Chapter Three
Chapter- 3

UNION-STATE ADMINISTRATIVE RELATIONS

The Constitution of India deals with Union and State executive separately but the provisions follow a common pattern for the Union and the States. The scheme of distribution of administrative powers between union and states followed in the Constitution of India in various administrative fields. Apart from the wide range of subject allotted in the VII schedule of Constitution, even in normal time parliament can under certain circumstances, assume legislative power over a subject falling with in the sphere exclusively reserved for the states. Beside the power to legislate on a very wide field, the Constitution vests in the Union Parliament, the constituent power or the power to initiate amendment of the Constitution.

Union-State relations cover a very large field. The necessity of legislations was felt for the continuance of social life and administration in the direct consequence of legislation. Without machinery for implementing laws, the laws are of no significance and unless there are laws or decisions to be enforced administration is unnecessary. In the words of Prof. Goodnow, “There are then in all governmental system two primary or ultimate functions of government, viz. the expression of the will of the state and the execution of that will, these functions are respectively politics and administration”.

India represents a plural society in which a variety of ethnic linguistic and religious groups coexist in the terms of varying cooperation and competition; consequently, the founding fathers of the Indian constitution, taking the Government of India Act 1935 as the base, caused out a constitution which is federal with two levels of Government, the Centre and the State operating on the

people. The main purpose was to create a strong Central Government which would unify the country into a homogenous nation out of the various religious and linguistic groups. Position of the country had left its scars on the process of constitution-making. In the words of Dr. Ambedkar ‘the aim was to create a constitution which would be unitary or federal according to the exigencies of the situation’.

In the context of Indian Federation administration is primarily handed by the state agencies. Unlike the other federations where both the federal and state government create their own agencies for the administration of their laws and the subject s allocated to them in the constitution, even the laws of the union are left to be administered by the state, authorities is order to avoid duplication of administrative machinery. In every federal constitution, the central and state governments are strictly delimited and the jurisdiction of the one excludes the other. The centre is concerned with matters of the union list. The states are with matters on the state list. The state also deals with matters found on the concurrent list save that Parliament may, by any law on concurrent matter provide for its administration by the union instrumentality. There is also provision for the delegation of the powers by the union to the states and vice-versa. The strength and success of such scheme however requires cooperation and coordination between Centre and States. In India, the central government or the union is responsible for the governance of the whole country and it is therefore import that there should be effective administrative norms between the union and States. The Supreme Court has defined that executive power of the union in the following words: “The executive power of the union is coexistence with power of the parliament, with this limitation that the executive cannot act

---

against the provisions of the constitution or of any law made by the parliament."\(^{106}\)

The Union Government is dependent on the States to give effect to its programmes. The scheme of distribution of administrative powers has two fold objectives. It arms, the union government with powers to have effective control over administration of the state and at the same time it adopts several advices for intergovernmental cooperation and coordination.\(^{107}\) "The executive powers in relation to any treaty or agreement has been conferred on the union by the Constitution, Parliament has also vested executive functions in union over concurrent list matters under several acts.\(^{108}\) The executive powers of the Union are vested in the President who can exercise it directly or through officers subordinate to him in accordance with Constitution. The President has power to appoint and remove certain dignitaries in the states. He appoints the Governor of a State who holds his office during the pleasure of the President (Article 155 and Article 156). He also appoints judges of the high courts (Article 217) and plays a significant role in the removal of High Court Judges as also members of state public service Commission (Article 317).

The essence of federalism lies not in the constitutional as institutional structure but in the society itself. Federal Government is device by which the federal qualities of the society are articulated and protected.\(^{109}\) Under the impact of federalizing trends, the one party dominant system has given way to a multi Party system and elections have adversely affected the fortunes of major national parties, bringing to the fore some regional parties to critical separates threshold giving them heavy electoral edge.\(^{110}\) Now-a-days regional, Political Parties are also playing vital role in administrative relations. Regional parties, like Akali

\(^{106}\) Rai Sahib, Ram Jawaya Kapur and others v/s state of Punjab, Supreme Court report (Delhi), Vol.2 (1955), p.236.
\(^{107}\) Sarkar RCS, Union-State relations in India, Nation Publication House, New Delhi, 1986, p. 39.
Dal, Asam Gana Parishad, Telugu Desam Party, Dravida Munnetra Kazhagam, AIDMK, Lok Dal, Samajwadi party, Rastriya Janta Dal, Jharkhand Mukti Morcha etc. have been come to wield more power than their regional strength, really provides them.\textsuperscript{111} Formation of state governments by a variety of such regional parties have forced the major national parties to adjust their organizational structures to suit the demands of regionalization making required adjustments to the federal imperatives of the Indian polity and society.

The scheme of administrative relations between Union and States imposed additional limitations on the provincial Autonomy. Provisions in the Act reserved in the hands of the Governor- General and the Governor a number of basic powers which ought legitimately to have belonged to the provisional government answerable to the legislature. Sir Chimanlal Satal Vad a known moderate and liberal politician felt obliged to remarkable that responsibility is buried in a pile of reservations safeguards and discretions. Part VI of the Act of 1935 enumerated the provisions relating to administrative relations between the Centre and the Provinces. The first principle laid down in this regard was the executive authority of every province there shall be so exercise as to secure respect for laws of the federal legislature which apply in the providence.

The Governor-General was authorize in his direction to direct the Governor of any Province to discharge as his agent either generally or in any particular case any functions in relation to the tribal areas defense external affairs or ecclesiastical affairs with the consent of the Government of Province, the Governor–General was authorized to entrust to that government or to its officers functions in relation to any matter to which the executive authority of the centre extended

The federal legislature could confer powers and impose duties upon a province or officers and authorities there of even in respect of matters outside

the jurisdiction of the provincial legislatures. Extra Courts of Administration incurred by the province in this regard were to be paid by the centre. Section 126 of the Act enjoined upon every province so to exercise its executive authority as not to impede or prejudice the exercise of the executive authority of the federation. The executive authority of the federation extended to the giving of such directions to a Province is as may appear to the federal government to be necessary for that purpose. It also extended to giving of directions to a province as to the implementation of any act of the federal legislature relating to a matter specified in part – II of the concurrent legislative list “A Bill proposing the authorization of issuing of any such directions was subject to the previous sanction of the governor – general in his direction. The executive authority of the federal government also extended to the issuing of directions to a province in respect of the construction and maintenance of meanly of communication of military importance.

The Governor – General acting in his direction also had the power to issue orders to the governor of a province for the purpose of preventing any grave menace to the peace or tranquility of India or of any part there of section 126 of that Act of 1935. Whittled down the restrictions suggested by the white paper on the powers of the federal government and the governor – general and gave there excessive administrative and legislative power over the province. The centre could require a province to acquire land on its behalf. The Provinces were entitled to be entrusted with functions relating to broadcasting which would enable them to construct and use transmitters and to impose fees on construction and use of transmitters and to impose fees on construction and use of transmitters and receiving apparatus in the provinces. But in the exercise of these functions the provinces were subject to such conditions as may be imposed

---

113 Govt. of India Act 1935 Section 126(1)
114 In his constitutional history of India: Prof. A.B. Keith described see – 126 as a very striking derogation from provincial autonomy for an illuminating discussion on his point see sir Sharafat Ahmad Khan op. cit 113-18.
115 Govt. of India Act 1935 – Section 127.
by the federal government. Disputes between the provinces and the federations were to be settled by the governor – general in his discretion.

Sections 130-134 of the Act of 1935 dealt with inter Provincial water disputes comprehensively. If it appeared to the government of a province that its interests in the water from any natural source of supply in any Governor’s or Chief-Minister’s province or federated state had been or were likely to be affected prejudicially, the Provincial Government was required to lodge a complaint with Governor – General who was authorized to create a commission on enquiry in this regard. The decisions taken and order made by the Governor General after considering to the Commission’s Report were final and the provincial legislations repugnant to such orders were void to the extent of inter-provincial water disputes jurisdiction of Courts was barred the Parties however had a right to appeal to his majesty in council section 135 provided for the possibility of the of the creation of an inter-provincial council by his majesty in council charged with the duty of inquiring and advising on inter provincial disputes or subjects of mutual and common interest to the provinces and federation.

