

Centre State Relations in India

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Week 01: Centre-State Relations: Nature of Indian Constitution

Lecture 01: Nature of Centre-State Relations under the Indian Constitution

Welcome to the NPTEL course on Central State Relations. Today in lecture 2, we will be discussing on the nature of Central State Relations under the Indian Constitution. And in this we will be discussing that what is the theoretical concept, we will cover Quasi Federalism, Asymmetrical Federalism, Cooperative Federalism and Horizontal Federalism that is what we will cover in this. Let me first explain to you the theoretical concept with the help of the constitutional provision which is there under the Indian Constitution. When you look at the language of Article 1 of the Constitution, Article 1 of the Constitution describes India as Union of States. And this very expression clarifies that what kind of federalism we have adopted in India because purposefully we have avoided using the term federal or federation in the Indian context.

So, therefore, when you look at the provisions which are there which gives a substance to this provision of Article 1. For example, there is a provision in Article 3 which says that Parliament has got a power to alter the State boundaries. And you would find that there is a provision where States they send their representative to the Parliament in the Upper House, but at the same time the representation of the State is not very uniform, it is not that every State, every Provincial Unit they send equal representation to the Upper House. And that is why you would find that what model we follow is not something which is to be seen in a very classical way where you have a Central State enjoying the same power.

And then you will also find that the structuring in India is not completely federal. The reason being that Parliament has been given upper hand on certain issues which will be discussing as we move on with the discussion on the nature of federation under the Indian Constitution. And that is why some literature uses the expression quasi federal for the Indian Constitution which also we will discuss that what do we mean by quasi federal. And as I said that the term federalism, federation, federal all these terms are not been used under the Indian Constitution. The framers of the constitution they have avoided using these terms because they wanted to establish a new country with a newer idea not based on what has already been prevalent in other parts of the world.

And that is how we need to understand the Central State relation in this country. Now when you look at the federalism model what we have adopted you would find that the Central government and the State government they are interdependent on each others. Though this interdependency is there, but then you would find that the State government is more dependent upon the Central government because of the reason that they have got a better financial resource because of the reason that they have got a bigger mandate to commit to the welfare goals and that is how you find the Central government bringing in the policies and plans for the socio-economic goods or needs of the people. So the nature of the Indian Constitution is neither completely federal nor in it is a mixture of both it is a unique experiment which has been done in this country. And that is how you look at when you read the provisions of provisions related to emergency, provisions related to Election Commission, limited power of Rajya Sabha where you would find that matters relating to Money Bill need not be go through the Rajya Sabha if there is a dissent in Rajya Sabha.

Once it is been presented and Rajya Sabha whatever opines that again been taken up with the Lok Sabha and the matter gets approved regardless of any kind of negative voting done by Rajya Sabha on the matter of Money Bill. And similarly is the case with provisions which are there on the temporary and transitional provisions which are there where again you would find that there is a some kind of a scheme which has been presented where Centre has been given a higher authority Centre has been given the more powers in order to run the country in order to see that the provisions of the concessions are well implemented. Now this is how I structure the nature of the Central State Relation in this country where I put in quasi federalism, asymmetric federalism and cooperative federalism and along with that now a newer idea is also coming up with regard to horizontal federalism. What is quasi federalism? quasi federalism is a structural design of a political system where we give more power to the Central government in comparison to the State government. So there is a balance which is tilted in favor of the Central government in terms of the power structuring that is how we look at quasi federalism.

