

Centre State Relations in India

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Week 08: Centre-State Relations: New Trends and Emerging Issues

Lecture 39: Emerging Issues in Federalism II- Demand for new States, Demand for Special Status

Greetings to all of you. We have come to the last module and we have decided to discuss new trends and emerging issues related to the Centre State relations. And in that area we thought of discussing with you the issue on creation of a new State, the reason of demanding a new State, the very procedural requirement of creating new States in India and this very topic becomes very relevant and significant because of the ongoing protest going on the matter of Ladakh where civil society is demanding a special status for Ladakh. Now this discussion becomes very important because the Centre State relation in India is uniquely positioned and articulated. It is not on the classical federal model which has been experienced or experimented or followed in the United States, Canada, Australia where autonomy to the States would not include only autonomy related to administrative affairs, but also territorial autonomy.

In India the provision has been made very clear where it has been suggested that to create a new State shall be progressive of the Parliament. And that is why in today's session we will discuss the issues related to demand for new States, what are the factors concerning to such demand, how constitutional provision connects with such demand, how the Court has interpreted the relevant constitutional provisions with regard to creation of a new State and then demand for a special status to the States and then connected with the recent issue going on with Union Territory of Ladakh. Considering a divergent socio-political landscaping in India with a very pluralistic structure blessed with multiple languages, numeral, ethnicity and very significant regional identities. The country is having a rich culture and heritage.

Now, this rich culture and heritage along with the issue of governance, demands administrative structuring for effective governance. So historically you would find that the demand for separate States resulted from the grievances on representation, on governance, on cultural preservation. At the same time the very subject matter on the creation of new States also brings within its fold the issues of administrative and logistical challenges. For example, whether enough resources are there for generating revenue in order to have effective governance, what are the territorial boundary we are looking for, whether large territorial boundary will cause difficulty in administering the State or whether a smaller territory will make it a kind of better governed area. Also, the issue of ethnic confrontation and conflict that whether creation of a new State will minimize such ethnic conflict.

So there is a dilemma in this country on the issue of creation of new States that whether acceptance of the demand will lead to fulfillment of regional aspirations or it will result into adverse consequence. So the question which is always weighed in by the Union is balancing of regional aspiration with national unity. So granting a statehood is influenced by several factors, could it be a matter of historical context, could be a matter of administrative viability or political considerations and no doubt we have experienced and seen that in India the fulfillment of demand is based on acknowledging the pluralistic social framework of the country and at same time also fulfilling the aspirations for self-determination. But then always it is difficult to always agree with this proposition when the regional aspirations are fueled by ulterior agenda when somewhere that aspiration is not aligned with the idea of national unity, idea of national interest. So that is how we need to look at the issues of demand for new States and thus the question on demand for new States we need to look at it on the aspect of regional aspirations and how do we look at the imperative of unified nation State where integrity of nation, sovereignty of the nation larger national interest is to be given prominence.

For example when you look at the language of Article 19 where you find that the rights given to citizen are on the one hand the rights fundamental rights on the other hand it serves a larger agenda of creating, fulfilling, fructifying the idea of one nation because Article 19 gives a right to a citizen to move to any part of the country to settle in any part of the country to go in any part of the country to earn livelihood. So for that matter that provisions those provisions they realize the idea of nation State. It has been also seen that the demand of creation of new States is also an

interplay between the issue of linguistic, ethnic, cultural, economic and political factors which are connected with the federal structure and also regional dynamics and this is something what has what has been seen in this country just after the commencement of the Constitution when there was a demand to reorganize the States on the basis of language because we are aware of the fact that in the beginning the geographical territories were divided into different parts in this country based on the structuring the legacy followed from the British style. So what is the factors demand for new States? One is regionalization and assertion of rights by dormant region States which were in a way not part of mainstreaming, regional inequalities, neglect and discrimination and then secession of the rich that over dependence of backward regions on developed regions causes discontent due to reverse discrimination for the people in developed regions. So in the same State if there is a region which is developed and underdeveloped then there will be an issue of disparity on resource allocation.