**Distribution of Executive Powers between Union and States**

The administrative powers of the State Government are subject to the same limitation of the Union control as the administrative power of the other States in India are not only that by a specific modification of the provisions of the Constitution of India in its application to the Jammu and Kashmir State. The state government is required, so to exercise its executive power as to facilitate the function of the union government in the state and whenever so required by the union government, to acquire or requisite property on behalf of union and transfer it to the union. A new clause related to Jammu and Kashmir was added to Article 256 of the Indian constitution through a constitutional order 1954. Article 256 said, the state of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the union of its duties and responsibilities under the constitution in relation to the states and the said state shall, if so
required by the union acquire or requisition property on behalf of and at the expense of the union or in default of agreement as may be determined by an arbitrator appointed by the chief justice of India.

The distribution of administrative powers may have a strong central bias as it exists in India. However, in Indian Union does not have any separate and effective machinery for administration and execution of central laws or to implement its policies. This is not so in other federations where both the federal and state government creates their own agencies and machinery for the administration of their laws and the subjects allotted to them under the Constitution. In India, union is dependent on the states to give effect to its programmes and laws. The scheme of distribution of Administrative powers has thus, two fold objectives. Its arms the union government with powers to have effective control over the administrative set up of the state and at the same time it adopts several devices for intergovernmental cooperation.

The general powers of the union government are to issue directions to the state government and to ensure compliance with union laws. The state government is subject to the specific obligation to obtain from acts might hamper the exercise of executive powers by the union. Article 246 as applicable to state of Jammu Kashmir says that the parliament has executive powers to make any law regarding the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty or territorial integrity of India or bringing about a secession of a part of the territory of India from union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution.

The Constitution of India provides for drastic remedial measures against a state government which declines to carry out directions it receives from the union government, whenever a state government fails to comply with directives received from the union, the president of India has the power to declare that constitutional government in that state has failed and to impose a state of emergency on that state. The president is entitled to assume all powers of the
state government, and also order that powers of the state legislature should be exercised by the authority of the parliament. If a state government fails to comply with the directions given to it by the union it need not necessarily require the looking of the provisions of Article 365 and 356. The president’s rule under Article 356 is a very drastic step, one that is adopted only in the last resort. The question that arises here, is there any other appropriate remedy (either legislative or executive) is available to achieve the object. The negotiations no doubt offer one way of detailing with the situation but they may not always succeed. As far as legislations is concerned Article 258(2) provides that a law made by parliament may confer powers or imposition of duties upon a state government or officers and authorities there of in relation to a matter in respect of which the state legislature has no power to make laws.

It is pre-supposes that if Parliament is, otherwise competent to make laws in respect of matter such as law may give additional powers and functions to officers and authorities of the state or state concerned, is not required for the purpose and authority given by Parliamentary law is in itself sufficient. Article 261, of the Constitution of India is intended to ensure the effective administration of justice throughout India. Under this article every state is obliged to give full faith and credit to the public acts, records and judicial proceedings of the other States and of the Union Government. The provision “full faith and credit does not imply to consent of the state concerned. Article 261 has three clauses, where the first clause lays down that the public acts, records and judicial proceedings of any state or of the union government shall receive the same credit in any or all of the other states as at home, the record gives parliament the power to lay down by the law the mode of the proof as well as the effect of such public acts records and judicial proceedings in other states and the third clause provides that any executable civil judgment or order of any state shall be directly executable in any or all of the other states. It does not however follow that decree passed in one part can be implemented in another

116 Article 356 of the Indian constitution.
part without legislation providing for it.\textsuperscript{117} It must be noted that the clause refers only to civil judgments that penal laws of one state are not enforceable in another. The constitution of India has devised a number of techniques for ensuring the control of the union over the administrative authority of the states. These techniques include directions to the state governments, delegation of the union functions to the states, All India Services, Inter-state councils, extra constitutional agencies etc.

Executive power is as a rule co-executive with legislative power. As observed by Clement, “It may seem needless to enlarge further upon what under responsible government, would appear too axiomatic namely that legislative jurisdiction and executive power go hand in hand.”\textsuperscript{118} Article 73 and 162 of the constitution dealing with the extent of executive power of the union and the states are to be of the same effect. Executive has been broadly stated to be “the residue of government functions are taken away”.\textsuperscript{119} Broadly, the executive power of the Union and the States extend respectively to matters with respect to which parliament and the state legislatures have power to make laws. However, those powers are not merely confined to matters over which legislation has been already passed.\textsuperscript{120}

Article 73 and 162 merely provide extensive limits and not maximum limits of executive power of the Union and the States. Apart from the broad conferment of the executive power with respect to the scope of legislative power, the constitution specially provides for certain executive powers being exercised by the union or the states. Provisions of these Articles are “subject to the provisions of the Constitution, and hence subject to the provisions of some of the Articles referred to below. Following article has the effect of extending the executive power of the union or the states in the manner mentioned below-

\textsuperscript{117} Variathu Aumaiathi v/s Subramonia in AIR, Vol. 45 (1958), Kerala, p.15.


\textsuperscript{119} Ram Jawaya Kapur v/s state of Punjab, 1955. 2 SCR, 225 at 235 for an interesting discussion on the meaning of expression executive power.

\textsuperscript{120} Ram Jawaya Kapur case 1955, 2 SCR-225 at 232.
Article 72 (1) (c) empowers the president to suspend, remit or commute the sentence of any person convicted of any offence where the sentence of death irrespective of the fact whether the offence is against any law relating to matters to which the executive power of the union regarding the matters referred in Article 72 (1) (c) empowers the president to suspend, remit or commute the sentence of any person convicted of any offence where the sentence of death irrespective of the fact whether the offence is against any law relating to matters referred therein. Article 73 (1) (b) extends the executive power of the union to the rights authority and jurisdiction exercisable by the union by the virtue to any treaty or agreement. Article 282, empowers the union or state to make grants for any public purpose, even though it may not be one which respect to which parliament or the state legislature may make laws and these extends the executive power of the union and the states to making of grants of the nature mentioned therein.

Article 292 extends the executive power of the Union to borrowing upon the security of the consolidated fund of India and the giving of guarantees with in any limits fixed by parliament by law. Article 293(1) extends the executive power of a state to borrowing with in the territory of India upon the security of the consolidated fund of the state and the giving of guarantees with in any limits fixed by the state legislature by laws. Article 298 extends to executive power of the union and of each state to carrying on of any trade or business and to the acquisition holding and disposal of property and the making of contracts for any purpose. Article 355, imposes a duty on the union to protect every state against external aggression and internal disturbance and to ensure that government of every state in carried on in accordance with provisions of the constitution and thus extends the executive power of the union regarding the matters referred to therein. The Executive has the constitutional and popular mandate to shape and formulate the policies of the government, the judiciary functions to protect the constitution. The executive constitutes the core of government. No political system can survive without an executive branch to formulate government policy and ensure that it is implemented. The leadership role of the executive has been enhanced consequent to the widening of responsibilities of the state in domestic

---

as well as international spheres. The executive leadership at once is under popular and legislative surveillance that renders any other over archly a usurpation, which regiments the domestic process and system. If the executive is to carry out its responsibility of carrying out the principles of general policy enacted by the legislature, it must retain the confidence of the latter body. Such confidence gives the latter power to compel the former to act according to its wishes which reflect the will of the people. The legislature can directly secure that the substance of executive act is suffered with what it deems to be its purposes. It can also secure this with the judiciary, though indirectly. The legislature ought not to dictate to the judiciary the nature of results it should attain in a particular case, but it is entitled within the limits.

Although the Union has its own areas of powers for the control of States which in turn have their own areas of powers for the control of states which in turn have their own areas of power independently of the Union. To ensure that a State Government by its action does not interfere in legislative and administrative policies of the union and there by undermine the unity of the nation, certain powers of administrative control over the states have been given to the central government. The constitutional provisions make room for several methods of union control over the states in the realm of administrative relations. Such provisions have been given in the constitution with the idea that most essential for the strength and survival of the union government.

