

Centre State Relations in India

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

Lecture 40: Role of Rajya Sabha in Federal Scheme

Greetings to all of you. We are in the last module and this is the last session. We thought of revisiting the positioning of Rajya Sabha which ideally is a representative of States and what role Rajya Sabha plays in the Centre State relations we thought of talking about it. So, in this module we will be talking about historical genesis what has been debated in the Constitutional Assembly Debate with regard to the Second Chamber, what are the constituent power, legislative power and extraordinary power, how Rajya Sabha influences federal values, what are the relationship between Rajya Sabha and Lok Sabha particularly on the matter of Centre States and then the impact of the judgment given by the Supreme Court in Kuldeep Nair Case and the representative character of Rajya Sabha. Article 79 states what constitutes Parliament and it provides that Parliament comprises of President, Rajya Sabha and Lok Sabha. Rajya Sabha is popularly known as Council of States, Second Chamber or Upper House and we can draw some reference of the significance and the genesis of the Second Chamber by reading the prevalence of Sambhava Parva in the text of Mahabharata which says that is not an assembly where there are no elder men those are not elders who do not speak with righteousness.

So, this very statement culled out from the text of Mahabharata signifies the role of the Upper Chamber. Upper House that what are the roles and envisaged visage of this Second Chamber. In India the idea of the Second Chamber came from the report submitted by Montagu–Chelmsford Reforms which became the foundational work for Government of India Act 1935. Obviously when Government of India Act 1935 proposed this bicameralism it was not based on the idea of

establishing Second Chamber for giving voice to the Provinces or the States. It was more of introducing a bicameralism system in India.

So, Second Chamber in India got statutory recognition under the Government of India Act 1950 and the nomenclature given was the Council of State. So, it was not based on the idea that this shall be representing in a true sense the constituent units. However, they adopted this bicameralism as a kind of legislative structuring where laws required to be passed by the two houses. Constituent Assembly debated in detail on the relevance of the Upper House and they were of the view point that Rajya Sabha would play a significant role in containing the emotions which might have played a role in passing legislation. That emotion might have led to passing of a law in a very hushed manner in the Lower House which is a directly representative house of the people and that may require a sort of check mating and can be done by the go-slow movement of the Upper House.

Second relevance is that the Upper House is proposed to be a permanent body while the Lower House is not a permanent body it gets dissolved gets freshly constituted with every election and it is also required for the progress of the nation. Because such permanent body can step in as and when situation demands or as per the constitutional mandate. What is the justification of the Upper House Rajya Sabha. It says that it plays a very significant role in providing a thorough evaluation you may say reevaluation of a legislative proposal which comes from Lok Sabha. So, it plays a significant role in giving a second consideration and second consideration by a body which is different in character and supplementary or superior in intellectual qualification. So, it is suggested that Rajya Sabha will be a house manned by qualified people, educated people not always to be looked at from a partisan view and that way it has got a capacity to pronounce a prudent and balanced judgment and significantly Rajya Sabha being a representative of the State would also bring in the interest of the State while reviewing the legislative proposal passed by Lok Sabha.

So overall it would act as a check and balance in the legislative functioning. Assessing the legislative proposal is desirable in order to filter out purely political considerations for passing a legislation and as I said when educated people, learned people are there in the Upper House then their expertise will ensure a better outcome with an extensive discussion on the proposal passed by Lok Sabha. Additionally, it also shares the burden of Lok Sabha and compliments the working of Parliament and then it promotes unity and integrity because it represents the voice of the States,

the States which are having a distinct cultural identity, ethnic identity, linguistic identity their concerns, their voices get a platform at the Union level. We have read it that Rajya Sabha has been given a co-equal power with Lok Sabha on the matter of constitutional amendment. No bill, no constitutional amendment bill can be passed without the approval of Rajya Sabha and it is also suggested that a constitutional amendment bill can be introduced also in Rajya Sabha, it need not be always in Lok Sabha and there is no provision for a joint sitting of both Houses to resolve a deadlock on constitutional amendment bill what you see in case of ordinary bill where there is a provision on joint sitting and going by the numerical calculations a joint sitting will always give an upper hand to the party which has got a majority in Lok Sabha or the ruling party.

