalism is viewed by the Sociological theory as a system which arises by virtue of the distribution of certain diversities in a society. A Federal Government can

9. Ibid., p.4.

be considered as a form of political and constitutional arrangement that unites into a single polity a number of diversified groups or component polities. In such an organisation the personality and individuality of the component parts are largely preserved while at the same time a separate and distinct political and constitutional unit is created in the new totality.

An approval of the Sociological theory is to be found in the writings of the radical liberal, Rajni Kothari. According to him, the debate over federalism as merely a question of centre-state relations is a mechanistic view point in which neither the people nor the great diversity of society and culture find a place. Instead of an artificial formulation of Federalism as merely division of powers between different governmental levels an organic view should be taken which takes into account the society's fundamental nature and then only a political structure should be created which recognises these diversities of society.¹⁰

Although the Sociological theory is quite broad in its scope, especially in comparison to the classical theory, there are certain limitations inherent in it. The approach seems to be somewhat self-defeating since the main aim of this kind of a comparative study is to produce generalizations, despite the fact that it is very difficult

10. Rajni Kothari, 'The Problem', Seminar, May 1989, New Delhi.

to make any firm and definite generalizations about society, as it is a category which does not have a well defined membership. Furthermore, under his heading of 'Federal Instrumentalities'; Livingston has included a wide variety of phenomena such as laws, regulations, theories, concepts and attitudes and propositions based on these are not specific enough to be helpful in a study of Federalism. In this respect, his analysis can be said to have the same kind of institutional bias as K.C. Wheare's.

Thus, Livingston's theory may have a wider perspective than the traditional theory but it has certain defects from the analytical point of view, which limit its usefulness as a tool of analysis.

(3) The Dynamic Theory

Various scholars who are opposed to the static model of Federalism which operates within a legal framework and a structural boundary share the view that Federalism has to be seen primarily as a dynamic process. According to these writers, the Dynamic model is applicable to the newly formed federal systems of the world, who hardly conform to Wheare's model. For instance, the Indian Federation, which has several unitary features, can be seen as a process rather than as a static pattern, keeping in mind the several changes that have taken place since the adoption of the Indian Constitution.

The most prominent advocate of the Dynamic theory is C.J. Friedrich. According to him, 'Federalism should not be seen only as a static pattern or design characterized by a particular and precise division of power at governmental levels. Instead Federalism is also and perhaps primarily the process by which a number of separate political communities enter into arrangements for working out solutions, adopting joint policies and making joint decisions by which a unitary political community becomes differentiated into a federally organised whole.'¹¹ For instance, the American Federation has continuously adapted itself to the changing circumstances and thus fits into the dynamic theory model. The framers of the U.S. Constitution had provided for a weak centre. However pressing factors such as technological and economic demands, need to contain Soviet Union, the Supreme Court's 'implied powers', and the emergence and growth of two powerful national parties have all contributed to the increase in powers of the Central Government. Even the Indian case can be cited in defence of the Dynamic theory since there is a vast change in what the Indian Federation is now and what was envisaged by the original Constitution, and this change has been brought about by both constitutional and extra-constitutional factors. Even K.C. Wheare, whose traditional theory is diametrically opposite to the Dynamic theory concedes that

11. C.J. Friedrich, *Trends of Federalism in Theory and Practice*, Frederick A. Preger Publications, New York, 1968, p.7.

'the national Governments have grown in importance in comparison to the regional Governments, because they began from nothing and because they were endowed with control over most of the important matters with which Governments have to deal.'¹²

According to the Dynamic theory, Federalism can be seen as a territorial division of powers. As Friedrich views it, 'It is a kind of division or separation of powers but applied on a territorial basis. We can speak of Federalism only if a set of political communities co-exist and interact as autonomous entities, united in a common order with an autonomy of its own.'¹³ Thus the Dynamic theory gives importance to State Autonomy as well.

Therefore, Federalism is said to be the process of federalizing; that is, the process of achieving a Union of groups which retain their identity. It follows that Federalism may operate in both the direction of Integration and differentiation. This aspect can be prominently marked in most federal systems after World War II. There are certain factors which create conditions for integration. Some of these are: 'war politics, depression politics, welfare politics, technopolitics, grants-in-aid politics and party politics. The horrible conditions of war and economic

12. Wheare, K.C. (London, 1966), p.238.

13. C.J. Friedrich, **Constitutional Government and Democracy**, Oxford and I.B.H. Publishing Company, New Delhi, 1974, p.195.

depression demand unitary control for the effective protection of national interest.¹⁴ At the same time, the need for a sustainable economic development throughout the country, dependence of the Central Government on the regional Governments for effective implementation of welfare measures, and the existence of social and cultural bonds ensure that decision-making is divided between the Central Government and the regional or State Governments.

Thus the Dynamic theory takes a broad view of Federalism by giving due importance to non-institutional factors and circumstances, it has rejected the former rigid approach and instead it emphasizes the recognition of a Federal process.

(4) The Bargain Theory

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Recently, a new theory of Federalism has been enunciated by a number of writers who argue that a form of bargain takes place between the different governmental levels before decisions are taken. Some of the prominent advocates of this theory are M.C.J. Vile, W.H. Riker, and R.J. May.

According to the Bargain theory, a Federation is a system of Government in which the central and regional authorities are linked together in a mutually interdependent

14. J.C. Johari, Comparative Politics, Sterling Publishers Private Limited, New Delhi, 1980, p.617.

political relationship. A balance is maintained so that neither level of government becomes dominant to the extent that it can dictate the decisions of the other. Usually, but not necessarily, the system is related to a Constitutional structure, which establishes an independent legal existence for both central and regional governments and provides that neither shall be legally subordinate to the other. Vile says that the Governmental functions are distributed between these governmental levels either exclusively, competitively or co-operatively initially perhaps by a Constitutional document, but thereafter by a political process.¹⁵ Scholars such as Friedrich, Riker, May and even K.C. Wheare approved of this definition of Federalism given by Vile in 1961.

The Bargain theory has it that in a Federal system the Constitution is always the result of a political bargain which has taken place in a historically unique situation. The Constitution provides for two levels of government, each of which has at least one area of action in which it is autonomous and each of which has some guarantee, given by the Constitution itself, of its concerned autonomy within its sphere.

According to Riker, there are two conditions necessary for the striking of a bargain and he asserts that whether

15. M.C.J. Vile, *The Structure of American Federalism*, Oxford University press, London, 1961, p.199.

these conditions exist or not determine the success or failure of a federation. The first condition is the existence of politicians who wish to expand the area of territorial control either 'to meet an external military or diplomatic aggression but prefer to expand without the use of force.'¹⁶ The second condition is the willingness of the asserting politicians to surrender part of their independence, either because they desire protection from an external threat or because they desire to participate in the potential aggression of a Federation.¹⁷ Thus Riker has directly focussed on the political aspects of Federalism. he has given a different viewpoint in a period where importance was given to social and economic factors alone.

Although Riker's approach is a novel one, he has been criticised for viewing a Federation as a limited purpose association and for overstressing the military - diplomatic factor. Before the rise of modern centralised federations, Federalism could sometimes be regarded as essentially a limited purpose alliance for mutual military security in the face of a common danger. With the changed emphasis of modern Federalism on an interplay of various factors, the military factor can no longer be a sufficient condition for the rise of a Federation of a centralised variety.

16. W.H. Riker, **Federation, Origin, Operation, Significance**, Little, Brown and Company, Boston, 1960, p.11.

17. Ibid., p.11.

Like Riker, R.J. May has also dealt with the political aspects of Federalism. he shares the same viewpoint with Vile that the distinctive feature of a federal political system is that neither the Central nor the regional Governments can dictate the decisions of the other.¹⁸ Despite the formal division of decision-making, however, decisions taken by the Central and Regional Governments affect one another. This is due to their interdependence with one another and so they seek to persuade, influence and bargain with one another even though they cannot dictate each other's decisions. Bargaining power and skill also influence and determine decision-making and decision-executing processes since the centre has a supreme position by virtue of an unmistakable tendency of centralisation of powers while the units have a 'superior' capacity by virtue of their respective position, demographic, strategic, political and economic.¹⁹

The Bargain theory also holds that in a Federation, instead of two independent political systems, there is a single system containing within it a number of overlapping sub-entities. The total output of policies is a product not only of the bargaining which takes place within the central and each unit sub-system but also of the bargaining which goes on in the total federal system. The nature of the

18. R.J. May, *Federalism and Fiscal Adjustment*, Clarendon Press, Oxford, 1969, p.3.

19. Johari, J.C. (New Delhi, 1980), p.41.

bargaining process will depend mainly on the power potentials and bargaining potentialities of the various Governments.

The concept of Co-operative Federalism can be mentioned in relation to the Bargain theory since Co-operative Federalism is not a theory of Federalism as such, but a concept elaborated by different writers from their analysis of the working of different Federations. A.H. Birch was the first writer to use the term 'Co-operative Federalism', which in his opinion, is distinguished by the 'practice of administrative co-operation between general and regional Governments, the partial dependence of the regional Governments upon payments from the general Governments.'²⁰ In a co-operative Federalism, the centre-state problems are solved through processes of bargaining, negotiation, arbitration and conciliation between the different levels of Government. Co-operative Federalism produces a strong Central Government, yet it does not necessarily result in weak provincial Governments that are largely administrative agencies for central policies.²¹ Granville Austin was the first writer to apply this concept in the Indian model and according to him, the Indian Federation is an example of a Co-operative Federation.

