

## CHAPTER 26

# ADMINISTRATIVE RELATIONS BETWEEN THE UNION AND THE STATES

ANY federal scheme involves the setting up of dual governments and division of powers. But the success and strength of the federal polity depends upon the maximum of co-operation and co-ordination between the governments. The topic may be discussed under two heads:

**Need for co-ordination between the Units of the Federation.**

(a) Relation between the Union and States;

(b) Relation between the States *inter se*.

In the present Chapter the former aspect will be discussed and the inter-State relations will be dealt with in the next Chapter.

### (A) TECHNIQUES OF UNION CONTROL OVER STATES

It would be convenient to discuss this matter under two heads—(i) in emergencies; (ii) in normal times.

I. *In Emergencies*. It has already been pointed out that in 'emergencies' the government under the Indian Constitution will work as if it were a unitary government. This aspect will be more fully discussed in Chap. 28.

II. *In Normal Times*. Even in normal times, the Constitution has devised techniques of control over the States by the Union to ensure that the State governments do not interfere with the legislative and executive policies of the Union and also to ensure the efficiency and strength of each individual unit which is essential for the strength of the Union.

Some of these avenues of control arise out of the executive and legislative powers vested in the President, in relation to the States, *e.g.* :

(i) The power to appoint and dismiss the Governor [Arts. 155-156]; the power to appoint other dignitaries in the State, *e.g.*, Judges of the High Court; Members of the State Public Service Commission [Arts. 217, 317].

(ii) Legislative powers, *e.g.*, previous sanction to introduce legislation in the State Legislature [Art. 304, Proviso]; assent to specified legislation which must be reserved for his consideration [Art. 31A(1), Prov. 1; 31C, Prov. 288(2)]; instruction of President required for the Governor to make

Ordinance relating to specified matters [Art. 213(1), Prov.]; veto power in respect of other State Bills reserved by the Governor [Art. 200, Prov. 1].

These having been explained in the preceding Chapters, in the present chapter we shall discuss other specific agencies for Union control, namely:

- (i) Directions to the State Government.
- (ii) Delegation of Union functions.
- (iii) All-India Services.
- (iv) Grant-in-aid.
- (v) Inter-State Councils.
- (vi) Inter-State Commerce Commission [Art. 307].

The idea of the Union giving directions to the States is foreign and repugnant to a truly federal system. But this idea was taken by the framers of *our* Constitution from the Government of India Act, 1935, in view of the peculiar conditions of this country and, particularly, the circumstances out of which the federation emerged.

The circumstances under which and the matters relating to which it shall be competent for the Union to give directions to a State have already been stated. The sanction prescribed by the Constitution to secure compliance with such directions remains to be discussed.

It is to be noted that the Constitution prescribes a coercive sanction for the enforcement of the directions issued under any of the foregoing powers, namely, the power of the President to make a Proclamation under Art. 356. This is provided in Art. 365 as follows :

**Sanction for enforcement of Directions.** "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 provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution."

And as soon as a Proclamation under Art. 356 is made by the President he will be entitled to assume to himself any of the functions of the State Government as are specified in that Article.

It has already been stated that with the consent of the Government of a State, President may entrust to that Government executive functions of the Union relating to any matter [Art. 258(1)]. While legislating on a Union subject, Parliament may delegate powers to the State Governments and their officers insofar as the statute is applicable in the respective States [Art. 258(2)].

Conversely, a State Government may, with the consent of the Government of India, confer administrative functions upon the latter, relating to State subjects [Art. 258A].

Thus, where it is inconvenient for either Government to directly carry out its administrative functions, it may have those functions executed through the other Government.

It has been pointed out earlier that besides persons serving under the Union and the States, there will be certain services 'common to the Union and the States'. These are called 'All-India Services', of which the Indian Administrative Service and the Indian Police Service are the existing examples [Art. 312(2)]. But the Constitution gives the power to create additional All-India Services.<sup>1</sup> If the Council of States declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interests so to do, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States and regulate the recruitment, and the conditions of service of persons appointed, to any such service [Art. 312(1)].<sup>1</sup>

As explained by Dr. Ambedkar in the Constituent Assembly, the object behind this provision for All-India Services is to impart a greater cohesion to the federal system and greater efficiency to the administration in both the Union and the States:

"The dual policy which is inherent in a federal system is followed in all federations by a dual service. In all Federations, there is a Federal Civil Service and a State Civil Service. The Indian Federation, though a dual polity, will have a dual service, but with one exception. It is recognised that in every country there are certain parts in its administrative set-up which might be called strategic from the point of view of maintaining the standard of administration... There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts... The Constitution provides that without depriving the States of their right to form their own civil services there shall be an all-India Service, recruited on an all-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union."