These are some of the instances related to the demand of creating of a new States primarily on the ground of economic backwardness or cultural distinctiveness for example in the State of West Bengal there is a demand to create a new State in Jangal Mahal or Gorkha land economic backwardness or cultural distinctiveness Harit Pradesh, Braj Pradesh, Awadh Pradesh, Bundelkhand, Purvanchal from Uttar Pradesh which is largely proposed for administrative efficiency. Mithila and Bhojpur from Bihar on the factor of cultural distinctiveness. Ladakh, Saurashtra from Gujarat again on the issue of backwardness. Now categorization of demand for new States you to find it is done on this special status category where Constitution provides for special status under Article 371 we have discussed in detail in earlier module on this or the issue of complete bifurcation creating a new State from the existing State or granting certain in autonomy to the regional bodies regional councils within the States. Now when you look at the history of reorganization of the State you find that right at the beginning Bombay was divided into two parts Gujarat and Maharashtra. Nagaland was carved out of the Assam, Punjab was divided into two parts Punjab and Haryana. Himachal Pradesh as was a Union Territory was converted into a full-fledged State. Jharkhand was formed carving out from the State of Bihar and this Dadar Nagar Haveli and Daman and Diu became one Union Territory which was earlier two Union Territories. What are the constitutional provisions with regard to creation of new States? Part I read with Schedule I and IV of the Constitution talks about Union and the

constituent units and Schedule I and IV details out the constituent units. Article 1 to Article 4 Article makes it very clear that it is the Parliament's prerogative to create a new States different methods are devised there suggested there that how new States are to be created.

So this is the provision which says that territory of India shall be Union of the States then what it comprises of it says the territories of the States, Union Territories in the Schedule I and such other territories which may be acquired which is nothing but a testament of sovereignty of the country. Article 2 categorically says that Parliament may by law admit into the Union or establish new States on such terms and conditions as it thinks fit. So when you look at the language of Article 2 you can very well make out that there is a clear mandate given in favour of the Parliament to create a new State and thus the reading of Article 2 makes it very clear that to establish and to admit new State as a part of the Union is decision of the Parliament. And how it is to be done what could be the way to create a new State it suggested that by separating a territory from any State, or by uniting two or more States, or part of the States increase the area of any State, diminish the area of any State, alter the boundaries of any State, alter the name of any State. So if you look at it a very comprehensive power has been given in favour of the Parliament.

But then there is a procedural requirement which has been laid down what is this procedural requirement it says that a proviso is there with Article 3 which says that for the purpose of creating a new State what is required is that that either House of the Parliament shall take up the matter but such matter to be taken up only on the recommendation of the President and what is required is that that the proposal contained in the Bill affects the area boundaries name of any State such Bill to be referred by the President to the affected States for expressing views. So President can identify the timeline within which the State Legislature has to express views and it also says that the power conferred on Parliament by Article includes the power to form a new State or Unit Territory by uniting a part of any State or Unit Territory or any other State or Unit Territory. So you find that there is a provision in the Constitution which talks about taking the State the views point on board that is what the proviso says. But then the requirement of reference by the President before taking up the Bill to be read with Article 255 which says that if such reference is not been such prior reference is not been taken then that would not amount to a kind of illegality in terms of declaring that process as null and void. It says that no Act of

Parliament and no provision in any such Act shall be invalid I emphasize by reason only that some recommendation of previous sanction required by the Constitution was not given if as into that act was given where the recommendation of previous sanctions required by the President.

So proviso to Article 3 when you read it Article 255 it gives wide power to the Parliament as it protects the Act passed so without the previous recommendation of the President as is required. But this is something which is a kind of technical point but generally what you have seen that President refers the matter to take the views of the affected State though it is different that the views may not be that it is very clear that views are not binding upon the Parliament. Further the federal modeling in India is entirely different and that is why it says that any change done in pursuant to Article 2 or Article 3 the same shall not be construed as a constitutional amendment. So look at the way the Constitution of India brings in unique framework on the Centre State relations on this very important area of creation of new States. Though there is change happening in the Constitution, for example, creation of new State modifies, amends Schedule I and IV of the Constitution. But then it is made very clear under Article 4 that such modification would not amount to a constitutional amendment for the purpose of Article 368.