20. Birch, A.H. (London, 1955), p.305.

21. Granville Austin, 'The Indian Constitution: Cornerstone of a Nation', London, 'Oxford University Press, 1966, p.187.

An analysis of the various theories of Federalism dealt with above reveals one commonality in them. Each theory has pointed out a set of conditions in which a new Federation is likely to be created. The approach of the writers who have laid down these theories is however different and so are their definitions of Federalism. Each of them has handled the concept in a different manner. Wheare aims at providing a detailed comparative study of the federal systems which confirm to his model. While Livingston says that social diversities produce a Federation, Friedrich views Federalism as a process of 'Federalising'. Riker and May have focussed on the political aspects responsible, in their opinion for the formation of a Federation. Thus, each of these writers have their respective merits. They have focussed on the concept from different angles and have sought to throw light on Federalism as either a static or a dynamic model.

A comparative study of these theories shows that it is the Bargain theory which can be said to be best suited to the Indian model. In India the centre and the states are mutually and inseparably linked together. Bargaining takes place between the federal units through such forums as the National Development Council, Zonal Councils and Inter-State Councils. However, over the years the Centre has dominated the bargaining process, so much so that Centralisation has

become an unmistakable feature of the Indian federation. Further, the Indian Federation is dynamic in nature and has undergone considerable changes over the years. Since the Bargain theory is a dynamic theory which does not stick to the static model, in my opinion, it is best suited to analyse the working of the Indian federation and the Centralisation which has been marked in the Indian polity.

CHAPTER - 3

CENTRALISING TENDENCIES IN THE INDIAN FEDERATION

Centralisation is the most important trend which can be noticed in every federation in recent times and the Indian Federation is no exception to this. This chapter presents a historical - analytical study of the Centralisation in the Indian Federation which is reflected significantly in the actual working of the Federal system. I have sought to find out whether Centralisation is manifest in the Constitution itself or whether the Central Government has assumed more and more powers over the years. The question also arises as to what should be the main debate regarding Centralisation - Should State Governments be given full autonomy in all spheres or certain matters should be reserved for the Central Government alone in the interests of the unity and integrity of the country. Furthermore, the Constitution has given the State Governments powers in certain areas and I have tried to focus on the factors which have led the Central Government to assume influence and control on these functions. This trend towards centralisation has become more evident after 1965. I have tried to find out why this is so and what has been the impact of this trend on the functioning of the federal system.

It is a debatable issue as to whether the Indian Constitution is naturally oriented towards Centralisation. Different Constitutional experts, jurists and political

scientists "have variously characterised the Indian Constitution as either unitary or federal or quasi-federal in nature. The Chairman of the Drafting Committee of the Constitution, Dr. B.R. Ambedkar, emphasized that the Indian System is federal in nature as the chief attribute of Federalism - the division of legislative and executive authority between the Centre and the States has been laid down in the Indian Constitution.¹ Others such as Ivor Jennings, K.C. Wheare and D.D. Basu, by taking the criteria of division of powers between the Union and Units come up with different interpretations. Jennings, for example, asserts that the Indian Constitution has a strong centralizing tendency as the Union Government has much more powers than the State Governments over whom it dominates.² K.C. Wheare, however, takes a middle path between Dr. Ambedkar and Sir Jennings by characterising the Indian system as a 'quasi-federal polity. He observes that India is a 'unitary state with subsidiary federal features rather than a Federal State with subsidiary unitary features.'³ The Indian Constitutional expert, D.D. Basu says that the Indian Constitution is 'neither purely federal nor purely unitary but is a combination of both. It is a Union or Composite State of a novel type. It enshrines the principle

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1. **Constituent Assembly debates**, Volume XI, Government of India, Manager of Publications, New Delhi, 1952, p.976.
 2. I. Jennings, '**Some Characteristics of the Indian Constitution**', Oxford University press, London, 1953, p.1.
 3. K.C. Wheare, '**Modern Constitutions**', Second Edition, Oxford University Press, London, p.21.

that in spite of federalism the national interest ought to be paramount.⁴

Before entering into the debate on the degree of centralisation in the Indian Federation certain essential features of a federal polity which the Indian model does possess should be pointed out. The Indian System has a written Constitution which is supreme in the sense that every power, legislative, executive or judicial, whether it belongs to the Central or State Government is subordinate to and controlled by the Constitution. Both the Central and State Governments derive their authority from the Constitution and the Component states have no right to secede from the Federation. Article 246 in the 7th Schedule of the Constitution divides power formally between the centre and the states in 3 Lists, Union, State and Concurrent. Items such as Defence, Foreign Affairs, Communications, Currency and Coinage, banking and Insurance are included in the Union List which has 97 entries. The State List has 66 items which include law and order, local Government, public health, education and agriculture. Items such as the legal system, trade and industry, and economic and social planning are included in the Concurrent List which has 47 entries. The Legislative and Administrative relations between the Union and the States have been dealt

4. D.D. Basu, 'Introduction to the Constitution of India'. Eleventh Edition, Practice Hall of India Private Limited, New Delhi, 1985, p.59.

with in Part XI of the Constitution vide Articles 245 to 263. Articles 268 to 281 deal with the distribution of revenues between the Union and the States and these are included in part XII of the Constitution. Part XIV deals with the services under the Union and the States. Finally, India has an independent judiciary which is essential in a federal polity and the Courts are given the final power to interpret the Constitution and nullify any action on the part of various levels of Government which violate the provisions of the Constitution.

Although these Constitutional provisions are features of a Federal polity, on analysis, they reveal that Constitutionally, the centre has been given an overriding position with regard to the States. It may be noted that not only does the Union List have more entries but it also deals with more important items like Defence, Foreign Affairs, and Communications. Besides, in respect of Concurrent Items, Union Laws prevail over those of the State. Further, only the Union Government is bestowed with the power to make laws on residuary items, i.e. those not covered in either of the Lists.

The Constitution makers have included further provisions which give the Centre a superior position vis-a-vis the States. For instance, as per the provisions of Article 249, the Rajya Sabha can pass a resolution in the

national interest by a two-thirds majority which gives Parliament the power to make laws on any law in the State List. The Constitution also provides that the States have to ensure compliance within their borders, with centrally promulgated laws and to refrain from impeding the exercise by the Central Government of its executive powers. The Parliament may also make provisions for the adjudication of inter-state disputes about the use, control and distribution of river waters. The Governor of a State, who is appointed by the President, may withhold consent to a bill passed by the State Legislature, or may reserve it for the consideration of the President. The Constitution also does not guarantee even the territorial integrity of the States. As per the provisions of Article 3 of the Constitution, on the recommendation of the President, Parliament by a simple majority can establish new States and alter the boundaries, areas and names of existing States. This particular provision is inconsistent with the Federal principle as a parliamentary majority need not necessarily reflect the views of the provinces.

Here a question may be raised: if Centralisation is inherent in the Constitution itself, then is there a need for a debate regarding it? It is true that the Constitution does have certain unitary features but pressing factors such as the size of the country, the need to combat Communalism

and the requirement of meeting immediate goals such as improving the standard of living of the citizens and removing basic inequalities among them prompted the Constituent Assembly members to incorporate these features into the Constitution. Even so, Dr. Ambedkar denied that there was any Centralisation in the Constitution as these features were required to meet the exigencies of the present situation. He asserted that the Constitution had upheld the basic principle of Federalism by ensuring that the 'States are in no way dependent on the Centre for their legislative or executive authority. The States and the Centre are co-equal in this matter.'⁵

Dr. Ambedkar's assertion notwithstanding, the Emergency provisions of the Indian Constitution, which are laid down in Articles 352, 356 and 360, have the potential to transform India into a unitary State. These provisions, borrowed from Germany's Weimar Constitution, were passed by the Constituent Assembly after a great deal of debate and discussion. K.T. Shah termed these provisions as 'the grand Finale and Crowning glory of a chapter of reaction and retrogression.'⁶ The provision, particularly relating to Article 356 or President's Rule invited severe criticism from certain members in the Constituent Assembly. For instance, H.V. Kamath and H.N. Kunzru thought that this provision

5. Constituent Assembly Debates, Volume VII, p.35.

6. Constituent Assembly Debates, Volume VIII, p.196.

reduced provincial autonomy to a farce.⁷ However, Dr. Ambedkar, Ayyar and Santhanam defended its inclusion on the grounds that the exigencies of the current situation demanded the provision and it would also meet unforeseen circumstances which may arise in the future.⁸ It was held by the members that the Governor of a State could act in his discretion but he was bound to communicate to the President his analysis of the prevailing situation so that the President could then take whatever action he thought desirable. However, the words, 'or otherwise', was included in the Article so that in the event of a breakdown of Constitutional machinery in a State, the President could take independent action even without depending on the Governor's report.

The most controversial of the Emergency provisions is Article 356 and since Independence, it has been used as many as 86 times to deal with various crises in the States.⁹ Advocates of State Autonomy have called Article 356 a draconian provision in the hands of the Central Government. The first instance of its use was in June 1951, in the Punjab when an alternative ministry could not be formed after the resignation of Dr. Gopichand Bhargava. The most serious criticism of the misuse of this provision was levelled against the Janata Government's dismissal of 8 democratically elected state Governments in 1977 and the

7. **Constituent Assembly Debates**, Volume IX, pp.140-146.
8. **Constituent Assembly Debates**, Volume IX, pp.151-157.
9. **Times of India**, New Delhi, December 25, 1992.

reciprocal dismissal of 9 elected Janata Government by Mrs. Gandhi in 1980. It may be noted that the frequency of use of Article 356 went up steadily after 1960 and dramatically after 1966 when Indira Gandhi became the Prime Minister. This resulted in increasing Centralisation and an effective reduction of State Autonomy. For this reason, Rajni Kothari terms Emergency a 'logical extension of a Centralised State.'¹⁰ Before 1966, President's Rule was imposed in the States just 9 times but henceforth its imposition became more and more frequent.¹¹ This may be more vividly presented in a table form.