As stated earlier, Parliament is given power to make such grants as it may deem necessary to give financial assistance to any State which is in need of such assistance [Art. 275].

By means of the grants, the Union would be in a position to correct inter-State disparities in financial resources which are not conducive to an all-round development of the country and also to exercise control and co-ordination over the welfare schemes of the States on a national scale.

Besides this general power to make grants to the States for financial assistance, the Constitution provides for specific grants on two matters: (a) For schemes of development, for welfare of Scheduled Tribes and for raising the level of administration of Scheduled Areas, as may have been undertaken by a State with the approval of the Government of India. (b) To the State of Assam, for the development of the tribal Areas in that State [Provisos. 1-2, Art. 275(1)].

The President is empowered to establish an inter-State Council [Art. 263] if at any time it appears to him that the public interests would be served thereby. Though the President is given the power to define the nature of the duties to be performed by the Council, the Constitution outlines the three-fold duties that may be assigned to this body. One of these is—

#### **Inter-State Council.**

"the duty of *inquiring* into and *advising* upon disputes which may have arisen between States."

The other functions of such Council would be to investigate and discuss subjects of common interest between the Union and the States or between two or more States *inter se*, e.g. research in such matters as agriculture, forestry, public health and to make recommendation for co-ordination of policy and action relating to such subject.

In exercise of this power, the President has so far established a Central Council of Health,<sup>2</sup> a Central Council of Local Self-Government,<sup>3</sup> and a Transport Development Council,<sup>4</sup> for the purpose of co-ordinating the policy of the States relating to these matters. In fact, the primary object of an Inter-State Council being co-ordination and federal cohesion, this object has been lost sight of, while creating fragmentary bodies to deal with specified matters relying on the statutory interpretation that the singular 'a' before the word 'Council' includes the plural.

The Sarkaria Commission has recommended the constitution of a permanent inter-State Council, which should be charged with the duties set out in (b) and (c) of Art. 263. Such a Council, consisting of six Union Cabinet Ministers and the Chief Ministers of all the States, has been created in April, 1990.<sup>5</sup>

For the purpose of enforcing the provisions of the Constitution relating to the freedom of trade, commerce and intercourse throughout the territory of India [Arts. 301—305], Parliament is empowered to constitute an authority similar to the Inter-State Commerce Commission in the U.S.A. and to confer on such authority such powers and duties as it may deem fit [Art. 307]. No such Commission has, however, been set up.

#### Inter-State Commerce Commission.

Apart from the above constitutional agencies for Union control over the States, to ensure a co-ordinated development of India notwithstanding a federal system of government, there are some advisory bodies and conferences held at the Union level, which further the co-ordination of State policy and eliminate differences as between the States. The foremost of such bodies is the Planning Commission.

#### Extra-constitutional Agencies for setting all-India Problems.

Though the Constitution specifically mentions several Commissions to achieve various purposes, the Planning Commission, as such, is not to be found in the Constitution. 'Economic and social planning' is a concurrent legislative power [Entry 20, List III]. Taking advantage of this Union power, the Union set up a Planning Commission in 1950, but without resorting to legislation. This extra-constitutional and non-statutory body was set up by a resolution (1950) of the Union Cabinet by Prime Minister Nehru with himself as its first Chairman, to formulate an integrated Five Year<sup>6</sup> Plan for economic and social development and to act as an advisory body to the Union Government, in this behalf.

#### Planning Commission.

Set up with this definite object, the Commission's activities have gradually been extended over the entire sphere of the administration



excluding only defence and foreign affairs, so much so, that a critic has described it as "the economic Cabinet of the country as a whole", consisting of the Prime Minister and encroaching upon the functions of constitutional bodies, such as the Finance Commission<sup>7</sup> and, yet, not being accountable to Parliament. It has built up a heavy bureaucratic organisation<sup>8</sup> which led Pandit Nehru himself to observe<sup>7</sup>—

"The Commission which was a small body of serious thinkers had turned into a government department complete with a crowd of secretaries, directors and of course a big building."