What was the structuring prior to 1956 when India called independence Part A was that province which was directly under the Governor's rule, nine States were there and then Part B princely States which were there ruled by the Rulers with a kind of sovereignty agreement with the British Empire. Then Part C was there which was known as Chief Commissioners Province and Princely States, ten States were there and then Part D which was administered by Lieutenant Governor these were the arrangements done pre 1956. Pre 1956 this was the arrangement where Part A was governed by Governor, Part B was governed by Rajpramukh and Part C was governed by Commissioner and then these were the Schedule I post 1956 after the reorganization of the States where Schedule I was having 28 States and 8 Union Territories where details were given.

An important question with regard to scope of Article 2 was raised in this case of RC Poudyal which connects with the seat matrix for the State of Sikkim where it has been provided that in the Assembly there shall be a representation of a religious community and the electorate for electing that seat shall also be of that religious community it was challenged that whether that goes

against the constitutional value that goes against the federal principles let down under the Constitution. The Court in this very important case has said that Article 2 gives a broader leeway it is a very extensive provision which enables the Parliament to admit a new States and the Court where there are considerable complexity involved and that is something which cannot be taken up in the Court of law because of the absence of judicially manageable standards where there are certain political necessities which is expediting or which is a reason behind taking a decision then in such situation it is important to be seen that it should not unnecessarily become a matter of judicial scrutiny. Having said so, the Court also made it very clear that it is not that creation of a new State shall be outside the review of the judiciary. Judiciary can very well look into it because what is to be seen overall that whether everything is done as per the broader principles let down in the Constitution or not. So that is what Court says that power is limited by the fundamentals of Indian constitutionalism and when it says that Parliament can create a new State based on terms as a dim fit that should not be something which is contrary to the constitutional philosophy.

So the Court has said it cannot be inconsistent and irreconcilable with the foundational principles of the Constitution and if the same thing happens if there is an attempt by the Parliament for creating a new State which goes against the foundational principle then the same can be very well struck down, the Court can very well you know assail the same and declare it unconstitutional. So it is said that Parliament is a sole authority to admit or establish new States modify the boundaries and the State Legislature of the respective States is only having a privilege to provide the opinion that opinion is not minding upon the Parliament there is nothing in the provision which says that Parliament shall accept the views expressed by the affected State this is very clear and categorical Court has said Court said that the very idea of taking the State on board for expressing its views is about giving a kind of place to the State in the federal framework it is about allowing the State to voice out the points to make the concern of the State clear and then it is for the Parliament to go through the concern raised go through the opinion made and decide as per the wisdom of the Parliament. Another important case which relates with the again views of State Legislature for giving effect to Article 3, Babulal Parate, wherein it was suggested that what was the views imposed was not been given due consideration and a newer proposal was adopted by the Parliament. So question was raised that before Parliament takes up a

new proposal which is contrary to or which is not aligned with the views expressed by the affected State should it again go back to the State for consideration the Court said it very clear that no such requirement is let down under Article 3 and thus it is not required that the State shall again be given an opportunity to express views on the altered proposal taken by modified proposal taken by the Parliament that is what the court said in Babulal Parate, It was said that even if no opportunity was given that is absolutely fine because it says that substantive part which is there in proviso lays down certain conditions for the exercise of power. So in the intention the idea is to give an opportunity to the State Legislature to express views all that is what contemplated in the scheme of Article 3. Parliament should have before it the views the State Legislature as to the proposals contained in the Bill and then Parliament is free to deal with the Bill in any manner it thinks it. There is no need that the proposal taken of the Parliament if it is significantly different from the views expressed should go back again to the Legislature that is not required it says proviso does not say that if and when a proposal contained in the Bill is modified subsequently by an amendment properly moved and accepted by in Parliament there must be a fresh reference to the State Legislature that is something which is not the mandate that is not what is the scheme suggested in the suggested under Article 3 of the Constitution.