Period	No. of times President's Rule has been imposed
1951-1965	9
1966-1975	28
1976-1985	33
1986-present	16

*12

This table clearly shows that after 1965 Centralisation in the form of imposition of President's Rule has increased at a very fast rate which was not the case in the Nehruvian period. Thus there is almost a consensus of opinion that Indira Gandhi's period saw a concentration of powers at the

10. Kothari (New Delhi, 1988), p.190.

11. Basu, D.D. (New Delhi, 1985), p.325.

12. Sources Basu, D.D. (New Delhi, 1985) and The Times of India, New Delhi, December 25, 1992.

centre which had a scant regard for its federal partner - the States. Rajni Kothari calls this period a 'period of transition, caused by the erosion of the Congress system.'¹³ With the gradual closure of the political processes. Within the Congress and the undermining of State and local bodies and other institutions under Indira Gandhi the centralising tendencies inherent in our Constitution came to the force.¹⁴ Morris-Jones also sees this period as a period of destruction and deadlock, as a period of challenge.¹⁵ All these authors share the view that this period saw the Central Government assuming an authoritarian role and in the process, the autonomy of the states was vastly reduced and in effect, they were reduced to puppets in the hands of the centre. Paul Brass also contends that in order to maintain power at the centre, the Congress Party under Indira Gandhi felt obliged to centralize power, nationalise issues and intervene increasingly in state and even district politics.¹⁶

A dissenting note is however sounded by Myron Weiner who in 1968, argued that State Autonomy was considerable and it was safe from central intervention. He remarked that 'it is most unlikely that the Centre will be able to take power

13. Rajni Kothari, 'Politics and the People: In Search of a Humane India', Ajanta Publications, New Delhi, 1989, p.157.

14. Kothari (New Delhi, 1988), p.188.

15. W.H. Morris-Jones, 'The Government and Politics of India', B.I. Publications, New Delhi, 1974, p.72.

16. Brass (New Delhi/Newbury/London, 1991), p.172.

away from the States. Indeed the trend has been just the reverse : the States have tended to become politically more autonomous and to accept central advice reluctantly.¹⁷

However, the fact that this provision has been used so frequently points to the inescapable fact that it is a drastic coercive power in the hands of the centre. Even Dr. Ambedkar hoped that these articles relating to imposition of emergency would remain a 'dead letter' and would not be used ordinarily, and if used, the President would take proper precautions before dismissing a State Government.¹⁸ In the early years after Independence, this provision was sparingly used, but frequent resort to it, especially after 1965 seems to have belied this hope of Dr. Ambedkar. The specific ways in which Article 356 has been misused directly undermining State Autonomy are by :

- (a) dismissing a democratically elected Government having a majority in the State Legislative Assembly;
- (b) Suspending and dissolving the State Assemblies on partisan considerations;
- (c) not giving an opportunity to the opposition to form the Government when no political party enjoys a clear majority in the Assembly; and
- (d) not allowing the opposition an opportunity to form the Government after the defeat of the Ministry on the

17. Myron Weiner, "Political Development in the Indian States", Myron Weiner (ed.), 'State Politics in India', Princeton University Press, Princeton, 1968, p.68.

18. Constituent Assembly Debates, Volume IX, p.177.

floor of the House and its subsequent resignation.

Often it is seen that President's Rule has been imposed even without a report by the Governor of a State. Although this is constitutional, and has been justified by the inclusion of the words 'or otherwise' in the Article, it seems contradictory since the Governor is the agent of the centre and it looks only logical that his views on such a serious matter regarding the federal polity should be ascertained before taking such a drastic step of imposing President's Rule. The independence of the Governors has thus been compromised and since the Governor is the constitutional head of the State, ultimately it is the State's autonomy which has been adversely affected. Glaring examples of the centre's domination in such a sensitive matter are the cases of Tamil Nadu, Bihar and Nagaland. The Governors of Tamil Nadu and Nagaland, Mr. Barnala and Mr. Vamuzo respectively refused to comply with the Centre's demand to send an adverse report against the State Government. Both of them resigned when the elected Governments of Mr. Karunanidhi and Mr. Vamuzo were dismissed perfunctorily by the Centre.¹⁹ In Bihar, the Governor, Mohammed Yunus Saleem was dismissed by the President, Mr. R. Venkataraman on February 13, 1991, the day of Barnala's resignation, for allegedly refusing to give a negative report against the Laloo Prasad Yadav Government, on the

19. Times of India, New Delhi, Feb. 14, 1991.

pressure of the then Prime Minister, Chandra Sekhar.²⁰

Earlier, in the 1980's, there have been numerous instances of the summary dismissal of popularly elected State Governments, both in Mrs. Gandhi's and Rajiv Gandhi's period, Rajni Kothari says that 'Rajiv Gandhi has eroded the Federal structure even more than Mrs. Gandhi.'²¹ This is because in the short period between 1984 and 1989 there were numerous instances of dismissal of State Governments and in all these cases either the Ministry had a majority which it was not allowed to prove on the floor of the house or the possibilities of an alternative Government were not explored. For example, Dr. Farooq Abdullah's national Conference Government was dismissed in July 1984. lack of space does not permit an explanation of all these cases which clearly show the increased Centralisation in the Indian Federation.²²

The latest instance of the use of Article 356 was in december, 1992 when the 4 B.J.P. Governments in North India were dismissed and President's Rule imposed. The Government of Uttar Pradesh was dismissed on December 6, 1992 following the demolition of the Babri Masjid while subsequently the Governments of Madhya Pradesh, Himachal Pradesh and Rajasthan were dismissed on the grounds that the State

20. Times of India, New Delhi, Feb. 16, 1991.

21. Rajni Kothari, "The Problem", Seminar, New Delhi, May 1989.

22. Other dismissals were N.T. Rama Rao's Government in August 1984, S.S. Barnala's Ministry in May 1987, S.R. Bommai's Government in April 1989 and Prafulla Mahanta's Government in November 1990.

Governments were not likely to implement central directives regarding the banning of certain communal organisations. The Prime Minister, P.V. Narasimha Rao, told the Lok Sabha on December 21, 1992 that Article 356 had been put to the test for the first time and it had proved a failure.²³ It should be amended, according to him, to empower the Central Government to dismiss a State Government merely on the ground of the apprehension of a certain situation arising. This raises the question as to whether a mere changing of the Constitutional provisions can rectify the matter as already the article has been termed authoritarian and such an amendment, as proposed by the Prime Minister would merely add to its draconian nature. Moreover, in the Ayodhya Case, the Central Government was instructed by the Supreme Court to deal with the matter constitutionally. An argument may be offered that action could have been taken under Article 352 which relates to National Emergency and under Article 355 which casts upon the Union Government the duty to protect the States from internal disturbance and to ensure that the Government is carried on in accordance with the provisions of the Constitution.

Although Article 356 is the Emergency provision which has been used most often, Article 352 and 356 also have the potential to transform Federal India into a purely unitary State. Article 360, which relates to Financial Emergency

23. Times of India, New Delhi, December 25, 1992.

was vehemently criticised in the Constituent Assembly by H.N. Kunzru on the grounds that this provision took away the fiscal autonomy of the States and reduced them to the status of municipal and district boards.²⁴ Alladi Ayyar however refuted this argument by pointing out that even in normal circumstances the collection and distribution of revenues was controlled by the centre and this provision was required in the national interest when the financial stability of the country was threatened.²⁵ As per the provisions of this article, if Financial Emergency is imposed, then the centre can direct the States in financial matters, reduce salaries of public servants and all money bills, after they are passed by the State Legislature, may be reserved for the consideration of the President. So far however, no use of Article 360 has been made.

In respect of Article 352, the 44th Amendment to the Constitution, passed in 1978 provides that a proclamation, under Article 352, may be made in respect of the whole country or only a part of it. The States are reduced to mere agents of the centre, which can, as per the provisions of Article 353 (a) direct the States as to the manner in which executive power is to be exercised. Article 250(1) gives Parliament the power to legislate in items enumerated in the State List. Thus the distribution of legislative

24. **Constituent Assembly Debates**, Volume IX, p.505.

25. **Constituent Assembly Debates**, Volume IX, p.151.

powers between the centre and the States is suspended and the Central Government can pass laws as if the Constitution is purely unitary. So far, National Emergency has been proclaimed three times, twice in the event of the Chinese and Pakistani aggressions on October 26, 1962 and December 3, 1971 and once on June 25, 1975 on the ground of internal disturbance.

Apart from these Emergency Provisions which provide for a strong centre at the cost of the States, a tendency towards Centralization can be marked on an analysis of the financial relations between the Centre and the States. This vertical fiscal imbalance is not unique to the Indian Federation.²⁶ In all federations, the resources of the Central Government are much larger than necessary to fulfil its responsibilities, while the States have resources inadequate to meet its responsibilities. This leads to an increasing dependence of the States on the Centre.

In the Indian polity, Centre-State fiscal relations have evolved from a purely unitary system in the British period to a complex federal structure after Independence. However the link with the past is still there and the Indian Constitution has made no drastic change in the fiscal relations between the different levels of Government. It has liberally borrowed provisions from the 1935 Act, the key

26. Hemlata Rao, "Financial Relations", Seminar, New Delhi, May 1989.

feature of which was the subordination of the provinces to the centre and of the centre to the British Parliament. Thus the Indian Constitution maintains this dominant position of the Central Government in the sphere of finance which is mainly responsible for its increasing control and influence over the finances of the State Governments. The working of the Indian Federation so far has also revealed a trend in this direction of Centralization.

The detailed provisions in the Constitution for the distribution of the resources of the country reveal a bias in favour of the Centre instead of a stress on equitable distribution. This goes against H.N. Kunzru's assertion in the Constituent Assembly that 'Federalism means a transfer of wealth from the richer to the poorer provinces.'²⁷ The Constitution does make some special provisions for the distribution of the proceeds of taxes, but these are once again biased in favour of the centre. Thus there are 5 categories of taxes viz.

- (a) Taxes belonging to the Union exclusively;
- (b) Taxes belonging to the States exclusively;
- (c) Duties levied by the Union but collected and appropriated by the States: (Art. 268).
- (d) Duties levied and collected by the Union, but assigned to the States within which they are leviable (Art. 269).

