CHAPTER I

ANATOMY OF CENTRE-STATE RELATIONS

A. INTRODUCTION

A socio-legal study of Centre-State relations under the Constitution of India involves on the one hand the examination of sociological factors which influenced the framing of the provisions of the Constitution pertaining to Centre-State relations and on the other hand the nature, working and legal bearing of these provisions on Centre-State Relations.

In fact it requires investigation in sociological as well as political and economic factors. It is in the later sense the investigation is contemplated. It is not the law alone that decisively determines the operation of constitutional provisions governing Centre-State Relations but the operation of law is conditioned by social, economic
and political forces. The constitution in essence is the mirror of socio-political and economic aspirations of people. A great deal of uncharitable, uncalled for and hasty criticism hurled at the constitutional provisions relating to Union-State Relations and its working could have been avoided if the provisions were studied from the sociological angle.

B. SOCIAL FACTORS

An attempt to make a socio-legal study of the Centre-State Relations under the constitution of India will necessitate the examination of the following aspects:

(1) The formidable forces influencing the constituent Assembly in its task of constitution making and more particularly, of constitutional provisions governing the Centre-State relations.

(2) Constitutional provisions alleged to have unitary bias and non centralising tendencies i.e. factual conditions, particularly in the Legislative, administrative and financial fields.

1. Illustrated Weekly of India - 26 March 1978.
(3) Other constitutional provisions and extra-constitutional bodies and factual conditions governing Centre-State Relations.

No time is more propitious than the present to attempt a socio-legal study of the Centre-State Relations. There is a plethora of literature on the Indian Constitution and also on the Centre-State Relations. The existing literature notwithstanding its massivity, abounds in various criticism of various aspects of the constitution and mainly of Centre-State Relations. However, many of these criticisms are untenable, misleading and unrealistic. It is necessary to emphasise that many of these criticisms would appear on the surface of it to be very formidable and irrefutable. But in reality it is not so. If only detailed socio-legal study of the Centre-State Relations had been undertaken, many of the criticisms would not have been made at all.

A casual glance at the constitutions of only a third world country

4. Ibid.
including India will not fail to show how these countries have taken the ideas and instructions, without any inhibitions, from western democracies for framing their constitutions. Inspite of this imitation or plagiarism in constitutional engineering, it would be hazardous to discount inestimable influence of time, place and circumstances in the shaping and determining the constitution. This is no less true with respect to the constitutional provisions governing Centre-State Relations. But this would not seem to have been followed consistently by the critics and commentators as far as the Constitution of India is concerned.

No constitution in the interest of preserving its legitimacy and ensuring its longevity, could ever remain complacent or ignore the weight or relevance of the sociological forces. Political farsightedness and social awareness obliged the constitution makers to give due weight to sociological forces. The explicit recognition by the constitution makers of the weight sociological forces produced in the framing of Indian constitution is evidenced practically in the whole fabric of the Constitution of India. But unmindful of the impact of the sociological

forces in the constitution making, the critics and commentators have laboured enormously to pinpoint the dark spots of the constitution of India. Such critics and commentators have overlooked the fact that nothing changes so much the pace of constitutional engineering as the time factor and social needs.

It, therefore, is necessary to examine the various shades of opinion that influenced the constituent Assembly in framing the Indian Constitution. The constituent Assembly that came into being in August 1946 fell short of Congress demand as the Congress stood for an Assembly constituted on the basis of universal adult franchise. The Assembly was born in an atmosphere of servitude. Right from 1909 the British Constitutional policy in India had been flattering and favouring the minorities and compartmentalising the Indian society socially and politically. So granting of the right of universal franchise to India was also not in the interest of the British. The Muslims and princes could not favour the idea of universal franchise and common electorate as in that case they were unlikely to get any substantial representation in the Assembly. It would have not only deprived the minorities of their share of political cake but would also have endangered the position of British Rule.

8. Ibid.- p. 5.
They were not unaware of the far reaching implications of conferring universal adult franchise on Indians as it would have tantamount to acquiescing in imparting with de-facto political sovereignty to Indians. Hence the constituent Assembly was constituted by means of indirect elections in accordance with the prevailing system of franchise under the Govt. of India Act 1935.

C. POLITICAL EXCIGENCIES

Moreover, due to highly explosive, precarious and serious political and social atmosphere in the country it would not have been possible to fulfil all the formalities to hold a sort of general election involving more than 150 million voters, vast majority of whom were illiterates. What would have been the impact of universal adult franchise on the princely states where the existing governmental system was anything but constitutional, liberal and democratic? Had the princely states disagreed to confer universal adult franchise on their people, could the Assembly have been brought into existence without princely states where one third of Indian population lived?