**Administrative Relations during Emergency**

B.N. Rau in his memorandum on the union Constitution dated 30 May 1947 observed, The provisions of the part VII of Indian Constitution (Administrative Relations between union and unit etc.) will depend upon the distribution of legislative powers between the union and the unit in part VI (distribution of legislative powers between union and units) and specific provisions can not be drafted until the provisions of part VI have been decided.

---

upon. The executive powers of the constituent units shall be exercised in compliance with (states), the law made by Parliament and the executive power of the Union extending to giving of directions to the states as to the manner in which the executive powers of the states shall be exercised as not to prejudice the exercise of executive power of the union. Besides the centre alone, either through the parliament or the president could settle disputes between states in certain matters and ensure coordination between them\textsuperscript{123}.

As in case of distribution of legislative power between the Centre and States which, is not confined merely to part XI in the matter of administrative relations too, the framers of the constitution chose to make a very vital provision in the part XI of the Constitution. It is arguable on behalf of Drafting Committee that a provision relating to distribution of administrative powers such as the one included in the miscellaneous part was put there because it was long after the distribution of powers part was finalized that the need for having such a provision made in the constitution was felt. No-doubt this was fact since this provision appeared for the first time in the Draft constitution as revised by the Drafting committee dated 3 November 1946 a little over three weeks before the finalization of the Constitution.

Any State has failed to comply with or to give effect to, any directions given in the exercise of the executive power of the union under any of the provision of this Constitution, the President may hold that situation has arisen in which the government of the state can not be carried on in accordance with the provision of the Constitution. Powers has been given to the Government of India to give directions to the states in various matters and some of these Articles, it has been mentioned that the failure to give effect to these directions will be deemed to be a failure to carry on the government of the state in accordance with the provisions of the Constitution.

\textsuperscript{123} K.C. Markandan, Centre State relations - The Perspective, ABS Publications, New Delhi, 1986, p. 76.
Well perhaps if Dr. Ambedkar had merely held that the purpose of Article 365 was merely as above then it would have been alright. “But it was more than all that and Dr. Ambedkar had to inform the constituent Assembly that article 365 for all intents and purposes was similar to Act 126 of the government of India Act 1935. According to which if it appeared to the governor general that effect had not been given to any of his directions he could in his directions issue orders to the governor who was to act in his discretion in the matter of carrying out directions given by the governor general. Recalling how the powers of giving directions turned out to be in fructuous when Punjab government would not carry out the food policy of the government of India.

Dr. Ambedkar added “The whole Government can be brought to stands till by a Province not carrying out the direction and the government of India not having any power to enforce those directions. This is very important matter and I submit that the change made is not only consequential but very necessary for the very stability of the government\textsuperscript{124}.

It becomes evident that in respect of distribution of administrative powers the framers of the constitution did not contemplate a federation at all. While federalize like Pandit H.N. Kunzru, standing for state autonomy held that Article 365 went beyond the decisions of the house (meaning there by that administrative relations between centre and states would be different in normal times as against an emergency period). Pandit H.N. Kunjuru went to the extent of accusing Dr. Ambedkar for his inconsistency and taking a view exactly the opposite of what he had held earlier and using the need for a strong centre for absolute control of the centre over the provinces and subordinating the states to the will of the centre under all circumstances even in the local sphere allocated to them. Thus H.N. Kunjuru observed that I am at one with all those members who wish that the centre should have adequate powder to discharge its

\textsuperscript{124} Constitutional Assembly Debate, Vol. XI, p. 509.
responsibility. But we can not use the need for a strong centre as an excuse for giving any bias we link to our Constitution.\textsuperscript{125}

The Centre’s powers are already extensive, during the emergency period, these powers have become more exhaustive in 1962, 1971, and 1975, the centre can even supersede the state governments and this constitutional provision has been invoked on no less than fifty’s occasions since 1950. In deed the provision for president rule in the states trends to make a nonsense of federalism in India\textsuperscript{126} what is more even the very identity of states has not been put above molestation by the centre for Article 3 provide that the Parliament may by law -

- Form a new state
- Increase the area of any state
- Diminish the area of any state
- Alter the name of any state

While the Union State relations had on imbalance built into it the 42\textsuperscript{nd} amendment made during the internal emergency (25 June 1975- 23 March 1977) further titled the balance in favour of the centre. Under this amendment the centre has acquired the unlimited right to send troops into any of the states to counter threat to law and order. This is one of the most sincere features of subversive amendment. Even earlier such an action could be taken but only if a particular state was violating the constitution or was not able to govern it self. As a result of amendment the centre is empowered to send troops into a state irrespective of any breach of the constitution or threat to the stability of the state in other words the centre can now take over the state on its own definition. The central government in India has two kind of role. It governs in the sphere of functions directly allotted to it by the constitution and in addition it functions as the Government of India – exercising over the constituent units the powers of overseeing control even punishment. There is a view point among the

\textsuperscript{125} K.C. Markandan, op.cit., p. 81.
constitutional jurist that federalism and emergency provisions do not go together there is force of logic in this but it can not be accepted as truism or as unalterable truth under all circumstances for all countries. Nothing in the draft constitution agitated more members of constituent assembly\textsuperscript{127} than the emergency provisions. The use of emergency provisions would convert the federal into unitary system without necessitating any constitutional amendment. They would accentuate the powers of the state enactive particularly they would affect the states, autonomy legally, politically and financially.

The Emergency provisions under Article 352-360 in the Constitution envisage three kinds of emergency, National Emergency which may be necessitated by war or external aggression or armed rebellion (Art 352), the break-down of constitutional machinery in the states caused by threat to financial stability and credit Art 360. The Indian Constitution maker had adopted and imitated some principles of other well known federal constitutions of the world and seized with the problem to make their adoptable to Indian social setup. This was the dilemma facing the constitution – makers when they decided to introduce the parliamentary democracy with the federal frame work. Political institutions anywhere in the world are not immune from all pervading influence exerted by history society and tradition\textsuperscript{128}.

Although it has to be concerned that there is an element of anti thesis between federalism and emergency provisions, it is not proper or wise to condemn and castigate these provisions and recommend their revocation forthwith. It can not be said that these provisions were included mainly with the object of the thwarting or endangering the working of federal system – these were intended to be employed as an antidote to meet the needs and requirements of emergencies and extraordinary situations and not to be employed as a power in a licentious and permissive manner in the day-to-day political life of the country. As long as these provisions continue to be used strictly, consistently and

\textsuperscript{127} Constitutional Assembly Debate, Vol. IX, pp. 169-172.

\textsuperscript{128} Entry 45 and 93 of government of India act 1935, empowered the governor- general and governor of state to issue proclamation in case of failure of constitutional machinery.
unscrupulously for the purpose for which they were designed, they will expect few not pose or cause any threat or challenge to federalism. When they are maliciously employed by those in power for narrow and selfish political purposes, such as abuse or irresponsible use of these provisions will not fail to cause irreparable and unbearable harm to the co-operative relations between the union and the states.

One of the most important constitutional obligations of the Union towards the States is to protect them against external aggression armed rebellion and internal disturbances and to ensure that government of every state is carried on in accordance with the provisions of the constitution. Infect, this constitutional duty of the Union is writ large on the provisions of Article 353 and Article 356 and 357. There is vast scope for the Union to invoke its constitutional authority in terms of Article 353. Further Article 355 has great bearing on Article 356 of constitution\textsuperscript{129}. This Article protects every state against external aggression and internal disturbance, and to ensure that the government of every state is carried on in accordance with the provisions of this constitution. Though the Article 355 stipulates the duty of the union towards the states, it does not indicate any power and procedure to fulfill the duty.