27. Constituent Assembly Debates, Vol. IX, p.217.

(e) Taxes levied and collected by the Union and distributed between the Union and the States (Art. 270).

A casual glance at these provisions may well tend to give the impression that the fiscal security of the States has been assured, but this is not so. The Central taxes include customs, corporation taxes, taxes on capital value of assets of individuals and companies, surcharge on income tax and fees in respect of matters in the Union List. These are not only more lucrative but grow with the growth in national income while the State taxes fade in comparison. Even in the distribution of Non-tax revenues the Centre has a dominant position. Subjects over which the Union has jurisdiction are Railways, Posts and Telegraphs, Currency, Broadcasting and Industrial and Commercial Undertakings of the Central Government. The State Governments receive revenue from Forests, Irrigation and Commercial Enterprises and Industrial Undertakings. Invariably the resources of the States are inadequate to meet the demands and aspirations of the people which have been increasing in the recent times even after the States have been assigned a share of the Central taxes. This resource gap in the State budgets necessitates fiscal transfers from the centre, thereby even further increasing the fiscal dominance of the Centre, especially in the last three decades as the responsibilities of the States far outweighs their resources.

The Constitution itself does not expect the States to be financially independent and Article 275 provides for grants-in-aid to such States as Parliament may determine to be in need of assistance by the Union. Article 282 authorises an even wider aid granting power enabling the Union to make grants for any public purpose, thereby extending Central control on the States in the field constitutionally reserved for them. The Union Government also grants loans to the States which become 'an important lever for the projection of the Union Control into the area of State autonomy.'²⁸ This aspect is more frequent in recent times. The States have to accept these loans as their own resources are not adequate to carry out schemes which are formulated, directed and supervised by the Union although these schemes relate to matters which fall within their own exclusive sphere.

An innovative feature of India's federal system is the existence of a quasi-judicial Finance Commission, appointed every 5 years to advise the President about the distribution and allocation of shared taxes and the principles concerning grants-in-aid. No other federation has any such independent agency. Article 280 of the Constitution provides for the Constitution of the Finance Commission which is an advisory

28. K.R. Bombwall, 'Constitutional System of the Indian Republic', Modern Publications, Ambala Cantt., 1989, p.119.

body whose recommendations are however usually accepted by the Union Government and endorsed by all political parties. So far, 10 Finance Commissions have been set up.

It is the function of the Finance Commission to ensure that the states obtain their tax shares and grants-in-aid as of right, without any strings attached. It was also assumed that most grants-in-aid would fall within the Commissions' jurisdiction and contribute no more than marginally to a States income. Both expectations have however been belied. Not only have grants-in-aid become essential components of the States finances, but the bulk of them, which are granted under Article 282, have fallen outside the purview of the Commission, and have been made conditional upon the States agreeing to carry out centrally formulated schemes and projects.

The recommendations of the successive Finance Commissions have resulted in a steady increase in central assistance to the States, in other words, its domination. There has also been a rise in the share of the proceeds of income-tax and excise duties. The major limitation is that it is not mandatory that the recommendations of the Commission are binding upon the Government. Further, it gives weightage to the States in proportion to their population, which results in unequal development, in itself an aberration of the federal concept. Therefore the formula

of central assistance should give more importance to equity and efficiency criteria and less importance to a neutral criteria such as population.²⁹ The economic goal of instituting a federal or quasi-federal structure has also not been taken note of. The exceptions are the 5th and 7th Finance Commissions.³⁰

The Finance Commission's role has also been restricted due to the importance given to the Planning process and to the Planning Commission, which is an extra Constitutional body established in 1950. In contrast to the Finance Commission, which is a quasi-judicial body, the Planning Commission may be described as a quasi-political body since its members are not independent of Government. The Prime Minister himself is the Chairman of the Planning Commission. While Cabinet Ministers constitute nearly $\frac{1}{2}$ of the total strength, other members have always been nominees of the Central Government. Thus the very composition of the Planning Commission is such that the formulation of the 5 year Plans are done largely in the light of the accepted policies and decisions of the Central Government, National Planning has resulted in increasing Centralisation and the Planning Commission is held to be the instrument through which a steady shift of power to New Delhi is being manipulated.³¹ Even in the Planning Process, Centralisation

29. R.K. Sinha, 'Regional Imbalances and Fiscal Equalization', South Asian Publishers Private Limited, Delhi, 1984, p.90.

30. Ibid., pp.94-95.

31. Bombwall, K.R. (Ambala, 1989), p.126.

is more evident from the 3rd Plan onwards. Indira Gandhi favoured rapid industrialization, including growth of capital intensive industries, which required Centralized Planning and central control over resources.³² The demands for more fiscal autonomy, especially from West Bengal and Kerala were not listened to. After 1980, even the Planning Commission's role was reduced to simply allocating the funds available by the Union Finance Minister as 'Central Plan assistance under established arrangements, while Planning was done by the Central Government, largely in secret.'³³

Thus the line on which a State should develop its economy is determined for it by the Centre. Hence there is often a large disparity between the Plan outlays as proposed by the States and those approved by the Commission. The State Plans are scrutinised by the Planning Commission to find out whether they conform to its targets and priorities.

Even individual schemes of the State Governments to satisfy local requirements and needs are minutely examined. The Plan implementation in the States is also supervised by the Commission through advisors. Even though State Plans deal with subjects in the State List, they require the approval of the Planning Commission before they can be put into operation and this approval is required even in respect of

32. Brass, (New Delhi/Newbury, London, 1991), p.131.

33. Ibid., p.132.

individual schemes. Thus through the device of Planning, the Centre exercises considerable control over the states, and this is more prominently marked after the 3rd Plan.

Finally, in the sphere of administration of law and order, increasing Centralisation is noted, despite Article 162 of the Constitution which gives the State Governments the duty to maintain public order. This they may do through the agency of the police, which is the Civil force charged with this duty. Thus administration of law and order is primarily a State responsibility. Nevertheless, the working of the Indian Federation has shown that the Central Government has built up a considerable machinery such as the Central Reserve Police Force (C.R.P.F.), Border Security Force (B.S.F.), Central Industrial Security Force (C.I.S.F.), and the Rapid Action Force (R.A.F.), to administer law and order in the States. This development is all the more ironical because in the Constituent Assembly, the amendment proposed by Brajeshwar Prasad to include public order protection in the Union List was opposed by Ambedkar and rejected by the Assembly. Deployment of Central Forces in the States is very common nowadays, the two most sensational instances being Operation Blue Star and Operation Black Thunder in the Golden Temple, Amritsar. Even if the State Governments are against deployment of Central forces, they are powerless in the matter, as has

been admitted by none other than the Union Home Minister.³⁴
The Centre can then send such forces superceding the desires of the State Government.

Thus Centralisation is an unmistakeable feature of the Indian Federation and this is reflected both in the Constitutional provisions as well as in the working of the Indian polity. Moreover, over the years Centralisation has increased especially after 1965 and this is reflected in myriad factors such as use of emergency provisions, interpretation of Constitutional features as per the wishes of the Centre, increasing use of central forces in matters which can be solved by the States themselves, more importance given to Planning and finally more significance being attached to extra-constitutional authorities such as the Planning Commission rather than to Constitutional bodies such as the Finance Commission. These factors result in the Centre becoming more powerful than the States. In matters of national importance affecting the unity and integrity of the nation, indeed the Centre should be more powerful and it is expected to be so, but it is seen that the Centre has extended its overriding powers to issues which rightfully fall within the jurisdiction of the States, thereby affecting the federal set up.

34. Times of India, New Delhi, November 22, 1992.

This raises the question regarding the relationship between Democratic Decentralisation and the Federal Polity. Here it may be pointed out that the Corollary of Federalism is State Autonomy.³⁵ Federalism requires Decentralisation as the Centre and the States are equal partners in the Federal set-up and it would be an aberration of one of the partners would exercise overriding powers over the other. Therefore, in this Context, increasing Centralisation in the Indian Federation can be directly linked with autonomy demands by the States.

It is also a matter for debate as to whether a federal set-up can be truly federal by altering the Constitutional provisions alone. Many of the 'unitary' features of the Constitution have been included to deal with extraordinary situations which may arise in the future. This may be acceptable to the States but their grievance is that these provisions are increasingly used to deal with even ordinary situations. Therefore, the problem of State Autonomy Demand should be solved by starting a process of Democratic Decentralisation in the Indian polity and by building up conventions and traditions which are in confirmity with the true spirit of the Constitution.

35. Ramakrishna Hegde, 'State Autonomy', Seminar, New Delhi, May 1989.

CHAPTER - 4

DIMENSIONS OF STATE AUTONOMY

Centralisation in the Indian Federation has evoked strong protests from the states that their autonomy has been eroded. This chapter presents an analysis of the various demands for State autonomy over the years and the different facets of state autonomy, i.e., pluralism, devolution and decentralisation of powers. I have sought to find out whether autonomy merely means granting more powers to the States or it means something much more, whether autonomy, if granted should stop at the level of states or should it be linked with the broader issue of decentralisation. An attempt has been made in this chapter to answer these question. The response of the Indian State to the various demands of autonomy has also been discussed in this Chapter.