Now the Indian Constitution is described as quasi federal as there are provisions which give more power to the Centre as I said for example the power of the Central government or to alter the boundaries of the State when I say Central government here I mean the Parliament and therefore you would find that in India we say that India is a unitary State with a subsidiary federal principles rather than a federal State with subsidiary unity principles. So on good number of subject matters States gets completely subjugated to the Centre for example during emergency the entire structuring becomes unitary instead of federal structure and the Centre start governing the provinces. So the tendency of centralism in the Indian Constitution is not due to its structural framework it is more of a the socialistic goal which is already there in the Constitution which you find while reading the Preamble of the Constitution which you find while reading the Direct Principles of the State Policy, where you find that larger responsibilities been interested upon the Centre to ensure that socio economic welfare goals

are being realized socio economic needs of the people are being you know taken care and in that process Centre has been interested with a larger responsibility and that is how we find that because of the responsibilities Centre comes up with the policies or plans even on the subject matters which are there with the State government. For example you find the government coming up with the nutrition policy health policy and when you find the Centre making this policies obviously the Centre also brings in a kind of condition which is State is bound to follow so that is why it has been very appropriately stated that it is not because of structural framework it is more because of the kind of welfare goals enshrined under the Constitution when you read different provisions of the Constitution. When you look at the features of quasi federalism under the Indian Constitution you find there is a clear division of power under the Indian Constitution where Schedule 7 there is a 3 List, List 1, List 2 and List 3.

List 1 and List 2 provide subject matters for Centre and the States to make laws and then additionally you have also a concurrent list where both the Centre and State makes laws and if there is a conflict in the Central Law which prevails which will be also discussing in detail when we take up the legislative relations between the Centre and the State. Additionally you also find that there is something supremacy of the Constitution where constitutional supremacy is the governing factor it is not the supremacy of the Legislature or supremacy of the Judiciary which is to be taken note of which is to be counted under the Indian Constitution. It is the constitutional supremacy which shall be giving the final word in the matter of governance of the country and additionally you also find that there is a rigid nature of the Indian Constitution when I say rigid nature of the Indian Constitution this is more to be seen in terms of provisions which are related to federal structuring for example any kind of alteration in the power of the High Courts or alteration in the power of the Supreme Court or for example any kind of alteration in the subject matters given in the 7th Schedule all these requires approval of the Parliament along with the ratification by more than half of the State. So when you look at the provisions which are there under Article 368 you would find that subject matters which are connected with the Central State relation they require ratification from the States also so that is how it indicates a rigid nature of the Constitution. Independence of Judiciary is also connected with the idea of quasi federalism in a sense that it is the judiciary we shall give the ultimate interpretation final interpretation to the functioning of the Constitution they are the final arbiter on the matter of Central State relations and therefore independence of Judiciary is also considered as one of the core idea behind establishing the very structuring known as quasi federalist structuring.

This is how also the Supreme Court has explained the federal relation or federalist structuring under the Indian Constitution for example you find in a famous case of S.R. Bommai the court says that the Indian Constitution has in it not only features of a pragmatic federalism which while distributing legislative powers and indicating the spheres of governmental powers of a State and Central governments is overlaid by strongly unitary features particularly exhibited by lodging in in in Parliament the residuary legislative powers. So when you when you look at the

judgment which the court gives in S.R. Bommai court also highlights that how certain provisions makes the unitary characteristics as one of the well-known feature as one of the counted feature under this federal structure under the Indian Constitution. Again when you look at the judgment in Kuldip Nayar Case where the Court again highlights this quasi federalist structuring and if I read India is not a federal State in the traditional sense of the term when it comes to exercising power they are weighed heavily in favor of the Centre so much so that various descriptions have been used to describe India such as a pseudo Federation or quasi Federation in an amphibian form. So when you look at the Indian Constitution and when you look at the interpretation which is given by the Supreme Court, Supreme Court also acknowledges that the Central State relation in India is not based on a classical model of Central State having a kind of equal power but then there is a kind of scale which is tilted in favor of the Centre. Now let me take you to the next feature of the federal State relation in India which is popularly known as asymmetrical federalism. Now this term is given by Charles Tarlton that and how he described asymmetric federalism as it means federalism based on unequal powers and relationships in political administrative and fiscal argument is faced between the units constituting a federation.