Viewing the constituent Assembly from the angle of its basis and mode of composition it becomes evident that the failure to constitute Indian Constituent Assembly on
the basis of universal adult franchise did not deprive it of the services of large body of members known for eminence, calibre, distinction, abilities and passionate zeal for the country's service and well being and representing the broad spectrum of Indian Society. It is difficult to deny the stark truth that in actual composition, the constituent Assembly was a microcosm of the Indian society. It is highly doubtful, if not impossible, that if a Constituent Assembly had been chosen on the basis of universal adult franchise, it would have ensured the election of such a galaxy of eminent members who adorned the Constituent Assembly.

The state that has emerged under the Indian constitution is a sovereign, democratic, secular, socialist republic. It is an indestructible union of indestructible democratic republic. The tone and tenor of Art.1-4 demonstrate the determination of the constitution makers to create an indestructible union consisting of constituent states and union territories.

Federalism constitutes a complex governmental mechanism for the governance of a country. It seeks to draw a balance between the forces working in favour of concentration of power of the centre and the forces which

favour a dispersal of power in a number of units. Federalism thus seeks to reconcile unity with multiplicity, centralisation with decentralisation and nationalism with localism. It rests on peculiar psychology among regionally grouped political communities of desiring union without desiring complete unity. The regionally indentified communities possess some very strong factors in their individual identity - in one case it is language - for the preservation of which they desire to maintain their separate existence. That is why Sir John Stracy was forced to state while answering the question "What is India?" "there is no such country. . . . . India is a name which we give to a great region including a multitude of different countries. Enlarging this there he wrote "the difference between the countries of Europe are undoubtedly smaller than those between the States of India. Scotland is more like Spain than Bengal is like the Punjab . . . . It is probable that not less than fifty languages, which may rightly be called separate, are spoken in India. The diversities of race and religion are as wide in India as in Europe . . . . there are no countries


in civilised Europe in which people differ so much as the man of Madras differs from the Sikh, and the languages of Southern India are as unintelligible in Lahore as they would be in London. A native of Calcutta is a much foreigner in Delhi or Peshawar as an English man is a foreigner in Rome or Paris. In spite of this the country may possess certain common interests, subscribe to a set of common values, and may share a common historical tradition of sufferings and rejoicings that imparts a sense of common destiny owing to which they desire a coordinated and united political organisation for the fulfilment of common aspirations and objectives that override their individual and regional interests and identities. A striking balance between two sets of conflicting sentiments - one calling for centralisation and the other reinforcing regional peculiarities and separateness is attempted in the constitution. In order to strike a balance between this centralism and provincialism federalism is bound to be a dynamic process. The complex of social, psychological, political and economic factors which necessitates federalism may require one kind of instrumentalities at one time, and quite another type at a later stage. It will be profitable if we remember this while making critical observation of Union-State Relations.

D. FEDERATION : A NECESSITY

Summarising the basic principle of federalism

Dr. Ambedkar said -

"as to the relation between the centre and states, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and the executive authority is partitioned between the centre and states, not by any law to be made by the centre, but by the constitution itself. This is what constitution does. The States under our constitution are in no way dependent upon the centre for their legislative and executive authority. The centre and the states are co-equal in this matter. It is difficult to see how such a constitution can be called a centralism. It may be that the constitution assigns to the centre too large a field for operation of its legislative and executive authority than is to be found in other federal constitution."\(^{13}\)

But how far this basic principle is followed in the actual working of our constitution is a matter to be examined.

Morris Jones observing the actual working of the centre-state Relations under the Indian Constitution states "where as the

\(^{13}\) C.A.D. Vol. XI. p. 976.
emphasis on the Indian constitution is on demarcation, that the practical relation is on co-operative bargaining."\textsuperscript{14}

The reason adduced in favour of this contention is that the centre despite its vast powers, is dependent heavily on the States for the implementation of its policies largely on account of the fact that it has staff but no line of agencies. Rajamannar Committee observes "though the constitution set up a federal system ... there are several provisions which are inconsistent with the principles of federalism."\textsuperscript{15} It may be contended that the Rajamannar Committee's observation, based on observation of actual working of the constitution is a mature one but biased by regionalism, than the observation of Dr. Ambedkar whose observation was just a maiden one on the advent of constitution making and therefore not based on actual working of the constitution.

Discussing the nature of Centre-State Relations under the Indian Constitution different writers have called the Indian federalism by different levels such as quasifederal, statutory decentralization, sisterhood of states, federal-unitary polity, permissive federalism,

\textsuperscript{14} Rajamannar Committee's Report on Centre-State Relations Govt. of Madras Ch. II. p.6.

rainbow federalism, marbel cake federalism, Union of States, co-operative federalism and bargaining co-operative federalism.

Whatever may be the name ascribed to Indian federalism it is the working of federal polity that aims for a federal stability and social progress that matters. The concept of federal stability involves two things: continued existence of the regional and central Govt. as somewhat equal partners. In order that this objective be achieved, it is necessary that the constitutional guarantee of (i.e. Constitutionally created opinions for) regional autonomy is effectively maintained. The central problem of federalism is to "keep the centripetal centrifugal forces in equilibrium so that neither the planet states shall fly off into the space nor the sun of central Govt. draws them into its consuming fire." Secondly federal stability involves progressive achievement of greater viability and cohesion of the body politic, which is to-day best described as a subsystem within the larger (and competitive) system of nation-states. How far the Indian federal system has achieved this federal stability is a matter that is to be examined by looking into the triple confluence of the

relevant federal provisions of the constitution, dynamic forces that have shaped these constitutional provisions and the working of federal system.