Article 353(a), of the Constitution states that “while a proclamation of emergency is in operation, the executive power of the union shall extend to the giving of directions to any state as to the manner in which the executive power of the state is to be exercised. The Raja Mannar committee in its report suggested that no direction under this article should be issued except after consulting, and with the approval of inter-state council if, however, during a period of emergency consultation with the inter−state council is likely to delay the issue of directions under article 353(a) to meet any emergent situation …… the direction may be issued without placing the matter before the interstate

\textsuperscript{129} Krishna Shetty K.P., President power under Article 356, of the constitution in theory and practice (Constitutional working since independence IIJ.), p- 333.
council, subject to the subsequent approval is obtained and further action is taken in accordance with the recommendation of the Council\textsuperscript{130}.

When there is National Emergency (Art. 352) caused by war external aggression or armed rebellion, the President of the Union Government stands automatically empowered to give directives to the States as to the manner in which the later should exercise their executive powers and Union Parliament stands empowered to make laws with respect to any subject included in the state list\textsuperscript{131}. These consequences will have definite bearings on the Union-State relations and it is impossible to say that state autonomy will remain unaffected or uninfluenced. Under normal circumstances development like these would have been construed as a definite encroachment by Union or the States, sphere and state autonomy, and quite against the rationale underlying the distribution of powers.

Apart from other powers of the President during the national emergency, the President may also by order modify all or any of the provisions of article 268-279 in their application to states. It is important to note that these provisions (Art. 268-279) in their application to states. It is important to note that these provision under Article 268-279 deal with several aspects of distribution of revenue between Union and States. Thus it can be said that the financial and administrative relations between Union and States cannot remain free from the centre hood of national emergency. The President who is to act in accordance with the aid and advice of the Union Cabinet cannot exercise his free will in implementing or otherwise of these constitutional provisions.

The constitutional duty and obligation enshrined by Article 355 of the constitution can be enforced by the procedure laid down in Article 356, which lays down that if president is satisfied on a report submitted by governor of state that the government of state cannot be carried on in accordance with the

\textsuperscript{130} Rajamannar committee Report (Government of Tamil Nadu) p -143.
\textsuperscript{131} Hussain M.A., Social and Legal Perspective of Centre – State Relations in India, Deep & Deep Pub- N. Delhi , 1989, pp. 85-86.
provisions of the constitution, he may by proclamation assume to himself all or any functions of the state government or power vested in or exercisable by or under the authority of parliament and make such incidental and consequential provisions for giving effect to the objects of the proclamation.

Thus when there is emergency proclaimed under Article 356 the legislative assembly will be dissolved, the State Ministry will go out of office, the State Government will administer the state on behalf of President, and the Union Parliament will make laws for the state. The Union Parliament becomes competent to confer on the President the power of the state legislature to make laws and authorize the president to delegate the laws making power conferred on him or to any other authority.

**Failure of constitutional machinery in a state:** It can be declared under Article 365 which provides if the states fails to comply with or to give effect to any directions given in the exercise of the executive powers of the Union, under any provision of the Constitution, the President can hold that the Government of State can not be carried on in accordance with the provision of the Constitution. This Article of the Constitution (Art. 365) has been taken almost verbatim from the Government of India Act 1935. Thus, the Constitution of India provides for central intervention in the state, if the latter fails to perform federal obligations or maintain the democratic and republican form of government, or if the government of the state is not carried on in accordance with the provisions of the Constitution.

The expression occurring in Article 356 is so much vague that the Article can be twisted to suit the political aim of the ruling Party of the Union. Commenting on this expression, H.V. Kamath said “It is a constitutional crime to empower the President to interfere not merely on the Report of the Governor or ruler of a state but otherwise” other is a mischievous word. It is dialectical word in this content and I pray to God this will be deleted from this Articles, it the God does not intervene today, I am sure at no distant date, he will intervene when things will take more serious turn and the eye of everyone of us will be
more awake than they are today. But in the state of Rajasthan v/s Union of India, the supreme court of India has held that the president does not act only on the report of the Governor but on otherwise. This means the satisfaction of the President under Article 356 which is non-justiciable can be based on material other than governor’s report. This decision of the Supreme Court does not seem to have kept in mind the basic objective of Article 356 and its use by ruling Party at Centre.

The grounds mentioned above clearly prove that Party in power at the centre has dismissed State Governments in an arbitrary manner. The power of declaring failure of constitutional machinery has also been misused by suspending or dissolving the assemblies keeping in view the interest of the ruling party in the centre. Whenever there is a chance of forming alternative ministry by maneuvering defection or the assemblies were suspended, otherwise they were dissolved for example, the Assemblies were suspended, in Rajasthan in 1967 in UP in 1970, in Orrisa in 1971 in Assam in 1979 and in Punjab in 1987; But on the other hand Assemblies were dissolved in Andhra in 1954 in Kerala in 1965 1970, and again in 1982, in Manipure in 1969 Tripura and in west Bengal in 1971 in Orrisa in 1973 in Assam in 1982 in order to prevent the opposition from forming the government when the congress ministries or the ministries supported by it went out of office.

Similarly, the suspension of State Assemblies in Punjab in 1961 1966, 1983 and again in 1987, Andhra Pradesh in 1973 in UP and Orrisa in 1975 provided examples for the resolving intra party conflict. Such examples can be added to show that opposition is not given a chance to form the government

---

133 AIR 1977, Section 1361.
134 Siwach J.R. *The President Rule in India*, Prakashan Delhi, 1971, p. 300.
135 *The Tribune*, 7 November 1983.
immediately after election. Opposition is not allowed to form government after the defeat of the ministry on the floor of the house.

**Janta Government**: The Janta Party came into existence in the 1977 as a result of the release of the top opposition leaders from detention. It may be recalled here that all the top leaders in the opposition parties were under detention during the emergency imposed by the Prime Minister Mrs. Indira Gandhi in 1975. The Congress government announced in January 1977 that the Lok Sabha poll would take place in March 1977. All the major opposition Parties took place in order to form a joint front and bring into existence a viable alternative to the congress for this purpose some national major opposition parties decided to merge into one party. The Congress ‘O’ Jana Sangh, Bhartiya Lokdal, Socialist and the Swatantra Party were merged into one National Front. The leaders of all these Parties came together and formed the Janta Party. The party fought the elections very successfully under its banner. The Historical poll resulted in unseating the congress government by putting an end to its 30 years rule at centre. The Janata party formed the government at the centre in the last week March 1977. The Janta era started in the country with a ray of new hope. The merge was formalized at an all India convention in May 1977.

The Party could not work with a real sense of unity, because under the garb of unity all the constituents retained their separate identities. The differences among the leaders of the party surfaced in early 1979. In the middle of 1979 the differences reached a point of no return. The Janta Government collapsed at the centre. But till today the Janta Party (Presently BJPor Bhartiya Janta Party) has been working as a national party. The Party has given its own views on Centre-State relations. Kabur, A.S. critically analyzed the views of Janta Party on Centre-State relations “The unity of India is the Unity of a land of diversity. The democratic Constitution of our Country has therefore, to be in absence a federal Constitution. However, in the historical circumstances that

---

136 This happened in Kerala in 1965 in Rajasthan 1967.
137 For example such situation arose in Andhra in 1954 in Manipur in 1969 and in Assam in 1987.
prevailed at the time of the birth of Independent India, some unitary features were considered essential to preserve the unity of country. More than three decades have elapsed since the constitution came into force. The experiences of these years have revealed the loopholes and shortcomings that can result in the subversion or erosion of some of the basic values and concepts of our constitution including democracy, federalism and the decentralization. There should be proper devolution and decentralization both at the administrative and financial spheres. This is the major thrust of the party. The decentralization should be from the centre not only to the states but right upto the Panchayats in turn with the spirit of federalism. “It has therefore become imperative to have a second look at the constitution to take corrective action through the constitutional amendments and the conventions. These amendments should strengthen the federal characters of the constitution with emphasis of devolution of political and the financial powers not only from the centre to the states but further down to the Panchayat as well. The edifice of a strong centre can be raised only on the firm foundation of the strong states. “At present a number of central agencies such as the Agricultural Prices Commission, Central water Commission, Central Electricity Authority, Director General of Technical Development, Monopolies and Restrictive Trade Practices Commission, Employees State Insurance Corporation, National Saving Organization Employees Provident Fund Organization Bureau of Industrial Cost and Prices, Food Corporation of India etc. handle activities relating to the subjects in the states and concurrent list of the seventh schedule of the constitution.