So, this very provision no denial positions Rajya Sabha in a very prominent place and makes it an equal partner on the matter of amendment of the Constitution and Rajya Sabha has asserted this constituent power instances are there. For example, 125th Constitutional Amendment Bill proposed to amend Article 280 enabling Finance Commission to recommend measures needed to augment the Consolidated Fund of the States to supplement resources of the 6th Schedule Autonomous Councils, Village Councils and municipal councils and also to amend the 6th Schedule to the Constitution the bill has been referred to the Standing Committee. 120th Constitutional Amendment Bill proposed to introduce NJAC was introduced in Rajya Sabha, 119th Constitutional Amendment Bill to give effect to the agreement entered by India and Bangladesh was introduced in Rajya Sabha. So those constitutional provisions are also given an effect this co-equal power positioning has been asserted. On legislative power except on the matter of money bill it seems that this power parity is maintained between Rajya Sabha and Lok Sabha.

A bill is deemed to have passed only when it has been agreed to be by both houses which truly reflects the significance of Rajya Sabha and it also says that if a bill is pending which has not been passed by the Lok Sabha shall not lapse on a dissolution of Lok Sabha because Rajya Sabha is a permanent body and continuation of bill is pending. So look at it through this measure transaction cost on passing a bill is addressed it has been minimized. Some important bills introduced and passed in Rajya Sabha like Consumer Protection Bill 2019, Aadhaar Bill of 2016, Rights of Persons with Disabilities Bill 2016 these are the bills which have got introduced in Rajya Sabha. Rajya Sabha also has got an extraordinary power, extraordinary power in terms of legislative actions as well as check and balance over executive actions. Most First extraordinary power is a

power of Rajya Sabha to pass a resolution authorizing Parliament to make a law on the State List which we have also discussed in earlier slide.

We find a significant provision wherein a true representative character representation of the State gets established through this provision. Creation of all India Services is again exclusive domain of Rajya Sabha where Rajya Sabha has to pass a resolution with that effect and then all India Services are to be created. Power during emergency when Lok Sabha is dissolved again Lok Sabha can pass a resolution and that can be given effect and it is required that once Lok Sabha gets freshly constituted such a resolution has to be placed before Lok Sabha. So extraordinary power of Rajya Sabha in a way affects this Centre State relation. For example, through the resolution of Rajya Sabha empowering Parliament to make a law on the State List.

So technically it is to be presumed that when such resolution is being passed in Rajya Sabha it is expressing the views of the constituent units, expressing the views of the States. Though we know very well in India States are not equally represented in Rajya Sabha there is asymmetrical representation of the States in Rajya Sabha. So power to legislate on States there is a provision which categorically says under Article 249 that such power shall be there where Parliament can very well intervene and make a law. Parliament will assume a power to make a law for whole or any part of the territory in pursuant to such resolution that is what Article 249 says. And this centrally implies that Parliament can assume direction only when two thirds of the members of Rajya Sabha present and voting passes a resolution and this resolution requires to specify that which matter is enumerated in the State List with respect to which Parliament is being authorized to legislate in the national interest.

So that is what it says a resolution passed under Article 249 clause 1 remains in force for a period not exceeding one year or extended for a period not extending one year by a phase resolution so that is what it says. A law passed under Article 249 clause 1 in pursuant to such resolution ceases to have an effect on the expiry of six months after the resolution ceases to be enforced that is what it says. So, in a way you can very well look at it that is how this timeline they clearly signify that that such a relation should not be used as a tool for undermining the legislative authority of the States. So, it should be seen only as an interim measure temporary measure to address a situation

and then ultimately it is the State which shall be asked to legislate on such subject matters. So good balancing is done under the Indian Constitution through Article 249.

There are instances where Rajya Sabha has passed a resolution one such example is resolution with regard to Entry 27 of List 2 which talks about production of goods industrial development law was passed in the year 1951. Then procedural checks and balance in Rajya Sabha which requires two-thirds of member present and voting. So, it is not something which to be seen as a kind of simpliciter process and also it prevents misuse by the Parliament to assess the power of the State Legislature. So, where there is parochialism, regional interest it is given prominence then necessary provision is there for the Parliament to step in the larger public interest or national interest. Article 312 allows the Rajya Sabha to pass a resolution with regard to creation of new all India Services declaring that it is in the national interest to create one or more all India Services common to both Union and the States as we know we have studied Services we know that in India we do not have a parallel democracy so we have a Central bureaucracy and the State bureaucracy.

But additionally under Article 312 it is been suggested that we can have a common Services for both Union and the States which Parliament can make when the resolution is passed by Rajya Sabha. So Parliament will acquire the power to create by law such services. There are services created with regard to this we know very well Indian Administrative Service or Indian Police Services are there but particularly this resolution is in past with regard to certain Services in order to bring them within the ambit of all India Services. In the year 1961 when you look at it, Indian Engineering Service, Indian Medical and Health Service and the Indian Forest Service was suggested to be brought within the ambit of all India services but it is only the Indian Forest Services was brought within this all-India Services category the other one was not other one was not implemented. A similar resolution for the creation of the Indian Agricultural Service and the Indian Education Service was passed by the house in the year 1965.