An examination of the constitutional provisions relating to Union State Relations will not fail to show that the scheme of distribution of powers - legislative, administrative and financial has not failed to allow the centre and states a substantial area where they can act with considerable degree of freedom, that it has not come in the way of the states aspiring for and attaining a position befitting them as the constituent states in a federal set-up. One is to remember that it is not the scheme of distribution of powers that is solely responsible for making the centre very formidable. The entire constitutional system and the political theory pervading it is responsible for assigning a very enviable and unique position to the centre which has become eyesore of the critics.

No doubt the centre has been vested with a vast and formidable array of powers - Parliament's power to admit, establish, form new states, increase or diminish their area, and change their names or boundaries; abolish or create legislative councils in the States; power to appoint state governors, and High Court Judges; Legislative Imbalance,
Governor's power to reserve legislative bills for consideration of the President who is not under any constitutional obligation to assent them is tantamount to legislate with respect to any subject in the state list, both during normal and emergency periods, Council of State's power under Article 249 to recommend the creation of one or more All India Service precedence for central law in the event of the conflict of laws in respect of any matter in the concurrent lists; Parliament's power to legislate for two or more states, at their request in respect of a matter in the State list, and adoption of such legislation by any other state; parliament's power for implementing any international treaty or agreement or convention; centre's power to direct the states to exercise their executive powers in such a manner as to ensure compliance with the centre's law and not to prejudice its executive powers; centre's power to delegate its function to the states, centre's discretionary grants to the States; centre's directives to the states as to the manner of exercising their executive powers in times of national emergency; parliament's power to legislate and sanction money for states where the latter came under the President's rule under Article 356, president's power to suspend rights guaranteed by Art. 19 and suspend the right to move courts for the enforcement of rights guaranteed by part III and its power to reduce public
expenditure and issue directive to the states to send financial or money bills passed by state legislatures under Article 207 for President's consideration; all these provisions amount to create inroads in the legitimate field of State autonomy. This vast and impressive list of centre's extraordinary powers may naturally tempt critics of Indian federal system to infer that this has led or will lead to political decimation, constitutional emasculation, financial servitude, psychological intimidation and more impoverishment of the states.

E. CRITICAL APPRAISAL

There has been a great deal of criticism in India against the constitutional provisions governing Centre-State Relations: The bone of contention in this behalf is that in distributing powers the constitution has tilted the balance in favour of the centre. To some extent the criticism is not wholly unjustified. This is so when a surface deep examination of the Indian federal system is attempted. Hard political realities, incredible historical tradition and compelling expediences and human problems are the factors which in the ultimate analysis determine the nature scope and form of any Govt., be it
federal or unitary. But to find out and satisfy if there is any element of truth in the contention that the constitutional device followed for distribution powers has resulted in tilting the balance in favour of the centre, it is necessary to examine three factors:

(1) Has the centre been given all necessary powers and functions for realising the ends and purposes for which the federal setup has been brought into being?

(2) Do the powers and functions given to the centre and states conform to the territorial divisions within which the central and state govt. are to act respectively?

(3) Is the constitutional procedure, followed for distributing powers, so designed as to maintain a balance between the centre and states by ensuring them substantial powers and fairly wide functional autonomy or independence?

A careful consideration of the scheme of distribution of powers will show that the first two factors were not neglected but the third one was not given meaningful consideration as it ought to have been given.
not because that the autonomy of the constituent states was overlooked or sidetracked but to ensure that the constituent states did not act in a manner constitutionally prejudicial and politically unbecoming. In other words the autonomy of the states is constitutionally rationed to ensure the careful nurturing of the delicate federal plant on the Indian Soil. Thus the scheme of the distribution of powers has been tampered by the imperative consideration of ensuring the durability and stencil strength of the federal centre and not to bend the autonomy of the states by upsetting in an unusual manner the balance of authority. The study of Centre-State Relations needs careful consideration of such factors.

The demand for redefinition of the powers of the centre and the states, with a view to restoring forces indicates that a fundamental change has taken place in the working of the federal polity since the reorganisation of States in 1956. The demand for such reorganisation of states was also due to federal sentiment that developed during the British rule. Because the established federalism rigidified the existing regional identities by giving them continued opportunity for articulation of their sentiments. After all federalism also generates its own strains and
tensions. While it divided the nation into one national centre and federating units, conflicts inevitably erupt when claims of an over-arching nationalism conflicts with particularistic regional identities. This is because that nationalism "is a jealous god that suffers no rivals in allegiance." 17