There is a provision in constitution to establish an inter-state council to solve the problems and disputes among the various states. But so far the centre has not given any attention towards the setting up of council. Therefore the inter-state boundary and water dispute have remained unsettled for a long period. This attitude of the centre is responsible for the tensions and the bitterness among the

---


140 Kabbur, A.S.: Centre-state Relations in India page-39.
various states. Even the Arc has referred to the failure of the centre to establish such a council to benefit the constitutional provision, relating to the states. Therefore, the Party has suggested that the inter-state council should be set-up without further delay to prevent the misuse of Article 356 of the Constitution. This was regarding the President’s rule in concerned States. The Centre has total control over mass-media like radio and the television. The legitimate rights of the states in this field have been denied. The monopoly of the centre over the mass media must be ended. The party has suggested that there should be autonomous corporations to deal with the affairs of television and radio.

As, we known that a strong centre was created under the Constitution. But during the years it has grown stronger and stronger by assuming transferring and encroaching upon and misusing the various powers in different field. The Centre has misused its powers in third, sixth, seventh and 42nd amendments to the constitution. Even in the fields of Planning Commission, implementation of five year plans emergency powers, imposition of present rule, appointment of governors, toppling of opposition party governments in the states, reservation of the state bills for approval of the president, control over the officers of all India services, appointment and transfer of judges in all these cases the centre has been playing a dominant role the states. The Union has also the controlling powers to the states in the names of grants-in-aid, loan and the overdrafts. The law and order is a state subject, but the union has been dealing with this aspect under its special powers without the consent of states. At present various regional parties have been coming in to power in some states. This trend started in year 1967. The people of the states concerned have been supporting such regional parties since 1967. This is because of the centre is negligence of regions concerned. When there is a concentration of power at the centre, then the Centre-State relations will be deteriorated. The executive powers has not been defined in the Indian constitution with the enormous expansion of state activities, executive
powers does not mean merely execution of laws but also includes all service operations of the state.\textsuperscript{141}

The Supreme Court has rightly described -It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remains after legislative and judicial functions are taken away subject, of course to the provisions of the constitution or of any law. The executive function comprises both the determination of the policy as well as carring it into executive, the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carring on or supervision of the general administration of the state.\textsuperscript{142}

As modern States are welfare or service states, the administrative powers have gained importance even at the cost of legislative and judicial functions. Executive power is as a rule coextensive with legislative powers, unless there is any specific provision to the contrary. Articles 73 and 162 of the Indian Constitution dealing with the executive power of the Union and States given effect to this rule.\textsuperscript{143} Thus under Article 73 of the Indian Constitution, the executive powers of the union extends to matters with respect to which the parliament has exclusive power to make laws, ie. matters listed in the Union list. This article of the Constitution, also specifically confers on the union executive power in relation to any treaty or agreement with the foreign countries. Also, under Article 162 of the Constitution, a state has exclusive executive power over patterns incorporated in the state list.\textsuperscript{144} However, in order to enable the executive to function in respect of any subject, it is not necessary that there should be prior legislation on the same subject.\textsuperscript{145}

The Article 365 relating to the administrative relations says that, where any state has failed to comply with, or to give effect to any directions given in the exercise of the executive power of the union under any of the provision of

\textsuperscript{142} Ram Jawaya v. State of Punjab (1955) 2 Supreme Court Report, 225.
\textsuperscript{143} R.K. Choubey, op.cit., p. 146.
\textsuperscript{144} Jayantilal vs. Rana, AIR 1964 SC 648.
\textsuperscript{145} Mirmal vs. Union of India AIR 1959 Calcutta 506.
the Constitution, the President may hold that situation has arisen in which the Government of the state can not be carried on in accordance with the provisions of the Constitution.\textsuperscript{146}

**Lok Dal (Janta Dal):** The Lok Dal has given its down views on administrative relations Article 355 states that it is the duty of the central government to protect every state against external aggression and internal disturbances. “Only during the external aggression against the state the centre can send the Parliamentary Forces like Central Reserve Police without consulting the states. But in remaining situations the centre should not send the central serve police without express request or the consent of the states. The centre should not interfere in the affairs of states without the express request from them. “When the centre sends its paramilitary forces or the central reserve police to the state concerned with request or consent, they must function and operate under the discipline and control of the state government in the forces violates the law, then the state government should have the power to deal with the force except with regard to their service conditions. Against this background the Lok Dal has suggested that Article 355 should be amended. Regarding the All India Services the Lok Dal has given its own view the officers belonging to the cadre of All India services have been playing an important role in national building. The IAS and IPS officers are posted in the states. But they remain under the supervision and the disciplinary control the central government when different political parties come into the power in the states and the union, the union government attempts to use IAS and IPS officers and advice them to non-cooperate with state governments. Even sometime they will subvert state governments and bring them to disrepute. There is considerable truth regarding the attempts made by the ruling party at the centre to use these officers.

A balance must be struck regarding their position. It is undoubtedly true that they must remain under the supervision and disciplinary control of state

governments. But at the same time, they must have reasonable protection from the harassment and insecurity from some unscrupulous political heads of governments and various ministries. The officers belonging to All India Services should be under the control and supervision of the states concerned governments. The Administrative tribunals should protect those officials against victimization. “The Lok Dal has given its own views regarding the role of the governor. At present the president appoints the governors on the advice of the Union council of ministers under Article 154 and 155. But the Lok Dal has suggested that president should appoint the governors to the states concerned on the advice of the council of ministers headed by the Prime minister. The Governors have been playing an important role under the federal structure. Therefore, the governors should not act as the constitutional heads of the states. Our constitution has given protection to the Supreme Court judges in the matter of removal from their office. The same protection should be given to the governors of the states so that they could function fearlessly and interdependently.

**Formulation and Dismissal of the Ministries in the States:** The Lok Dal has complained that Article 164 has been invariably abused. The Ministries can be toppled in the states through the machinations of the governors. The party has mentioned the examples of Andhra Pradesh and Jammu and Kashmir. It was the tremendous public pressure and the steadfastness of the legislators of Andhra Pradesh that government has to yield.\(^{147}\) Therefore, the party has recommended the amendment of Article 164 of the constitution regarding the appointment of Chief Minister the Governor should appoint a person who enjoys the support of the majority members of the state legislative Assembly. The Governor should summon the legislative assembly within three days of vacancy of the post. The governor should dismiss the Chief Minister when he is voted out of office, if he himself does not resign. If the Chief Minister loses the confidence of the legislative assembly and if he still insists that they has majority support in

---

\(^{147}\) The views of Lok Dal: A Copy sent to the Sarkaria Commission on Centre-State Relations (New Delhi Party Office 1986), p. 27.
the legislative Assembly, then a meeting of the legislature should be convened within three days to enable him to seek a vote of confidence.

The Communist Party of India (Marxist) has given its views on administrative relations between the centre and the states. At present, the officers belonging to Indian Administrative service and Indian Police Service cadre are posted to the states, but they remain under the supervision and disciplinary control of Central Government. There should be only two services–namely, the Union Services and State Services. The recruitment to the union services should be made by the Central Government and the State Government concerned should recruit the state services. In the year 1967, itself the party had stated these views that Hindi should not be the Rashtrah Bhasha and the English language should not be the national language, “Our party is of the view that in the course of growing economic, social and intellectual intercourse, the people of different states of India will develop in practice the language of intercommunication most suitable to their needs. This natural process will be hindered rather than helped, if Hindi the language of the largest linguistic group in the country is sought to be imposed on the other people. While our party is all for encouragement to the learning of Hindi by Non-Hindi speaking people, we are of the view that the equality of all India languages in parliament and central administration should be recognized

The Party has given more importance to the Indian languages. “Member of Parliament should have the right to speak in any language and simultaneous translation will have to be provided for in all other languages. All acts government orders and resolutions of the centre should be made available in all Indian languages. The use of English in the field of administration legislation, judiciary and as the medium of instruction in education should be discarded replacing it with the people language of state concerned. The right of people to receive instruction in their mother tongue in educational institutions as well as its

use as the medium of education in the states up to the higher standard should be recognized. The Urdu language and its script should be protected. The Eight schedule of the Constitution should be emended to include language like Nepali.