On the issue of creation of new States we find a significant reports for example when there was a demand to reorganize the States on the basis of language a Committee was constituted under the chairmanship of Dhar. Dhar Committee suggested very categorically that let there be no creation of new States based on languages because he was of the view that with that national interest may get compromised and in order to you know give a further recommendation on the submissions made by Dhar Commission, a Committee was constituted with 3 members Jawaharlal Nehru, Vallabhbhai Patel and Pattabhi Sitaramayya that how shall we go about with the Dhar Commission Report and they agreed with the findings of the Dhar Committee and they said that there should be a delay you know in reorganizing the States and they agreed with the proposition that division of the States on the basis of language may not be a good idea because it may not cater the interest of the nation but we know very well that in southern States agitation started taking place for reorganizing the States on the language line and then leading political leaders they started protesting they started agitating and then finally the government had to succumb to the pressure of those political leaders and a Commission was constituted for reorganization of the

States and that reorganization the Commission suggested five principles for reorganizing the States one is preservation and strengthening of unity and security, linguistic and cultural homogeneity, financial and administrative efficiency, and whether five-year plan can be successfully worked out in reference to such proposed States or not.

Now let us come to the recent demand on Ladakh we know very well that erstwhile the State of Jammu and Kashmir has been divided into Union Territories. Union territory of Ladakh has now an independent identity which was carved out from the State of Jammu and Kashmir now there is a demand that Ladakh shall be given a separate statehood with a very clear mandate under Schedule VI which gives a special status to certain regions in India as we have studied with regard to Northeast regions. So there is a demand for giving greater autonomy to Ladakh. Ladakh is administered as on date under Ladakh Autonomous Hill Development Council, Kargil and Ladakh Autonomous Hill Development Council and Leh. So what they are asking is to restore a kind of full statehood for Ladakh, to give a new statehood to Ladakh and to also provide a constitutional safeguard so that a necessary autonomy can be there with the State under Schedule VI of the Constitution and they should have a separate Lok Sabha seats for Leh and Kargil districts and also job reservation for locals as constitutional provision provides under Article 371 what we have read in earlier module with regard to some of the States.

What are the primary reasons for such demand? One important one is the fragile ecosystem of the area, then the weakening power of the Autonomous Council, a sort of bureaucratic disconnect between the Council and the local population and very significant one a distinct culture and customary practices of local population demands that let this State be put under the Schedule VI of the Constitution. So this demand when you look at it closely, it aligns with what State Reorganization Commission suggested for those five principles. There is an issue of cultural homogeneity, there is a clear distinctiveness of the Ladakh people, the Ladakh region and the point of fragile ecosystem is very valid and that is why it suggested that let it be that is why this demand is there that let it get included under Schedule VI so that the local customs the a cultural issues all this can be maintained and preserved if the support of or with the strength of Schedule VI under the Constitution. Now when you look at the other demands for the newer States you find that backwardness is one reason for which people are asking for new States. So

development and efficiency in managing a smaller the States is one area which is to be looked at it.

A smaller States also in a way promises better public participation and representation in governance and creation of a smaller States also provides kind of good representation to the people in the matter of election that is what it says for the support. What is the argument from the other side opposing the demand for new States that it in a way presents a threat to the unity to the country because then it will unnecessarily fuel the regional fanaticism which is which is which is threatening to the national unity and identity and then there is a possibility of regional political parties playing kind of opportunism and bring a sort of instability in the in the political system.

So that is another that is another important point with regard to why smaller States or newer States, the demand for newer State should not be exceeded so easily. The issues with regard to federalism is the State which is the existing State from which the smaller States are to be carved out they have no say in the constitutional process as we have seen that Article 3 makes it very clear that views are to be expressed but not binding that is just a procedural requirement and then there is a kind of unfettered power to the Parliament to create new States obviously this unfettered is subject to judicial review so that Parliament cannot do something which goes against the constitutional values and then non-inclusion of the States manifest that holding together an unitary principles of federal scheme is somewhere getting more prominence in the in the federal framework federal policy of the country. There can be another demand from the other side that when you look at the catering of the State's interest Rajya Sabha does it because Rajya Sabha is considered to be Council of a State representing the interest of the State. Constitution envisages superiority of Union over State that is what the language of Article 355 makes it very clear that is the responsibility of the Union to protect the State and to ensure that the governance in the State runs as per the Constitution Parliament has been interested with the duty to protect the as I said in the language of Article 355 when you read.

So that way the federal scheme under the Indian Constitution is unique and that is how deviation from classical federal model is well justified when you read the Centre State relation in India. These are the references for this session. Thank you.