The demand for autonomy had its earliest manifestation in the demand for linguistic states almost immediately after the adoption of the Constitution. It was felt that the division of the Union into 4 parts, Part A States, Part B States, Part C States and territories in part D by the original Constitution was arbitrary and did not reflect a true federal polity. Both the Dar Commission, presided over by Justice S.K. Dar and the Congress Party's JVP Committee, consisting of Jawaharlal Nehru, Vallabhbhai Patel and Pattabhi Sitaramayya in 1948 had advised against the formation of linguistic states. Reasons cited were that 'linguistic states could not be established without a loss

of administrative efficiency, the creation of unhappy linguistic minorities on the wrong side of any possible borders and above all, a substantial and unnecessary threat to national unity at a time when every effort was required to preserve it.¹ On the other hand, the votaries of linguistic states argued that State reorganization itself would lead to national integration. Local aspirations would be more easily fulfilled and the cause of essential matters such as language, culture and education could be taken up by the newly formed states. Sajal Basu points out that 'Linguistic redistribution of provinces had been an integral part of the Indian National Movement. Having sponsored the linguistic principle for nearly forty years, it was impossible for the political leaders to reverse the current.'² So, the Indian State had to bow down to these demands and in 1953, the new state of Andhra Pradesh was created. Article 3 of the Constitution was used for this purpose and a few years later, in 1956, the political map of the country was redrawn by the States Reorganisation Commission, which consisted of Fazl Ali, K.M. Panikkar and H.N. Kunzru. 14 States were created by the Constitution 7th Amendment Act, 1956. The process of State Reorganisation did not stop here and in 1960, Bombay was divided into Gujarat and Maharashtra, in 1963, the state of Nagaland was

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1. Morris Jones (New Delhi, 1974), p.96.
 2. Sajal Basu, *Regional Movements, Politics of Language, Ethnicity, Identity*, Manohar Publications, New Delhi, 1992, p.25.

formed, in 1966, Punjab was divided into Punjab and Haryana and in 1969, the 22nd Amendment Act was passed, whereby an autonomous State, Meghalaya, was created within the State of Assam.

Even today, State Reorganisation is very much demanded, though not on linguistic grounds alone, but also on grounds of administrative efficiency and fiscal autonomy. The demands for State Autonomy have to be seen not merely in the narrow perspective of giving more powers to the State Governments, but in the broader perspective of autonomy demands within the states itself. As Sajal Basu views it, 'In a multi-ethnic, multi-lingual country like India, sectional sentiments could easily be translated into political action. So in different states of the country, the linguistic religious and ethnic sentiments set the tenor of regional movements.'³ Thus we have various movements in different parts of the country such as Jharkhand, Gorkhaland and in Vidarbha and in the Chhatisgarh region. These movements and agitations also have to be viewed in the broader spectrum of State autonomy.

Linguistic division apart, federal politics of the country were not much affected in the Nehru era - an era in which one political party enjoyed a virtual monopoly of power both at the centre and in the States. Conflicts

3. Basu, S. (New Delhi, 1992), p.25.

between the centre and the States or between the States interse, when they did arise, were resolved in the party forum than on the legal plane.⁴ Rajni Kothari characterises this phase as one of 'sustained democratic functioning.'⁵ Tensions between the centre and the states were few and far-between. The State-Governments, though dependent on the centre for financial resources, played an important and effective role in the implementation of projects. The Chief Ministers of the States played an important role in the choice of Lal Bahadur Shastri as Nehru's successor in June 1964 and in the choice of Indira Gandhi as Prime Minister after Shastri's death in January 1966.⁶

It was the Fourth General Elections of 1967 which transformed the face of Indian politics. Not only was the Congress majority at the centre reduced considerably, but in a number of States, non-Congress Governments were formed. Union State relations naturally had to change in the new circumstances as The Congress Monolith had been challenged. Kothari lists the key factor for the Congress route as 'the breakdown of the party organisation and the consequent breach in the consensus represented by the Congress.'⁷

The response of the Central Government under Indira Gandhi was to hasten the pace of Centralisation. This, in

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4. Bombwall, K.R. (Ambala, 1989), p.144.
 5. Kothari, (Delhi, 1988), p.185.
 6. Bombwall, K.R. (Ambala, 1989), p.145.
 7. Kothari, (New Delhi, 1989), p.154.

turn, induced vociferous protests from the states that the Centre was usurping its powers. For instance, in Tamil nadu, the Dravida Munnetra Kazhagam, which had started initially as a protest movement against upper caste domination, built up its support base on the demand for autonomy against the powerful centre came to power in 1967. State autonomy demand in Punjab was articulated in the form of the Anandpur Sahib Resolution which was adopted in 1973 and redefined in 1978 by advocating that the States should have full control in all matters except Defence, Foreign Affairs, Currency and Communications. Later came demands from Kashmir and Assam for more powers.

This explanation and enumeration of the various demands for more powers is necessary as it specifically highlights that autonomy is seen as a natural requirement by almost all the States of the Country and that there is a near consensus on this matter. Even the leaders of the Congress party in various States have subscribed to this view. However, the more strident protests are from the non-Congress-I ruled states, and this is only natural when one considers that it is the Congress which has been in power at the centre for most of Independent India's history. There have been various meetings of non-Congress Chief Ministers and non-Congress political parties to formulate specific demands. For example, in the Bangalore meeting of March,

1983, the Chief Ministers of Karnataka, Pondicherry, Tamil Nadu and Andhra Pradesh demanded a more equitable division of financial resources between the centre and the States.⁸ This was followed subsequently by the opposition conclaves, in Vijaywada and Srinagar. In the Srinagar Conclave, apart from reiterating the Anandpur Sahib resolutions' demand for restricting the powers of the centre to 4 subjects, the following specific demands were made by the Akali Dal and the Telugu Desam;⁹

1. Articles 200, 201, 249, 250 and 360 should be deleted.
2. Articles 356 and 357 should be suitably amended to prevent misuse.
3. Residuary powers should be given to the States.
4. The Planning Commission and the National Development Council should be reorganised.
5. The CRPF should be deployed in the states with the consent of the State Government concerned and the Disturbed Areas Act should not be extended to a state without the consent of the State Government.

An analysis of the various demands listed above made in different periods and circumstances reveals certain commonalities. There is an universal agreement even by the States that the Centre alone should have law-making powers in matters of national importance and/or where the security

8. J.R. Siwach, 'State Autonomy and President's Rule', *Indian Journal of Political Science*, April-June, 1985.

9. *Ibid.*

and sovereignty of the country has to be protected. Thus in matters relating to Defence and Foreign Affairs for instance, there is no demand by the States for law-making rights and as a corollary to this statement, it follows that there is no protest that there is Centralisation in these matters. However, in matters which deal directly with the Federal Polity such as emergency provisions, special powers of the Rajya Sabha; residuary powers and Planning, a restructuring of the Constitutional Provisions is demanded.

Here a question may be raised as to whether this restructuring merely means building up conventions and traditions which conform with the true spirit of the Constitution or are large-scale amendments to the Constitution required for increasing the autonomy of the States. Nani Palkhivala is of the opinion that Constitutional amendment should be treated as the option of the last report.¹⁰ This is indeed true as the basic scheme of the Constitution is that while wide powers may be given to the states, the Centre should have reserve powers to intervene in the national interests when these powers have been exercised in a manner which undermine the value of the Constitution. Palkhivala also comments that the Constitution is intended not merely to provide for the exigencies of the moment but to endure through a long lapse

10. N.A. Palkhivala, *We, The People, India - The Largest Democracy*, Tata Press Limited, Bombay, 1991, p.250.

of years and if the Constitution is worked in the proper spirit there would be no need to consider any amendment so far as centre - state relations are concerned. With emotions running high in Assam, Punjab, and some other states large - scale constitutional revision may involve a great danger to the unity and integrity of the Country.¹¹

This implies that centralisation is not so much inherent in the Constitutional apparatus but it has been reflected in the working of the federal polity. The Centre has used the constitutional provisions in a manner which has been termed by the advocates of State autonomy as against the spirit of the Constitution. This leads to the natural assumption that there are shortcomings in the Constitution itself which should be amended to give more powers to the States. Palkhivala however contends that it is a 'noble Constitution which has been worked in an ignoble spirit.'¹²

This argument that the provisions of the Constitution has been misused by the Centre to erode State autonomy can be substantiated by citing a few instances, such as the Centre's intervention in the fields of industries, public order and public health. While Industries are a State subject, without any amendment to the Constitution, they have virtually been transferred into a Union subject. The basic scheme of the Constitution that only those industries

11. Palkhivala, (Bombay, 1991), p.250.

12. Palkhivala, (Bombay, 1991), p.250.

may be regulated by the centre, the control of which by the Union is expedient in the public interest has thus been violated as more than 90 per cent of the organised industries have been brought under Union Control.¹³ This has led to demands by various State Governments and State level leaders that the rightful primacy of the States in this field should be restored. For this no amendment to the Constitution is required. Merely various items in the Industries (Development and Regulation) Act have to be deleted. This Act was passed by Parliament in 1951 and over the years more and more items were included in it. The present position is that if a state wants to start or develop an industry, the assent of the centre is required. The advocates of State Autonomy argue that this is not in the national interest and the centre's veto in this regard should be taken away. On analysis, a middle position emerges whereby the States should be given the right to set up industries since they have the rightful jurisdiction in this matter, but the centre should also have the reserve power of starting industries in the states. Similarly, in the fields of public order and public health, the centre may reserve powers in the national interest, but the present overriding position of the centre is an infringement into the domain of the States. In this context, the Home Minister of

13. Ramakrishna Hegde, "Plea for a 'United States of India'", *Mainstream*, Vol. XXIX No. 33, June 8, 1991, New Delhi.

of India, Mr. S.B. Chavan said recently that the Rapid Action Force, which is a special anti-riot force of the C.R.P.F., would only be supplementing local forces and would be sent on the request of the State Governments with the centre reserving the right to send the force on its own.¹⁴

The States also disagree with the contention of the centre that strong states may pose a threat to the unity and integrity of the nation and argue that strong states and a strong centre can co-exist together and there is no contradiction between the two. They assert that a strong Union can only be a Union of strong states. Constitutionally, the autonomy of the states is enshrined, administratively, it is an inescapable necessity.¹⁵ A genuinely Federal structure is demanded to solve the growing problems of poverty, unemployment, communal riots, and social strife as it is felt that the present centralised model has failed to tackle these problems in the required manner. Their contention is that regional disparities have only been widened by centralised planning and decision making. Backwardness can only be removed by giving the backward regions the power to make vital decisions that affect them. The position of the poor and the weak will not improve as long as power and decision-making remain outside their reach.¹⁶ The argument by the States is that while the

14. Times of India, New Delhi, October 7, 1992, p.4.

15. Ramakrishna Hegde, "State Autonomy", Seminar, New Delhi, May 1989.

16. Kothari, (New Delhi, 1988), p.192.

Constitution has assigned them more vital function involving more expenses, they have to depend on the centre for financial resources. Therefore they demand a greater share in the national finances and less dependence on the centre and the only solution, according to them is the granting of greater autonomy to the States which will involve a devolution of power and the decision-making process.