Then we have also studied that during emergency Rajya Sabha plays a very important role it enjoys an equal power in respect of legislative functioning whether it is a case of money bill or the financial bill. Apart from making law Rajya Sabha enjoys higher degree of power to place a check on political executive to check in you know interventions by the executive particularly where it says that any action taken by the government shall be placed on the floor of the House and requires

the approval of the House. So obviously such approval requires approval also from the Upper House. So therefore it becomes significant and then it also says that when Lok Sabha is dissolved then such resolution needs to be passed by Rajya Sabha. So Rajya Sabha becomes pertinent it becomes a significant you know institution for approving such action taken by the government.

So the proclamation of emergencies under Articles 352, 356 and 360 sustains of the Rajya Sabha it approves such a proclamation. For example, in 1977 Rajya Sabha had to be specifically convened for a brief session to extend the President's rule in Tamil Nadu and Nagaland. So there are instances where this provisions are being used and then it categorically says either of these proclamations are required to be approved by resolution of both the Houses within the prescribed period. So Rajya Sabha's approval is equally important and but if any such proclamation is assumed at the time when the Lok Sabha is dissolved then Rajya Sabha considers such resolution and then again when Lok Sabha is constituted then again it goes back to Lok Sabha for getting obtaining necessary approval. So these are the provisions which categorically identifies the significance of Rajya Sabha and why such prominence is been given to Rajya Sabha it appears that such prominence is all because of the very character where it signifies that Rajya Sabha represents the States. So in a way a view point has been taken on board which is to be assumed that is a view point of the constituent units.

Let us look at the relationship between Lok Sabha and Rajya Sabha bicameralism has been one of the most important features of parliamentary democratic process in this country. Constitution treats the two Houses equally except on the money bill matter which says that Lok Sabha shall have a kind of sole purview. So if money bill comes to Rajya Sabha and if it is not been passed within a specified time limit then it is to be presumed that Rajya Sabha has passed it. Both the Houses they complement each other in their core functioning of legislation in their core functioning of deliberation in the core functioning of making the government accountable. So both the Houses have developed a kind of distinct status and also functional identity they work simultaneously collaborating rather than in conflict and operating in a harmonious way rather than you know clearing a kind of obstruction amongst each other.

Both the Houses they share a you know kind of very smooth relationship for example when you look at it Rajya Sabha discussed a resolution disapproving Prevention of Terrorism Second

Ordinance 2001 and the motion for consideration of the related bill as passed by Lok Sabha moved by the concerned Minister the resolution was adopted this would have effect the rejection of the motion but the motion was also put separately and rejected therefore a joint sitting of both Houses was held and the bill was passed. So when you look at it somewhere indicates that some value was given of the opinion on the opinion expressed by Rajya Sabha though technically they have placed that opinion as a separate proposal so that voting can also take place there. There has been an attempt to also abolish Rajya Sabha in 1954 and 73 resolutions are moved in Lok Sabha to abolish Rajya Sabha which were not successful. Furthermore through private member bill also a proposal was initiated to abolish Rajya Sabha that was done in the year of 1971, 72, 75 and 81 primarily when it was seen as this is now an unnecessary House creating a kind of bottleneck or you know not needed it is not truly representing the States but then the very rejection of this proposal highlights and signifies that House significant is the position of Rajya Sabha in the parliamentary democracy in India and for maintaining a healthier Centre State relations. So when you look at the relations during coalition government it becomes a very effective one different parties rule at the Centre and the States and this has an impact on the composition of Rajya Sabha where you find that the party which is ruling at the Centre may not have majority in the Rajya Sabha and this affects a policy making of the government leading to the shaping of the bills one has to look at it in a constructive way where larger interest of the State is also been you know taken into account.

A situation has emerged whereby the government responsible in Lok Sabha is finding itself in minority in Rajya Sabha so larger coordination is required, better floor management is required to take more political parties on board in order to pass legislative measures of the government. When you look at the federal scheme the significant one is Rajya Sabha fulfills or represent the aspiration of the States in the federal structuring it is a very integrated indispensable constituent units of the federal backbone of the Constitution and then potential differences between the two Houses of Parliament cannot be resolved simply by overlooking Rajya Sabha as I said that the amendment bill does not have any provision on joint sitting so government has to take Rajya Sabha into confidence in order to pass the important amendment bill. So, what is important is that efficacy of Rajya Sabha cannot be you know overlooked cannot be defeated by Lok Sabha both the Houses play a very important role in strengthening Centre State relation that is something which is a very important structuring very important principle laid down under the Indian Constitution. And then