According to these critics, the Planning Commission is one of the agencies of encroachment upon the autonomy of the States under the federal system. The extent of the influence of this Commission should, however, be precisely examined before arriving at any conclusion. The function of the Commission is to prepare a plan for the "most effective and balanced utilisation of the country's resources", which would initiate "a process of development which will raise living standards and open out to the people new opportunities for a richer and more varied life". It is obvious that the business of the Commission is only to prepare the plans; the implementation of the plans rests with the States because the development relates to mostly State subjects. There is no doubt that at the Union, the Planning Commission has great weight, having the Prime Minister himself as its Chairman. But so far as the States are concerned, the role of the Commission is only advisory. Whatever influence it exerts is only *indirect*, insofar as the States vie with each other in having their requirements included in the national plan. After that is done, the Planning Commission can have no *direct* means of securing the implementation of the plan. If, at that stage, the States are obliged to follow the uniform policy laid down by the Planning Commission, that is because the States cannot do without obtaining financial assistance from the Union.<sup>9</sup> But, strictly speaking, taking advantage of financial assistance involves voluntary element, not coercion, and even in the *United States* the receipt of federal grants-in-aid is not considered to be a subversion of the federal system, even though it operates as an encroachment upon State autonomy, according to many critics.<sup>10</sup>

But there is justification behind the criticism that there is overlapping of work and responsibility owing to the setting up of two high-powered bodies, *viz.*, the Finance Commission and the Planning Commission and the Administrative Reforms Commission has commented upon it.<sup>11</sup> There is, in fact, no natural division between 'plan expenditure' and 'non-plan expenditure'. The anomaly has been due to the fact that the makers of the Constitution could not, at that time, envisage the creation of a body like the Planning Commission which has subsequently been set up by executive order. Be that as it may be, the need for co-ordination between the two Commissions is patent, and, ultimately, this must be taken over by the Cabinet or a body such as the National Development Council of which we shall speak just now, unless the two Commissions are unified,—which would require an amendment of the Constitution because the Finance Commission is mentioned in the Constitution.

The working of the Planning Commission, again, has led to the setting up of another extra-constitutional and extra-legal body, namely, the National Development Council.

This Council was formed in 1952, as an adjunct to the Planning Commission, to associate the States in the formulation of the Plans. The functions of the Council are "to strengthen and mobilise the efforts and resources of the nation in support of the plans; to promote common economic policies in all vital spheres and to ensure the balanced and rapid development of all parts of the country", and in particular, are—

- (a) to review the working of the National Plan from time to time;
- (b) to recommend measures for the achievement of the aims and targets set out in the National Plan.

Since the middle of 1967, all members of the Union Cabinet, Chief Ministers of States, the Administrators of the Union Territories and members of the Planning Commission have been members of this Council.<sup>12</sup>

Besides the Planning Commission, the annual conferences, whose number is legion, held under the auspices of the Union, serve to evolve co-ordination and integration even in the State sphere. Apart from conferences held on specific problems, there are annual conferences at the highest level, such as the Governors' Conference, the Chief Ministers' Conference, the Law Ministers' Conference, the Chief Justices' Conference, which are of no mean importance from the standpoint of the Union-State as well as inter-State relations. As Appleby<sup>8</sup> has observed, it is by means of such contacts rather than by the use of constitutional coercion, that the Union is maintaining a hold over this sub-continent, having 25 autonomous States (now 28):

"No other large and important national government... is so dependent as India on theoretically subordinate but actually rather *distinct units responsible to a different* political control, for so much of the administration of what are recognised as national programmes of great importance to the nation.

The power that is exercised organically in New Delhi is the uncertain and discontinuous power of prestige. It is influence rather than power. Its method is making plans, issuing pronouncements, holding conferences... Any real power in most of the development field is the personal power of particular leaders and the informal, extra-constitutional, extra-administrative power of a dominant party, coherent and strongly led by the same leaders. Dependence of achievement, therefore, is in some crucial ways, apart from the formal organs of governance, in forces which in the future may take quite different forms."<sup>8</sup>

Another non-constitutional body, the National Integration Council, was created in 1986, to deal with welfare measures for the minorities on an all-

**National Integration Council.** India basis. The National Front Government revived it in 1990, with a broad-based composition, including not only Union Ministers and Chief Ministers of States, but also representatives of national and regional political parties, labour, women, public figures as well as media representatives. The issues before its first meeting were—

Communal harmony, increased violence by secessionists, the problems in respect of Punjab, Kashmir, Ram Janambhoomi-Babri Masjid.

#### (B) CO-OPERATION BETWEEN THE UNION AND THE STATES

Apart from the agencies of federal control, there are certain provisions which tend towards a smooth working of both the Union and State Governments, without any unnecessary conflict jurisdiction. These are—

(i) Mutual delegation of functions.