The Communist party has stated that the Administrations of the states should be in their regional languages. The majority of the people in all the states and regions should replace English not by Hindi but by their own language. There is not one Rashtra Bhasha in India, but there are as many as dozen Rashtra Bhasha in our country. The language policy of the centre is based on National inequality. Therefore a correct approach to the languages of the people is necessary unity and promoting a sense of equality.

**West Bengal’s Memorandum on Centre-State Powers**

The question of Centre-State relations is crucial to the preservation of the unity and integrity of India with the framework of its linguistic culture and other diversities. The constitution that emerged after independence, though describe as federal, was essentially unitary in character. It clothed the centre more powers at the expense of the autonomy of the states. That is why the concurrent list has as many as 47 items.”

Since, the adoption of the constitution, the tendency had been to make greater inroads into the powers of states. This was facilitated by the fact that the same Political Party was in power at the centre and in all the states except for short durations and that too in only a few states. While the demand has been growing for greater powers to the states so as to make states autonomy real and effective, there have been persistent efforts to erode even the limited powers of the states and reduce the democratic functioning of the governments there. The right of the people to manage their affair even with in the limited sphere allotted in the state list of the constitution has been sought to be reduced to a force for this purpose, all manner of pressures had been used, sometimes formally through the power of the centre, some times indirectly by denying finances and other resources etc, to non congress governments and by

---

applying pressure of the Chief Ministers of the Congress Party through the organizations of leadership.

A strong and unified India can only be one in which the democratic aspirations and the distinctiveness of the people of different states are respected and not treated with disdain we are definitely for strong states, but on no account do we want a weak centre. The concept of strong states is not necessarily in contradiction to that of strong centre, one their respective spheres of authority are clearly marked out. According to Marcus. F. Franda, “Federal relationship in India is a bargaining process between central and state leaders, one in which experiment, cooperation persuasion and conciliation could describe both generally accepted norms and the usual procedural patterns of inter-governmental relationship”.

To protect states autonomy an amendment to Article 248 should be made to the effect that the legislature of state should have exclusive power to make any law with respect to any matter not enumerated in the union- or concurrent list as against the present provision which reserves this right to parliament while the enlarging the scope of the states sphere, we must also they to preserve and strengthen the union authority by subjects that could be carried out by the union authority and not by any single state, such as defense, foreign affairs including foreign trade currency and communications and economic coordination. The role of the centre should be one of coordination.

Article 356 and 357 which enable the President to dissolve a State Government or its Assembly or both should be deleted. In the care of Constitution break down in a state, provision must be made for democratic step of holding election and installing a new government as in the case of Centre.

---

Article 360, which empower the president to interfere ground of a threat to financial stability or credit of India should be deleted.151

Article 200 and 201, which empower the Governor to resolve bill passed by Assembly for President’s assent should be done away with. The state legislatures must be made supreme in the state sphere and no interference by the centre in this sphere should be allowed on any ground. In order to enforce the principle of equality of the federating units and to protect further erosion of states autonomy it is suggested that elections to the Rajya Sabha also should be directly by the people at the same times as Lok Sabha elections, all states must have equal representation in Raj Sabha except those with a population of less than three million. All India services like IAS, IPS, etc. Whose officers are posted to the states but remain under the supervision and disciplinary control of the central government must be abolished. Three should be only union services and state services and recruitment to them should be made respectively by the Union Government and the State Government concerned.

**Kerala’s views on Autonomy for the States:** E. K. Nayanar Chief Minister of Kerala, at the symposium on Centre-State Relations held at Madurai on 17 August 1980 said that – “When our national leaders and constitutional experts sat down to frame our Constitution, it was not possible for them to foresee as to how exactly centre-state relations would develop in future. They could not even visualize that our country would be re-organized on the basis of language. All that they then visualized was only a reorganization of the then existing provinces and native states on the basis of so-called administrative convenience.

**Role of Governor as Executive Head**

The Office of the Governor in Indian political system is not something new. Infect, it is as old as the East India company dates back to 1800. The Charter granted by the Queen on 31st December 1600, provided for the office of

---

the governor elected by the company in addition to twenty four committees. The charter was granted for a period of fifteen years and Thomas Smith Alderman of London, was appointed the first governor. It is important to note that with the extension of powers of company by the Act of 1609, 1615, 1623 and 1657 the office of governor also became important. It was only after the Battle of Plassey in 1757; the East India Company became the dominant power, by assuming sovereign authority over large number of territories which later on were divided into provinces. Each province was governed by a chief executive known either as the governor or the lieutenant governor. Subsequent Act like the Regulating Act of 1773, the Pitt’s India Act 1784, Act of 1786, Act of 1807, Act of 1833 etc, directly or in directly affected the office of governor.

By the Government of India Act 1919, a new device known as “Dyarchy” was introduced in the provinces. Under this system the provincial matters were divided into two parts – the transferred and reserved subjects. The transferred subjects were to be administrated by the Governor with the aid and advice of the ministers accountable to the legislative council on the other hand, the reserved subjects were to be administered by the governor and his executive council without being responsible to the legislative council.

The British Government appointed statutory Commission in 1927 in order to examine the functioning of the system of government in India which submitted report in 1930. This resulted in the passing of Government of India Act 1935, which can be considered as the basis of the last phase in evolution of Governor’s office in pre-independent India. As Mr. M.S. Dahiya observes ‘From 1773 to the passing of the Minto-Morely Reforms of 1909 not with standing the new momentum of the national movement in 1885, the governor in provinces continued to play dominant sole. The government of India Act 1935,

---

154 Dahiya, M.S., Office of the Governor in India, Sundeep Prakashan, 1979, Delhi, p. 18.
went a step further in the sense that position of Governor became less than a real head, but remained more than a constitutional by any stretch of imagination.

Governor is appointed by the Union Government and he continues his office during the pleasure of the its appointing authority. He may become suspect of acting under the pressure of the ministers of central government in relation to his functions in the state. This is especially true if the same party does not sue the government at the Centre and in particular State. According to Article 155, of the Constitution of India “the Governor of the state is to be appointed by the President by warrant under his hand and seal 157 of Constitution provides no person is eligible for appointment as Governor unless he is a citizen of India and he has completed the age of thirty five years.”

Right from the commencement of the Indian Constitution a hot debate is going on regarding the role of Governors. Normally, two extreme views are advanced in this context. First, which argues that a governor is only a constitutional head without any authority to interfere in state administration? His position is akin to the position of the president that is he is bound by the aid and advice of council of ministers headed by a chief minister except, that he enjoys some sort of discretionary powers in rare situations. Second view argues that a governor has significant and wide ranging discretionary powers under constitution with which under he can not only guide state administration, but interfere whenever he deems it necessary.

These arguments and counter arguments started generating more heat but less light after 1967 because most of the state legislatures were captured by the opposition parties. Beginning of 1980’s witnessed the emergence of two divergent phenomenon in Indian politics moving in opposite direction:

- Return of Mrs. Indira Gandhi as Prime-Minister with a road roller majority in parliament and along with her returned centralization, authoritarianism, and personalized politics.
Emergence and consolidation of regional and opposition symbols, jargons and vocabulary like N.T. Rama Rao, in Andhra Pradesh, Ramkrishna Hagde in Karnataka and M.G. Ramachandran in Tamil Nadu, council of southern Chief-Minister initiated by Hegde was a step in this direction.

It is an assertion and demand for more and more decentralization and powers to the states under these two opposite and mutually hostile trends, contradictions and conflicts were quite natural. As a result role of governor became more and more controversial, and the decade 1950s witnessed the increasing use and abuse of Article 356.