Here it is pertinent to say that State Autonomy has to be linked with the broader issue of Decentralisation. If restoration of State Autonomy is essential for the proper functioning of the federal polity, then devolution of power and decision-making to the district and village bodies is imperative for democracy to succeed. This is because these bodies are the third tier in the federal set-up. Regular elections to the Panchayats and Municipalities should be held and more importantly they should be given sufficient power and resources to work with. If the Centre should not treat the States as mere agents to carry out its schemes, then this logic can be extended to the states not treating the local bodies as agents to implement its projects. Furthermore, the local bodies should have their own resources and they should be organised vertically through functional relationships along various tiers reaching out to the state level. Providing them adequate resources is not possible without first or simultaneously providing the States themselves with significant power and resources.

Decentralisation of power and to the zilla parishads, local bodies and village panchayats will not have any meaning unless the autonomy of the states is respected.¹⁷ A decentralised state can provide institutional safeguards against the cult of personality and the role of charisma. Everything seems to point to the need for decentralisation. It is indeed a historic necessity.¹⁸

The fear expressed by the centre that decentralisation of power and resources to lower tiers may well constitute a threat to national unity may be dispelled as the centre can be strong only if its constituent units, the states are strong. In turn, autonomy should not be the exclusive right of the State Government and it can function better through administrative decentralisation of powers to local bodies. Otherwise, it will be held as guilty of authoritarianism and centralisation by these bodies as it holds the Central Government to be in its relations towards the States. Presently local self government is not functioning effectively in most states of the country and either elections are not held regularly or the bodies themselves do not exist. This situation should be rectified since the establishment of a decentralised administration would ensure the ideal functioning of India's democratic federal polity.

17. Ramakrishna Hegde, art. cited., State Autonomy, Seminar, May 1989.

18. Kothari, (New Delhi, 1988), p.192.

Decentralisation apart, Pluralism of our society and culture is another important facet of the demand for autonomy by the States. This is directly linked with the assuming of more powers by the Central Government. For this undermining of a plural and multi-tier structure of power has led to more and more popular agitations and demands to the Central Government. For instance, the cultural minorities in the country feel that they are steadily losing their independent entity and are being subjugated by the majority culture. They feel that greater autonomy for their regions would enable them to protect their cultural identities, foster and promote the diverse cultures within the States, encourage cultural activities, literature, arts and crafts. The diversity of Indian Society and the presence of numerous cultural groups in a country of India's size do not make it feasible for the centre to play an effective role in this arena. This, according to the advocates of greater state autonomy can be done only by truly autonomous states. Furthermore, the revival of local self-government will strengthen the centre, not weaken it. Professor Rasheeduddin Khan asserts that 'India is a federal nation whose hallmark is unity of polity and plurality of society.'¹⁹ It's interests can best be served by giving more powers to the various regions.

19. Rasheeduddin Khan, *Federal India - A Design for Change*, Vikas Publishing House, New Delhi, 1991, p.29.

The concept of pluralism and decentralisation can be further extended to include in their scope the problems created by unequal development. A characteristic of the Indian Federalion is that some states are more developed than others. This is true not only of economic development but also of other socio-political factors such as literacy, institutional set-up and importance given to local self-government bodies. A strong argument for decentralisation can be made on this ground that devolution of powers will be more beneficial to the less developed states as Centralisation helps the more advanced and powerful states who, by virtue of their greater influence at the centre, are able to get more resources for themselves. As Krishna Bharadwaj views it, the pattern adopted for the allocation of central assistance is disadvantageous to the less developed states and often the genuine needs of the backward and poor states were ignored in distributing the national cake.²⁰ Since the independent sources of revenue provided by the Constitution to the States are not adequate, they have to depend on the centre for subsidies and grants. In this area, the centre gives more weightage to population and in the process, the states having less population and more often than not, a lesser degree of economic development are the losers. Therefore the formula for central

20. Krishna Bharadwaj, "Regional Differentiation in India: A note," Economic and Political Weekly, Annual No.1982, New Delhi.

assistance should give more importance to factors such as equity and efficiency and less importance to a neutral criteria such as population. Inter-state disparities can be put into various categories such as indicators of income, poverty and unemployment, agricultural indicators, industrial and infrastructural indicators, social service indicators and resource allocation indicators.²¹ As far as possible, development should encompass and include these indicators and factors to make it more equitable.

Problems of inequitable development necessitate an enquiry into inter-state problems and the measures taken to solve them. The amicable solution of these disputes between the states is necessary to reduce tensions in the 'Centre-State' relations. This is because these inter-state issues can easily be converted into centre-state problems by the concerned states directing their demands to the centre which is empowered by the Constitution to look into the disputes. The response of the state varies in different circumstances.

For instance, Zonal Councils were set up under the State Reorganisation Act, 1956, to ensure greater co-operation among the various States in the field of planning and other matters of public importance. The Act divided the country into five zones and a zonal council was included in each zone. These Zonal Council discuss matters of common

21. R.K. Sinha, Regional Imbalances and Fiscal Equalization, South Asian Publishers Private Limited, Calcutta, 1984, p.41.

interest to the states included in the zone or to the Union and one or more of these States and can make recommendations to the concerned Governments in regard to these matters. So far, however Zonal Councils have not performed the tasks envisaged for them nor have they been given their due importance. In general, it may be said that Zonal Councils have been relatively more successful in co-ordinating the activities of States in the economic and social spheres than in resolving inter-state disputes in relation to boundaries and river waters.²²

Yet another response of the Indian State to the growing demands for autonomy has been to set up Commissions to look into the intricacies of Centre-State relations and suggest how these can be developed. So far three such Commissions have been set up. The first was the Administrative Reforms Commission set up by the Government of India in 1966. The Second was the Rajmanner Committee which was constituted by the Tamil Nadu Government on September 22, 1969. Finally, in June 1983 the Union Government appointed the Sarkaria Commission to review the question of Centre-State relations and it submitted its report on 27 October, 1987.

A review of the three reports reveals very little which is common between them, despite the fact that their objective has been the same viz. to have a fresh look into

22. K.R. Bombwall, (Ambala, 1989), p.142.

centre-state relations. This is however not very surprising since the Rajmanner Committee was constituted by a State Government and it performed the function of articulating the extreme concerns in favour of State autonomy. However in certain matters the 3 commissions, share the same opinion. They agree that the issue of majority support should be determined on the floor of the legislative assembly and that the Chief Minister of the concerned state should be consulted in the appointment of Governor. Even in this latter point the Rajmanner Committee takes a further step by suggesting that the Union Cabinet should be divested of the power of appointing Governor by providing that the President should appoint the Governor in consultation with a high power body composed of eminent jurists, lawyers and administrators. Another point on which the three Commissions agree is the need for an Inter-State Council. This recommendation of the Sarkaria Commission, in fact, has been accepted by the V.P. Singh Government at the Centre.

While the A.R.C. report and the Sarkaria Report both agree that there has been a trend towards more centralisation of powers over the years, they do not favour limiting of the powers of the Union or transfer of subjects from the Union List to the State or Concurrent List. Rather, they recommend consultation between the centre and the states, especially on concurrent states. However the Rajmanner Committee had certain radical suggestions such as

giving residuary power to States, transfer of powers to the State and Concurrent List, equal representation for all states in the Rajya Sabha and deletion of articles 356, 357 and 360. This report failed to make an impact on the Central Government which completely ignored it because of its nature and as its release in 1971 coincided with vociferous demands for State autonomy by various states.

Since the Sarkaria Commission is the most comprehensive review of centre-state relations since Independence, its recommendations deserve a closer look. The Commission does not suggest any drastic measures in the existing scheme but on the other hand it favours constitutional and functional changes to remove irritants in the centre-state relations. For instance it recommends that Corporation tax should be shared with the states and surcharge should not be levied on income tax. Consultation and arbitration between the centre and states is recommended to solve their problems. Two major recommendations to facilitate consultations are the creation of a modified National Development Council renamed as the national Economic and Development Council (NEDC) and the appointment of an Inter-Governmental Council under Art. 243. The proposed NEDC would consist of all ministers of the Union Cabinet, Chief Ministers of States, Lieutenant Governors and Chief Executive Councillors of Union Territories. The Inter-Government Council consists of the Prime Minister and all Chief Ministers of States and

executive heads of Union Territories. The Standing Committees of these two larger bodies is however constituted to give the federal-side a casting-vote majority over the state bloc in a straight centre-state encounter.²³

It remains to be seen whether the Sarkaria Commission Report will be implemented or not. The demand by both intellectuals as well as political leaders is that since the primacy of the Central Government has been maintained by the Report which has not recommended any drastic measures, it should be implemented in toto. This would ensure that larger interests of the nation are given top priority and at the same time, the interests of the states are not altogether ignored.