(ii) Immunity from mutual taxation.

(a) As explained already *our* Constitution distributes between the Union and the States not only the legislative power but also the executive power, more or less on the same lines [Arts. 73, 162].

**Mutual Delegation of Functions.**

The result is that it is not competent for a State to exercise administrative power with respect to Union subjects, or for the Union to take up the administration of any State function, unless authorised in that behalf by any provision in the Constitution. In administrative matters, a rigid division like this may lead to occasional deadlocks. To avoid such a situation, the Constitution has engrafted provisions enabling the Union as well as a State to make a mutual delegation of their respective administrative functions:

(b) As to the delegation of Union functions, there are two methods:

(i) With the *consent* of the State Government, the *President* may, without any legislative sanction, entrust any executive function to that State [Art. 258(1)].

(ii) Irrespective of any consent of the State concerned, *Parliament* may, while legislating with respect to Union subject, confer powers upon a State or its officers, relating to such subject [Art. 258(2)]. Such delegation has, in short, a statutory basis.

(c) Conversely, with the *consent* of the Government of India, the *Governor* of a State may entrust on the Union Government or its officers, functions relating to a State subject, so far as that State is concerned [Art. 258A].

(C) IMMUNITY FROM MUTUAL TAXATION

The system of double government set up by a federal Constitution requires, for its smooth working, the immunity of the property of one Government from taxation by another. Though there is some difference between federal Constitutions as to the extent to which this immunity should go, there is an agreement on the principle that mutual immunity from taxation would save a good deal of fruitless labour in assessment and calculation and cross-accounting of taxes between the two governments (Union and State).

This matter is dealt with in Arts. 285 and 289 of *our* Constitution, relating to the immunity of the Union and a State, respectively.

**Immunity of Union Property from State Taxation.**

**Exemption of Property and Income of a State from Union Taxation.**

The property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a state [Art. 285(1)].

Similarly the property of a State is immune from Union taxation [Art. 289(1)]. The immunity, however, does not extend to all Union taxes; as held by *our* Supreme Court,<sup>13</sup> but is confined only to such taxes as

are levied on property. A State is, therefore, not immune from customs duty, which is imposed, not on property, but on the act of import or export of goods.

Not only the 'property' but also the 'income' of a State is exempted from Union taxation. The exemption is, however, confined to the State Government and does not extend to any local authority situated within a State. The above immunity of the income of a State is, again, subject to an overriding power of Parliament as regards any income derived from a commercial activity. Thus—

(a) Ordinarily, the income derived by a State from commercial activities shall be immune from income-tax levied by the Union.

(b) Parliament is, however, competent to tax the income of a State derived from a commercial activity.

(c) If, however, Parliament declares any apparently trading functions as functions 'incidental to the ordinary functions of government', the income from such functions shall be no longer taxable, so long as such declaration stands.<sup>14</sup>

### REFERENCES

1. Until 1961, no additional All-India Services were created, but later on several new All-India Services were created [vide footnote no. 45 under Chap. 30. *Post*].
2. S.R.O. 1418, dated 9-8-1952; *India*, 1959, p. 146
3. *India*, 1957, p. 398
4. *India*, 1979, p. 352. Also Central Council of Indian Medicine, Central Family Welfare Council [*India*, 1982, pp. 101, 108].
5. *Rep. of the Administrative Reforms Commission* (1969), Vol. 1, pp. 32-34; *the Report of the Sarkaria Commission on Inter-State Relations*, Part I, paras. 9.3.05-06.
6. The current Plan is the 10th Five Year Plan (2002-07)
7. CHANDRA, *Federation in India*, pp. 213 *et seq.*
8. APPLEBY, *Public Administration in India*, p. 22
9. Under the Second Five Year Plan, 70 per cent of the 'revenue expenditure' and nearly the whole of the 'capital expenditure' on the State Plans were financed by grants from the Union (under Art. 275 of the Constitution), known as 'matching grants'.
10. *Vide BASU'S Commentary on the Constitution of India*, 5th Ed., Vol. IV, p. 304; *Steward Machine Co. v. Davis*, (1937) 301 U.S. 548.
11. *Rep. of the Administrative Reforms Commission*, Vol. I, pp. 16-19, 26-39.
12. *Statesman*, 18-7-1976, p. 1
13. *In re, Sea Customs Act*, AIR 1963 S.C. 1760.
14. *A.P.S.R.T.C. v. I.T.O.*, AIR 1964 S.C. 1486 (1491, 1493).