Thus the office of Governor, as conceived by Constitution makers, was endowed with potentialities to develop as an instrument for forging line and dynamic link between the centre and states and it plays an important role in Union State relations. Under our Constitution, the Centre has been given a dominant voice in affair of the states, in times of peace and overriding powers in times of Emergency. In order that the centre may discharge its constitutional obligations to the states it is necessary that the centre should have a representative in each state who has a duty to defend the constitution, promote national objectives and national integration and also preserve national standards of public administration. At this time, in a parliamentary system, there must be someone at the head of as state who is not affected by the rise and fall of Governments in the State. Under the Constitution, the Governor is accepted to play a double role, as the head of the state and as the representative of the centre. Both the functions are equally important and there is sometimes conflict between them. The duality in the role of the Governor is perhaps the most unusual feature of our constitution and has made the Governor’s task difficult and delicate.

The role of Governor in Administrative relations is a perennial interest in the Constitutional system and its working problems of far reaching importance relating to the office of the Governor have cropped up from time to time and lot of misunderstanding between the centre and the state has arisen on account of the role of the Governor. The Indian situation being what it is, it can be safely
said that while the Governor in an opposition ruled state will always be important, the role of the Governor in a state ruled by a party which also wields power at the centre will always tend to be unimportant. As the special report of the study team of Administrative reforms commission has said that, “he (Governor) would be out-flanked and reduced to a non-entity.

Today many questions are raised over the issues of the role of the Governor in the Indian political system. Is the Governor only a nominee of the centre? Is the Governor only a nominee of the centre? Is he not the head of the constituent state? Should he not therefore, act on the advice of the council of Ministers? Such questions are bound to recur again and again. But the most important question in this regard is whether the massive denigration of the office of the Governor is the handiwork of only one individual and only one political Party or should the blame be laid at more doors then one?

The fact can not be denied that Governors can certainly play an important role in improving union state relations if the widespread feeling that the Governors are agents of union, can be removed. But for this purpose conventions have to be evolved so that unnecessary pin pricks may be avoided and healthy relations between the Governors and their ministers can be established. This becomes easy once the ministers know that the Governors are their friends, that they are well wishers of the states, that they are influential with the central authorities, that through there adequate assistance can be secured, then their task becomes comparatively easy and there is continuous co-operation between them and the ministries.

Of course, all this, does not mean that no efforts were made in this regard in the past. Infact, since the adoption of the constitution, we have been trying to build those healthy conventions which strengthen and smoothen the parliamentary set-up. But on the other hand, occasionally resource to the written provisions have caused bitterness between a Governor and his chief minister, and has invented criticism of the conduct of the Governor not on the grounds of constitutional validity, but on propriety.
Union Control over States

Union Governments give Directions to the State Governments: The Union Government possesses the authority to control the State Governments by virtue of constitutional provision of giving directions to the State Governments. These provisions operate both normal and emergency situations. The Constitution expects the States to ensure their executive power in manner in order to ensure compliance with the union laws and power of the union extend to giving of such directions the state as may appear to the Government of India to be necessary for that purpose. The executive power of the states is not to impede on prejudice the exercise of the executive power of the union. In respect of Constitution and maintenance of means of communication declared to be of national or military importance and protection of railways, the Union Government has also the power of giving direction to the states. Union is also empowered to direction states activities for welfare of the education of scheduled tribes.

The Constitution provides for a situation in which as State Government decline to carry out the direction, it has received from the Union Government. Article 365 lays down that where a state has failed to comply with or give effect to any direction to any given in the exercise to executive power of the union it shall be lawful for the President to hold that a situation has arisen in which the government of the states can not be carried on in accordance with the provision of the constitution. He will then be entitled to assume all or any of the functions of the government of the states and the all powers vested in or exercisable by the Governor or anybody or authority other than the High Court of the State. “The constitution with a view to securing uniformity through the country not only provides for union directions to the states but also makes room for sanctions against non-compliance. Incase of non-compliance the president becomes competent to make a proclamation under Article 356 that the constitutional machinery has failed where upon the coercive provisions of that article will

155 Constitution of India, Article 257 (1),(2) and (3).
come into play. The Constitution of India provides coercive sanction for the governance of the state, by the president under Article 356. This has given rise to a new area of tension between the centre and state relating to law and order and the maintenance of central government’s property. This issue had been raised by the Kalyan Singh government when the central government deployed CRPF, in U.P. to check and control the plan of Karsevak in Ayodhya on December 6, 1992. The Bhartiya Janta Party government in UP strongly opposed the central government’s scheme to send the said forces. It is other thing that these para-military forces absolutely failed to play its active role. The centre-state confrontation took place seriously when on March 24, 1969 the CRPF fired at mob in administrative building of the Durgapur steel plant as a result of which six people were injured. Then, the home minister of West Bengal Mr. Jyoti Basu urged the with-drawl of all CRPF units from the steel offered the strong argument that the maintenance of law and order, including the protection of all types of property centre state and private was with in the constitutionally delimited jurisdiction of the state government. As Basu bluntly said that there cannot be two parallel forces in the state.\textsuperscript{156}

After the Janta Party came into power in 1978 at the centre, the Home Minister declared that the centre would deploy its forces in the affected areas only at the request of the state government concerned. This was further confirmed in the Chief Minister’s Conference of September 1978 when the Prime Minister Mr. Morarji Desai accepted the chief minister’s view that the Police and Armed Forces should be strictly kept out of the realm of party-politics. In this, Chief Minister’s conference the Prime Minister delivered a clear indication that the centre would not interfere in affairs of the states in the management of the law and order problems.

**Union Delegates the Powers to the State Government:** The Union may exercise control over States by giving necessary directions. The power to issue directions in a formidable weapon in the hands of the Union Government as the

constitution provides for a coercive sanction for the enforcement of such directions. Such directions may be issued under Article 256, 257, 339(2), 350(A), 393(a) and 360(3) of the Indian Constitution.\(^{157}\)

Article 356 of the Constitution required that the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing law which apply in that state, and executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.\(^{158}\) It is a positive injunction on a state, Article 257 of the Constitution requires that the executive power of every state shall be so exercised as not to impede or prejudice the executive power of union. In this case also, the executive power of the union extends to giving of all necessary directions. The union has also power of issuing directions to a state as to the construction and maintenance of means of communication declared to be of national and military importance. The Union can also issue directions to a state as to the measures to be taken for the protection of the railways within the states. It is clear that with reference to Article 256, the existence of law made by Parliament is condition precedent which must be satisfied for the issuance of direction under it. No direction can be issued under Article 256 where no enforcement of law made by parliament is involved.

The Union Government can delegate its powers through two ways:

- Union Government may with the consent of State Government, delegate to it the Union’s inventive power on specific subjects conditionally or unconditionally.

- Parliament may while enacting a law on a union subject confer powers and impose duties or authorize confessing of powers and imposition of


duties on a state of offices and authorize there of for administrating the law so made.\textsuperscript{159}

The difference between two types of deligation is that in the former that union can not act on its own without the consent of the states were as in the latter case the union can act unilaterally by virtue of the authority given by the parliamentary legislation. The states might incur additional expenditure for either carrying out the directions or performing duties given by the union government and there in no justification for imposing this additional burden on the state’s exchequer. “The constitution provides that union government will compensate the states for this purpose and in case there is any disagreement between union and the state governments concerned as to the amount of the compensation payable, the matter will be referred to the chief justice of India (CJI) to decide it by appointing an arbitrator. Arbitration will half in shielding from public eye the internal conflict between deferent governments there by avoiding bitterness in their reciprocal relationship.

As we know that original Constitution did not incorporate any provision enabling the State Governments to delegate their executive functions to the Union. The states forced practical difficulties in the face of absence of such a provision with regard to certain developmental works. For example the Union Government under took the construction of Hira Kund “Dam” in Orrisa. The comptroller and auditor general objected to this arrangement as ultra vires of the Constitution. The deficiency could be done away with by the seventh amendment to the Constitution. “Article 258A was added under which the government of India entrust either conditionally or unconditionally to that government of to its officers functions in relation to any matter to which the executive power of the state extends.\textsuperscript{160}

\textbf{State’s Autonomy in Administrative Relations}

\textsuperscript{159} Article 154(2)(b) according to which parliament is not prevented from conferring by law function on any authority subordinate to governor.