So asymmetry in the arrangements in federation can be viewed not only in a vertical sense between the Centre and the State but also in sense of horizontal amongst the States that how it is been power structuring is been divided between the States. So one for India when you look at the asymmetrical structure you would find that the focus is not on a Nation-State focus is on the Nation-State and not on the State-Nation kind of thing because asymmetry as a central to India's ability to cohere what they define or what they say is State-Nation as opposed to Nation-State by recognizing multiple modes of belonging in India and providing constitutional protection to different layers of autonomy within the federal system and that's how when you look at this structuring of federalism in the Indian Constitution what you realize and acknowledge that the model which the government which the framers of the Constitution have adopted in India is certainly unique and to fulfill the aspirations of the people. For example when you look at the asymmetrical federalism structuring in India you find that the Constitution acknowledges the rights of different reasons different groups and accordingly confers power on the constitutional bodies constitutional functionalities to commit to the welfare of those people. For example you have a provisions related to Temporary Transitional and Special Provisions under Part XXI of the Constitution and when you read this Part XXI of the Constitution which we will be also discussing in a detail in a later part of our course you would find that the framers of the Constitution were aware of the backwardness prevalent in certain reasons they were aware of the fact that there is a cultural distinctiveness in certain reasons and at the same time a special focus is required for economic advancement of that reason and accordingly what the framers have done is that they have interested the power upon the Governor or upon the President to do the needful for the advancement of those reasons. So special provisions have been made to fulfill the will of the people to cater the economic and cultural interest of the people residing in that area.

So you can very well visualize a situation where growth of that reason is not solely given the responsibility of the State government but a separate structuring has been done under the Constitution where a focus has been there only on those reasons which are backward relatively backward than the other parts of the State and where responsibility has been interested upon the government. Along with that you would also find clear acknowledgement of the special need of tribal areas in this in the in the States particularly in Northeastern States where you would find that there is a provision which deals with Schedule and Tribal Areas in Part X read with Schedules V and VI of the Constitution when you read 5-6 of the Constitution you would find that the Constitution provides for a unique scheme where the governance is been delegated to the grassroot level it is the it is in the form of Hill Council, District Councils where they have been given the responsibility in the nature of administering the reason in the nature of implementing the laws in the nature of making the laws as well as on certain aspects in for adjudication also. So this kind of provisions which are there under the Indian Constitution no doubt establishes the very fact that the federal structure in this country is also asymmetric it is not that Central State they have they work on a very coherent and very systematic power structuring depending upon the socio-economic condition of the reason the governance structure has been designed under the Indian Constitution and that's why it has been said that this provisions are intended to mitigate intrastate inequalities that's how you look at it. Now asymmetric federalism is also duly acknowledged in the judicial pronouncements for example in a famous case of Government of NCT of Delhi v. Union of India where there is a kind of power tussle going on between the elected government for the special territory created under Article 239AA and the Union of India and if you look at what the Court says Court says that the provisions of Articles 239, 239 A, 239AA resembles asymmetrical model of governance. So this is something which is also been acknowledged in the in the constitution and then a Supreme Court in also the case Ewanlangki-E-Rymbai v. Jaintia Hills District Council says that the tribal areas of Assam are governed not by relevant provisions of the Constitution which apply to other constituent States of the Union but by the provisions contained in the sixth Schedule VI.

So look at it when the matter comes before the Judiciary, Judiciary also duly acknowledges the very different characteristics of inter-state relations in India. Again you would find in the famous case of New Municipal Corporation v. State of Punjab this the Court says that all Union Territories are not situated alike. The first category consists of Union Territories which have no Legislature at all. The second category has Legislature created by a law enacted by Parliament under the Government of Union Territories Act 1963. The third category is Delhi which has a special feature under Article 239AA.