Parliament depends upon the States as one of its Houses Rajya Sabha is elected by the State Legislative Assembly so you can see that in a way every parliamentary proposal gets an approval of the State in direct though indirectly in the form of the voices coming out from Rajya Sabha. So that is what is significant though Rajya Sabha people members of Rajya Sabha gets indirectly elected from the State Legislature but then such indirect election also to be seen in a in a constructive way and to be seen that Rajya Sabha truly represent the States and after 44th Constitutional Amendment to Article 352 the approval of Rajya Sabha relating to declaration of proclamation of emergency has become a kind of separate you know requirement that is something which again provides a prominence to Rajya Sabha particularly on an issue where the center tries to change the character of the governance by making it unitary then approval of upper chamber is required.

So executive power of the union is vested in the President and when you look at it the President gets elected by both the electoral college for electing the President is both Houses of Parliament as well as the members of the Legislative Assembly and State Legislature have got a substantial voting power in electing the President. So inclusion of Rajya Sabha substantially increases the power because as the member of Rajya Sabha are elected by the State Legislative Assembly so they do have a very visible voice very impactful voice in the matter in the federal scheme under the Indian Constitution. Rajya Sabha also reflects pluralism what is there in the nation that is what the court says in put the Puttaswamy judgment where the court says that the institutional structure of Rajya Sabha has been developed to reflect the pluralism of the nation and the diversity of language culture perception and interest. Rajya Sabha as an institution does an act of balancing on the issue of the direct aspirations reflected in the lower house in Lok Sabha and the aspirations of the State getting represented you know through the Upper House representation of the federal character through Rajya Sabha. So the architecture of Constitution as provided in the scheme of Rajya Sabha as an institution is a federal bicameralism it is just not to be seen as a simple bicameral legislature which is a very distinct and very visible deviation from the scheme of Government of India Act 1919 and thus any reading on the role of Rajya Sabha in the Centre State relation has to be seen in the newer context has to be seen in the context of a Constitution adopted to create a new India in the year 1950.

So that is what it signifies that when you look at the nomenclature, nomenclature is Council of States purposefully it was not been said as a Senate. So that way it signifies the federal importance of this Council of States. This judgment has played a significant role in redesigning restructuring Rajya Sabha prior to Kuldeep Nair judgment prior to the amendment made in 2003 there was a requirement of domicile to contest election in for Rajya Sabha and there was a system of open ballot system which was introduced. Now these amendments were made in Section 3, Section 59, Section 94 and Section 128 of the RPA Act where in Section 3 provided for domicile requirement which was done away with after 2003 amendment. Sections 29, 54, 129 provided for the open ballot system during the voting in Rajya Sabha and post Kuldeep Nair when these provisions were being challenged that it is against the idea of federal Constitution though in this case the court has very categorically said that federal principle is a basic structure doctrine but then court validated these changes done in the Representation of People Act.

Court has said that removal of domicile as a criteria does not affect the federal principle it says that no part of federal principle says that representation of a State must belong to that State. If the Constitution had intended that the representatives of the State must be the residents of the State then it would have been categorically provided if there is an absence of such express provision then it has to be presumed that no such mandate has been let down by the framers of the Constitution. So that is what categorically the court has read and categorically held on the matter of representation. The word representative of the State refers to the members of Rajya Sabha do not import any further concept or requirement of residence in the State being represented so that is what clearly said. With regard to introduction of open ballot system the court said no requirement of having election of Rajya Sabha by a secret ballot under Article 80 clause 4 is been done.

If the Constitution thought fit to introduce secret ballot the same should have been there so now it is the case of open ballot in India when the Rajya Sabha election takes place. In the case of direct elections members are chosen directly by popular vote which is not the case in the indirect election which happens in Rajya Sabha. Therefore, it cannot be said that the concept of open ballot defeats the free and fair election which is again one of the basic structures let down in the you know in one of the judgments by the Supreme Court. So the court has validated the change in the scheme of the pattern of voting from secret to open for Rajya Sabha election and court justifies it that it has been done with an idea to address the issue of corruption and to bring in purity of electoral

principle in the election of Rajya Sabha because it was at least that with the secret ballot the law of horse trading taking place and with the open ballot that can be minimized. So, and that also we have seen and experienced that because open ballot system it is now a mandate that the member of a you know electoral college the member of Legislative Assembly, they have to show the you know cheat to the representative of the political party that for whom they the person the member has voted for.

These are the references for this session. Thank you very much for joining this course. I believe it will give a newer perspective on the Centre State relation. Looking forward to engage with you.