Thus the various demands for autonomy have been discussed. A question may be raised here as to what these demands have achieved so far. One school of thought, headed by Rajni Kothari feels that it has led the state to become even more repressive. He speaks about the rise of a 'terrorist State', arguing that there is a direct correlation between the fragility of a State and its repressive power.²⁴ Kothari calls for a 'rethinking on the development package and basic restructuring of the institutional fabric through which the mass of the people, and the communities and regions in which they

23. M.P. Singh, "The Sarkaria Recipe", **Seminar**, May 1989, New Delhi.

24. Rajni Kothari, "State and Statelessness." **Mainstream**, Annual No.1991, New Delhi.

are located, become partners in the challenge of rebuilding the State.'²⁵

A novel viewpoint has been offered, in this regard, by Paul Brass who asserts that power disintegrates at the maximal point of concentration and when decentralizing tendencies and regional political forces assert themselves, the effort by an authoritarian regime to undermine them fails.²⁶ Brass gives instances of the language policy, transfer of resources from the centre to the states, and the patterns and trends in party support and inter-party relations to support his thesis.²⁷

Thus, to sum up, the problems of centre-state relations and the resultant demands for State autonomy are more because of political and economic dynamics and not only because of constitutional provisions. Greater autonomy for the States will provide a more efficient federal democratic political structure. Autonomy must not end with the States who themselves should give local - self government bodies the autonomy they need and deserve. While the centre should confine itself only to the performance of functions assigned to it by the Constitution and resort to extra-constitutional measures and steps, the states should not pose any demands

25. R. Kothari, 'This Centre cannot hold', **Seminar**, Jan. 1992.

26. Paul Brass, (New Delhi, London, Newbury, 1991), p.117.

27. Ibid., p.118.

or take measures harmful to the unity and integrity of the country. This would mean Federalism in its true sense, and ensure a truly federal structure which can solve the problems of the hour as well as reduce centre-state irritants to the minimum.

CHAPTER - 5

AUTONOMY DEMANDS IN SPECIFIC STATES

The demand for Autonomy is made without exception by almost all States of India as Autonomy itself has different dimensions for them. While West Bengal and Tamil Nadu were the first two states to demand more powers in the financial sphere, other states also have specific demands, such as freedom in political matters or less domination by the Centre in the sphere of finance. In this chapter I have sought to analyse how the problems in the states of Punjab, Jammu and Kashmir and Assam are an indication of the desire for more powers. These problems are of national significance and they also have an international aspect to it, with interference by foreign powers. My main focus will be the Autonomy demands in Punjab, since it is the perfect instance of a protest against central domination and in recent times, there are signs of the triumph of federalism in this State, with the Central and the State Government functioning together as envisaged by the federal Concept. I have also briefly dealt with the Assam and Kashmir problems which are autonomy demands of a separate nature. Lack of space does not unfortunately permit a detailed analysis of the autonomy demands by these two States.

In Punjab, the crisis is multifaceted and multi-dimensional, the different facets being political, economic, emotional and in recent times the terrorist dimension. The one commonality which binds these different facets together

is a quest for more power and a desire for autonomy. For instance, the political dimension of the problem is rooted in the Akali quest for more and to secure power and the Congress's hesitation to accommodate them culminating in a no-holds-barred bid to marginalise the Akalis as a power in Punjab. Before 1973, the Akali Dal was functioning as a political party within the liberal democratic framework but imposition of President's Rule on June 30, 1970 and the Congress Party's landslide win in the 1972 elections pushed them into taking a militant posture. The Anandpur Sahib resolution was adopted in 1973 which called for restricting the Central Government's role to Defence, Foreign Affairs, Currency and Communications and granting Punjab and other states a degree of provincial autonomy beyond that governing the relations between the centre and the States under existing conditions. The economic demands aimed at further shifting the terms of trade in favour of agriculture and thus State Autonomy can be seen in Punjab only as a demand for the growth of economic interests under the political control of their own representatives.

While the Akali Dal has throughout been a strong advocate of State Autonomy, it is significant that after it secured a majority in the 1977 Elections, it did not take up the issue of the Anandpur Sahib resolution with the Central Government, of whom it was a junior partner. On the other hand, a meeting of Akali Dal leaders was held at Ludhiana in

1978 to revise and moderate the Anandpur Sahib Resolution. This shows that another name for State Autonomy is a desire for less interference by the Centre and if the Central and State Governments function together, which is the basic principle behind the federal concept, then demands may be modified and moderated to more realistic ones.

Another feature of the Punjab problem is the Central Government's propensity to declare Emergency under Article 356 even in instances where solutions may be found and this reflects a lack of consistent policy on the part of the Union. In Punjab the tragedy lies that an exclusively Sikh character was sought to be given to demands essentially genuine and some of these demands are made by other States too, which shows that the specific Punjab problem may arise in other States too under a different guise. The political demands in Punjab were not tackled by the Government in a clear-cut manner. The Central Government sought to 'highlight the image of the Sikhs as violent secessionists and to magnify the picture of the New Delhi regime as a strong Government when it finally took action.'¹ On the other hand, the Akali moderates felt that it would be possible to pressurise the Central Government to get their demands met by taking up a Communalist posture along with the militants by making use of the 'extremists sabre-rattling.'²

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1. Nikhil Chakravarti, 'Haryana & Punjab', **Mainstream**, New Delhi, Feb. 26, 1984.
 2. Nikhil Chakravarti, 'Brinkman's Game', **Mainstream**, New Delhi, June 18, 1983.

Draconian laws passed by the Centre have been a feature of the Union's policy towards Punjab. After the Akali's launched 'Dharam Yudh' on August 4, 1982 to fight for the implementation of Anandpur Sahib Resolution, a killing spree was launched in Punjab. In spite of President's Rule, law and order situation worsened and the terrorist dimension had finally been given to a problem which was essentially a conflict between federal partners. The Central Government's response was to declare the whole of Punjab a disturbed area and to amend the NSA giving the police even wider powers of arrest. This was of no avail as terrorists started operating from within the Golden Temple itself and started fortifying it. The counter response by the centre was Operation Blue Star, one of the most celebrated instances of central intervention in a State since independence. The Central Government moved decisively in this operation. Punjab was sealed off from the rest of the country by the Indian army and movement inside the State was brought to a standstill. After a long and protracted battle with the militants, the troops of the army entered the Akal Takht on June 7, 1984 to cleanse it of militants. Operation Blue Star hurt the Sikh psyche and it was combined with Operation Wood Rose which was intended to be a combining and flushing out operation. This continuing presence of the Indian Army further alienated the Sikhs and police excesses compounded the matter almost to a point of no return, in a case where a

political solution within the democratic federal polity could have been suggested.

After Indira Gandhi's assassination on October 31, 1984, the new Central regime under Rajiv Gandhi tried to offer a political solution to the problem. The Rajiv Gandhi - Longowal accord was arrived at and they signed a Memorandum of Understanding on July 24, 1985. The overwhelming response to the Punjab Accord was one of relief tinged with sadness - sadness because the contents of the Accord made it clear that settlement on these terms could have been arrived at between the Akalis and the Central Government as far back as 1982.³ The settlement conceded the basis of certain demands. According to it, Chandigarh would be transferred to Punjab and a Commission would be established to determine the territory Punjab would transfer to Haryana in return. A Boundary Commission would examine the territorial claims between Punjab and Haryana on the basis of linguistic affinity of the areas under disputes. River waters reapportionment would be decided by an independent tribunal and the extraordinary powers of the Army in Punjab would be curtailed. This detailed enumeration of the provisions of the Rajiv-Longowal accord is necessary to put the problem of State autonomy in the proper perspective, as it was for the first time that a

3. Sachin Choudhuri, 'A Beginning in Punjab', *Economic and Political Weekly*, New Delhi, July 27, 1985.

political solution was sought to be arrived at within the parameters of the Constitution.

The subsequent elections saw the Barnala Government coming to power. Longowal's assassination had shown the fragile unity within the Akalis. Barnala followed a policy of appeasement such as release of detenus and rehabilitation of army deserters but this had little impact on terrorist activities. The AISSF held a Sarbat Khalsa on January 26 at Amritsar in which they declared the establishment of Khalistan and formally hoisted the flag in April 1986.⁴ In the Akali Dal itself, opinions were divided as to the policy to be adopted against the continued central presence in Punjab in the form of the army and draconian laws. Enforced fundamentalism and indiscriminate killings by extremists convinced the Centre that the Barnala Government could not create conditions for the implementation of the accord. President's Rule was again imposed on May 11, 1987 on the basis of the Governor, Mr. S.S. Ray's report. This was once again a demonstration of the political bankruptcy of the Central Government, which had no clear policy in the Punjab. President's Rule led to greater confusion and heightened polarisation. Police excesses isolated the public. The mistake of the centre was thinking that police action alone was enough without taking into account the fact

4. Satyapal Dang, 'Dark clouds over Punjab', *Mainstream*, New Delhi, January 18, 1986.

that socio-political and political factors had contributed to the growth of terrorism.⁵

This policy of drift continued till the 1989 General Elections saw a change of Government at the Centre. In this period there was the widely acclaimed Operation Black Thunder from May 9 to 18, 1988 which flushed out terrorists from the Golden temple without firing a single shot. It led to a general lack of public credibility for the terrorists but the gains were frittered away. There was no mass mobilisation to isolate the extremists and the Government relied on only administrative measures to tackle an essentially political problem.

After the 1989 General Elections, there was initially tremendous enthusiasm over V.P. Singh's visits to Amritsar and Ludhiana and the holding of an all Party meeting on Punjab but it dissipated the goodwill and trust it had to start with by deferring the elections to the State Assembly.

This decision further widened the gap between the Sikhs and the non-Sikhs and hardened the militants suspicion about New Delhi's intentions.⁶ The same policy of drift was therefore followed and there were only cosmetic changes such as replacing Governor S.S. Ray by Nirmal Mukherjee and Virendra Verma.

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5. Pramod Kumar, 'Communal Violence and Repression', *Mainstream*, New Delhi, September 5, 1987.
 6. Nikhil Chakravarti, 'Need for New Thinking', *Mainstream*, New Delhi, April 7, 1990.