\textsuperscript{160} Ashok Chandra, \textit{Federalism in India}, 1965, p. 109.
There has been much talk about for and against state autonomy in the Indian federation. The first fact about state autonomy that has to be accepted is that it is not independence. In one sense it is not correct to assume that the constitution has settled everything finally forever. India is a nation in the making attempting a closer integration, and no body has sufficient authority to decide whether India is a nation of sub-nations or multinational state. Under the Indian constitution it is clear that the India states are not like the indestructible states of an indestructible union.

When we talk of state autonomy now, we are not thinking of the provincial autonomy of the Government of India Act 1935 or university autonomy, of attenuated autonomous institutions which no financial powers, or the imagined autonomy of a broad casting corporation of which any government is afraid. Under the state list of the seventh schedule of the constitution, the state enjoy vast legislative and thereby executive powers. The problem of state autonomy in great issue from the birth of Indian Republic. The federal idea which was mooted in Nehru Report and Report of the Indian statutory Commission was assiduously pursued in round table conference and was adopted in the government of India Act 1935. The two major characteristic of the aforesaid act were that —

- It proposed a federation for India.
- It provided for provincial Autonomy.

But the proposed federation could not see light of the day as the conditions precedent to its inauguration could not be fulfilled the issue of provincial autonomy gained momentum that cabinet mission plans attempted a compromise between the congress demand for a strong and unified India and league’s demand for a separate home land for the Muslims, and the framer of our Constitution started in October 1946. We had some sort of a loose Union of States as our objectives. With the adoption of June 3 plan the partition of the vast

---

India subcontinent became a settle fact and the tie was cast in favour of the strong centre. Amal Ray has rightly observed that “the constitution was conceived at a time when unitary trends were most powerfully manifest in country’s politics”.162

The sentiment for state autonomy was at its peak when the Constitution was put on its anvil. Introducing the Draft constitution, Dr. B.R. Ambedkar said, “It establishes a dual polity with 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. The Union is not a league of States united in a loose relationship, nor are the states, the agencies of the union, derived power from it. Both the union and the states are created by the constitution; both derive their respective authority from the constitution. The one is not subordinated to the other in its own field; the authority of one is coordinated with that of the other”.163 It is therefore, wrong to say that the states have been placed under the centre. The centre cannot by its own will alter the boundary of this partition, nor can the judiciary. The demands for the state Autonomy may have been the unequal battle with the Unitarian trends, but it has never run short of its firm supporters. The union is more powerful because the constituent assembly strongly desired to have a strong union. The president of the constituent Assembly as also the chairman of the Drafting committee gave enough indication of this climate of opinion K.M Panikkar pleaded for a strong centre and observed “The structure of the Administrative power unity built up in Hindustan will fall to pieces unless then union is given a overriding power.164

Granville Austin observed, “The exigencies of all the present as well as pattern of the past impelled the Constituent Assembly to create a strong control government lesson pointing to this conclusion were had in the streets outside the Assembly. Only a strong communal frenzy preceding and accompanying

164 Constitutional Assembly Debate, VII. 1, Page – 33-34.
partition accomplish the administrative tasks created by the partition and resettle the refuges. Presenting the union power committee’s report N.G Ayanger stated that committee came to the conclusion that we should make the centre in this country as strong as possible consistent with leaving a fairly wide range of subject is to the provinces in which they would have the utmost freedom to order things as they liked.

It is difficult to concur with this line of argument, Dr. Ambedkar appeared to think that a simple division of legislative and executive authority between the centre and states by the constitution, howsoever inquitour is enough to fulfill the federal requirements of the system. This is wrong. It is not the division of authority but the actual quantum of authority assigned to the centre and the units which is crucial. What the Indian constitution makers did was to ensure a convenience division of administrative labour between centre and units and not an equitable sharing of responsibility between them.\textsuperscript{165}

**Recent Trends of State’s Administrative Autonomy:** There are several issues which have caused the tension between Union and the States. These issues could be solved with the cooperation of each-other. The conflict between the Union and States cannot be ruled out altogether. Every effort should be made to avoid such conflicts. This normally done by mutual discussions, consultations and negotiations at conferences of Governors, Chief ministers, officials of the Central Government and the State Governments, Planning Commission, National Development Council, National Integration Council etc. Some issues which caused of tension between Union and States are as follows:

- Partition Role of Governor:
  - Appointing and dismissing the State Ministers.
  - Summoning pro rouging and dissolving the assemblies.

• Reservation of large number of bills for the consideration of the president under article 200 and 201.
• Issuing ordinance.

➢ Misuse of the constitutional emergency powers under Article 356:
  • Dismissing the state ministers having majority in the Assembly on untenable grounds.
  • Suspending and dissolving the State Assemblies keeping in view the interests of ruling party at the centre.

➢ Discriminatory attitude of the centre towards the states in:
  • Appointment and transfer of the Governors.
  • The appointment of inquiry commissions against Chief Ministers.
  • Financial devolution in general loans and grants-in-Aid in particular.

➢ The role of Planning Commission.

➢ The use of central reserve police by the centre in the states without the permission of the state governments.

➢ The refusal by certain state governments to carry out central directions issued under article 357 and 365 of the constitution because they were not in, interest of the ruling party in the state.

➢ Inter-state river water dispute.

These issues generated Centre State tensions on the one hand and sense of insecurity in some of regional ruling Parties, on the other hand hence the DMK in Tamil Nadu, Akali Dal in Punjab and CPM in West Bengal started advocating constitutional amendments to ensure more autonomy of the states.

If we analyze the demands of the states then the three trends seems to emerge about the state autonomy. These three trends are -

➢ India is not a National State and therefore it should be split up into various semi-independent states. Though at the moment this trend is very insignificant it has its advocates among certain intellectuals. This trends
therefore feels that the rise of regionalism is not something which should unnecessarily worry the centre because it is an inevitable result of the rising consciousness of the development and developing nationalities, thus to the adherents of this school of thought.

- The second trends is that the States should get greater autonomy in every sphere. The extreme view in this trends advices that accepting these subjects including defense, foreign affairs and currency all other subjects should be transferred to states there are other shades of opinion too, in this trend

- The third trend is that the dominant position of the centre in our federal system should continue to prevail and adjustments should be made with in existing frame work of the constitution.

**Directions of Union Government to States Government:** It was from Government of Indian Act of 1935, that the framers of the constitution took the idea of giving directions. The union may give directions to the states for the following progress.

- To ensure, due to compliance with union laws and existing laws.

- To ensure that the exercise of the executive power by the states does not interfere with the exercise of the executive power by the union.

- To secure the construction and maintenance of means of communication of military importance by states.

- To ensure the protection of railway lines and property with the states.

- To promote the Hindi language.

- To ensure the observance of canons of financial propriety in the manner specified during financial emergency.

---


167 Report of ARC on Centre-States Relations 1968.
➢ To reduce the salaries and allowances of all classes or any class of persons serving in connection with the affairs of the union, including the judges of the Supreme Court and High Courts during financial emergency.

➢ To draw up and execute specified schemes for the welfare of other schedule tribes in the states.

These are the matters on which the union government has power to issue direction to the state government. The section behind these directions in Article 365 which empowers the president of India -

➢ To issue a proclamation in respect of any of states saying that government in that state can not be carried on in accordance with the provisions of the constitution.

➢ To assume himself all or any of the functions of the government of the state and all or any of the powers vested in or exercisable by any body or authority in the state other than the legislature of the state.

➢ To declare that powers of the legislature of the state shall be exercisable by or under the authority of the union parliament.

The extra-ordinary powers of the union are subject to legislations. Firstly, every proclamation which should necessarily be laid before parliament ceases to have effect at the expiry of period of two months, unless approved by both houses of parliament. A proclamation approved by ceases to be enforced at expiry of a period of six months. The proclamation can be kept alive by subsequent resolutions of parliament for six months, at that time up to a total period of three years. Secondly, the president can not assume to himself the functions of the High Court by virtue only of this Article.