So there are experiments done and those experiments are to be duly acknowledged when we interpret the provisions of the Constitution and when we look at how the Central State relations have been provided under the Indian Constitution. Another model which we talk about in the Indian context is the cooperative federalism. Cooperative federalism is something where you

find that there is a blend of spirit responsibilities and the concept of working together where Centre in the States they come together kind of holding hands of each other and then ensuring that there is socioeconomic development of the people of this country. So in a way both the Central and the State they do have a responsibility to see that the welfare obligations which are there and the Constitutions are being followed are being obligated are being implemented by both the governments of the Centre and the State. So the spirit of cooperative federalism it requires two sets of democratic governments and to iron out their differences that arise in practice of governance and there is a need to cooperate and collaborate with each other instead of they entering into a kind of conflict instead of they doing a kind of creating a deadlock they need to come forward and they need to discuss that how the same how it is to be resolved.

And therefore when I look at the idea underlying the cooperative federalism I believe that the very Preamble concept which is there of justice, liberty, equality And fraternity that gives a strength to the idea of cooperative federalism that beat the central government or the State governments they do have a constitutional obligation to fulfill these ideals which are there in the Preamble and therefore they should not be looking at their responsibilities in a very isolated way. Cooperative federalism is also known as marble cake federalism which in a way to be understood that it is a combination of cooperation and interdependence between the Centre and the States to ensure a smooth governance of the country. The spirit of cooperative federalism requires a kind of set up where both the Central and the State governments they come together and they need to ensure that they commit to the idea of good governance and they should not keep on creating a kind of differences with each other which would be adversely affecting the people that is what is the idea. Cooperative federalism as an idea is also been acknowledged by the Supreme Court for example in the State of Rajasthan v. Union of India you find Supreme Court describes India as a cooperative federalism and then in a very recent judgment related to GST, Union of India v. Mohit Minerals Case again the Supreme Court has said that according to the theory of cooperative federalism integration and non-autonomy is the objective that federalism seeks to achieve and the Court has held that the GST Council under Article 279A is the avenue for the exercise of cooperative federalism because we know that the GST Council the way it works all the States are members and the Central chairs that the Council and this is something which is based on the idea of establishing a common market unified market wherein there shall be barrier free trade throughout the territory of the country and therefore GST appears to be a good model of cooperative federalism. The last one is horizontal federalism where what we need to understand is that how the apart from vertical relation horizontal relation amongst the constituent units are being governed because when we read the Central State relationship we read it from the context of Central State relation but at the same time we also read it from the context of how inter-States are dealing with inter-States are addressing their issues each other because that is also very important aspect and element of Central State relation which in detail will be also discussing at later point of time when we would discuss institutions which are established under the Constitution to address the conflict between the States because there are two ways of seeing

the conflict and the possible ways of resolving the conflict the conflict between the Centre and the States and also the conflict which takes place between the States.

So that also we will see that how these conflicts are to be addressed and what kind of constitutional formula given in the Constitution for resolving the conflict. So horizontal federalism it refers to the relationship between the States of our provinces relating to the effects of State actions or other States for example prohibition law which is there in the State of Bihar how the neighboring States of UP or Jharkhand is ensuring that the prohibition law which is made in the State of Bihar is getting implemented in a true sense because they do have a responsibility to extend all necessary support to the through the State government which has enacted law to prohibit the consumption of liquor sale of liquor. So that's how we need to look at the horizontal federalism which certainly as I said we'll be discussing in detail when we'll discuss the institutions like Inter-State Council and the responsibility of such Councils. Similarly is the case with the regard to inter-State water disputes when you look at Article 262 these are certain areas where you would find that Centre-State relations needs to be seen also that how the two States are dealing on their subject matters which has got a direct linkage or support with for the people. So this is how we need to look at the horizontal federalism where there is a Union government but it is not a kind of vertically structured there is a State government and how the State governments they are dealing on the issues with amongst themselves and how effectively the Union government is playing a role in ironing out the differences between the States or encouraging them to come together for the in a coordinated in a coordinated way for their benefits.

So these are the references for this lecture thank you very much for this session.