It was the Narasimha Rao Government at the Centre which finally held elections in the strife torn state. A Congress Government under Sardar Beant Singh came to power and it set about facing the problem in the right earnest. Elections were held for the Municipalities and Panchayats and they were well received. This shows that Decentralisation is an essential weapon to combat a problem of this sort as mass mobilisation of the people and isolation of the extremist elements is then bound to take place. This political mass mobilisation was accompanied by a renewed assault on the terrorists, which was successful since the first step of isolating them had been taken. Now that a semblance of normalcy has been restored to Punjab, the Centre-State problems and the issue of Autonomy can be discussed by the federal partners - the State and Central Governments, both of whom are democratically elected. This should be done at the earliest, since neglect of this fundamental problem had pushed the crisis to an altogether different dimension.

Kashmir is another case in point where the issue of State Autonomy has a different manifestation. At the time of its accession to the Indian Union, the Instrument of accession was signed by the Maharaja, Hari Singh, whereby the Dominion of India acquired jurisdiction over the State with respect to the subjects of Defence, External Affairs and Communications. Art. 1 of the Constitution declared Jammu and Kashmir a part of the territory of India while a

special Article 370 provided that a separate Constituent Assembly consisting of the people of the State and their representatives, would finally determine the Constitution of the State. Over the years, the Centre has made steady inroads into Article 370 inducing vociferous protests from the State leaders that their Autonomy was being abrogated. For instance, the Constitution Order, 1954 extended the jurisdiction of the Union to all Union subjects instead of only the three subjects of Defence, Foreign Affairs and Communications. This obsessive Centralism on the part of the Central Government is in disregard to the Kashmiri's high sense of identity which is a product of their peculiar historical development and continuous erosion of Article 370 has contributed to an obliteration of that identity, Therefore, it can be argued that the Kashmir problem is a problem of the alienation of the Kashmiris from the national mainstream, with militancy as its consequence. The problem of alienation is further directly linked to increasing Centralisation and erosion of State Autonomy. Therefore, the priority issue in the Kashmir problem should be to win over the people by inculcating them into the national mainstream, while in the same instant their peculiar sense of culture should not be hurt.

While in Punjab, a positive response of the Centre was to hold elections and offer a political solution to the problem, in Kashmir, there has been so such step so far.

The 4 Central Governments headed by Rajiv Gandhi, V.P. Singh, Chandra Sekhar and P.V. Narasima Rao in recent years have followed the same policy of drift and purposelessness. For instance, the imposition of Jagmohan as Governor by the V.P. Singh Government against Chief Minister's, Farooq Abdullah's wishes led him to resign and thus Kashmir was deserted by its elected Government.⁷ This imposition was a direct refutation of the Sarkaria Report's recommendation that the Chief Minister of a State should be consulted in the appointment of a Governor. Different policies have been adopted such as following the bullet for bullet policy or making conciliatory pronouncements of different nature, sometimes expressing sympathy for the Kashmiris and sometimes calling militants as misguided youth instead of having a concerted, planned policy to tackle the centre-state problem.

In recent weeks however, an attempt has been made to start a political process by regional leaders, who in a meeting for the first time since imposition of President's Rule on January 19, 1990, have met and unanimously agreed on the point that the integrity of the State had to be maintained and early steps should be taken to bring about normalcy in the valley.⁸ Added to this is the Union Minister of state for Home, Mr. Rajesh Pilot's statement

7. Shiraz Sidhva, 'The Militant Viewpoint', Seminar, New Delhi, April 1992.

8. Times of India, New Delhi, March 4, 1993.

that militant organisations will be allowed to participate in elections within the framework of the Constitution, and in the event of their victory, the centre will have no objection to their forming a Government.⁹

This no doubt has led to hopes that the State would be given the political autonomy which would go a long way in solving the problem, for then the hurt Kashmiri psyche can be assuaged and only then can the international facet to the matter, i.e. Pakistan's involvement in the area be handled.

The Assam case is altogether different from that of Punjab and Kashmir and here the Autonomy demand arose on account of the influx of 'foreigners' from the neighbouring country of West Bengal and the neighbouring States of Sikkim and West Bengal. The feeling of insecurity arose that in any election, the Assamese would be outnumbered. During 1979-1980 the first protests of the Assamese people were heard and demands made for more powers to detect and send 'foreigners' out of the country, remove their names from the electoral rolls and seal international borders along Assam to check infiltration. Thus State Autonomy demands in Assam arose not on account of central interference but from factors within the state itself which subsequently became a matter for centre-state debate. while the Assam Accord was

9. Times of India, New Delhi, March 3, 1993.

signed in August, 1985 which fixed 1966 as the cut-off date for the detection of 'foreigners', problems of decentralisation led to the Bodo demand for devolution of powers. This can be interpreted to be a regional demand for autonomy, inside a State which itself was clamouring for more autonomy. The six-year old issue however seems to have been settled with the signing of an Accord between the Chief Minister and Bodo leaders on the 20th of February, 1993 whereby the creation of an autonomy Bodoland Council with legislative powers is envisaged.¹⁰

Therefore, State Autonomy has different dimensions - political, economic and even psychological and emotional and it is not merely a question of the demand for more powers. Every problem and demand for State Autonomy has a different solution and should be properly understood since misconceiving a problem may lead to serious trouble, as in the States of Punjab, Kashmir and Assam. In all these States and in other States too the problem had its roots in the genuine demand for more Autonomy in administrative and legislative matters. The problems in these 3 states are of grave national importance which threaten to disrupt the very rubric of secularism and democracy on which our nation rests. Earnest steps should be taken to solve them within the framework of the Constitution and the Centre should ensure that mismanagement of policies does not lead to any such serious centre-state problems.

10. Times of India, New Delhi, February 21, 1993.

CHAPTER - 6

CONCLUSION

Federalism is not merely a scheme of division of powers between the Central and the regional Governments. While this division of powers is of vital importance and integral to the concept, Federalism also includes in its broad spectrum different facets such as 'decentralisation', 'devolution' of powers, 'pluralism' and 'autonomy'. Thus Federalism is not just a question of Centre-State relations but a much broader concept.

In modern Federations, a tendency towards Centralization can be marked. The emergence of a welfare state, industrialized society and the need for national planning has led to a tremendous increase in the sphere of activity of the Central Government. In India too this change has been noted. Constitutionally the Indian federation had been enshrined with certain unique features which gave a unitary tinge to it and these features had been incorporated in the Constitution to deal with the exigencies of the then situation and to deal with unforeseen emergency situations in the future. Centralisation is however more significantly marked in an appraisal of the actual working of the federal system. It is seen that even in subjects which constitutionally fall within the exclusive jurisdiction of the State Governments, considerable control and influence has been exercised by the Union Government.

This is most evident in the maintenance of law and order and in the sphere of centre-state fiscal relations.

Financial dependence of the States on the centre may be desirable to some extent as it represents a centripetal force, but the relationship between the federal units should not be that of creditor-debtor. This is because irresponsibility, operational inefficiency and lack of self-reliance is marked in States which are too much dependent on the Centre. Furthermore, while the Finance Commission is a Constitutional body to look after the Centre - state fiscal relations, it has been noted that in practice, the extra-Constitutional body the Planning Commission has overshadowed it in importance. Planning in India is entirely Centralised and this is reflected in both the Composition of the Planning Commission and in the formation of 5-Year Plans. Since the concept of federal legitimacy has great significance in the context of India's plural personality, it is necessary to regularise the planning mechanism and ensure effective participation of the States in the Planning process. There should broadly be a two-level planning with Autonomy at each level and their synchronisation by an impartial, expert body. The transfer of resources from the Centre to the States should largely be in the form of shared taxes and statutory grants. It is also seen that the more advanced States in India receive a

higher tax devolution than the less advanced states and that the weightage in favour of backward States is not uniform on substantial. This results in uneven development which in itself is an aberration of the federal concept.

While there has been strident demands from the states that those articles empowering the Centre to issue directives to the states and to take over the administration in a State should be deleted, these provisions are required in the context of national interests and in times of war and aggression. Moreover, these are features of the original constitution and they need not be deleted as problems of centre-state relations arise more because of political and economic dynamics and not only because of Constitutional provisions. Therefore these provisions should be used sparingly and in cases where the unity and integrity of the nation is at stake. A President's Advisory Council may be formed consisting of neutral, impartial observers such as former Presidents themselves and members of the judiciary to advise the President in matters relating to declaration of President's Rule and the Union Cabinet may not be regarded as the sole authority in this matter. Regarding deployment of armed central forces such as C.R.P.F. in the states, they may be made taking the consent of the State Governments which are democratically elected representative bodies since unilateral deployment is often regarded by the States as an infringement on their rights and autonomy.

While there is no debate about Centralisation in matters such as Defence and Foreign Affairs, the States in the Indian federation often demand more powers in the sphere of finance. The Indian States are not allowed to raise capital on their own through loans from foreign countries, and whether they should be allowed to or not is a point for debate. On one hand, the interests of sovereignty of the country may be hampered, but on the other, this reflects a genuine right of a state to speed up the development process by minimising delay and red-tapism. Proper guidelines should therefore be laid down in this matter and strictly adhered to. The State Governments should be allowed to raise loans directly from foreign countries and international financial institutions and the Central Government may appoint advisors to the State Government in this regard and prepare a list of industries in which directly loans may not be floated.

Since Pluralism and Decentralisation are an integral part of the federal concept, the federal units should be given Autonomy since a unity enforced and achieved at the expense of suspension of diversity would be harmful to national integration. Decentralisation is therefore essential so that the personality and rich individuality of the plural elements constituting the Indian State can be developed. however, the states themselves should not

radiate centralising tendencies and therefore the degree of autonomy given by the Centre to the States and by the States to the local self-governing units should be clearly spelled out. A move towards Democratic Decentralisation in the form of a decentralised economy, a wide dispersal of the location of industries to ensure even development and a substantial devolution of decision-making on allocation of resources would go a long way in making sure that Federalism and its Corollary, the autonomy of the State are both respected in the Indian Federation.

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