Topic Covered: Semester – IV

[redacted]	Paper- C-9 (Indian Government & Politics) –
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Chapter 2

India's Federal Order

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I Introduction

The structure of the Indian federal state has been a matter of confusion and controversy from its very inception. Classicists such as K.C. Wheare have highlighted the confusion inherent in its nomenclature as well. Innumerable epithets have been used such as "federalism in practice", "Constitutional federalism" and so on to describe the peculiarities of the Indian federal state. However, no term is explicit enough or comprehensive enough to encapsulate the entire Indian state. Even the innovative term "quasi federalism" falls short of its objective. For one thing, it fails to explain the emphases that varying determinants have at given periods of time within the structure. These determinants may be the "within" constitutional provisions or they may be pure innovations of the Indian federal structure.

The fact is that there is no single federal pattern but a number of patterns in existence simultaneously. Out of this variegated phenomenon however, it is possible to distinguish certain features that stand out. For instance, the formal structure of administrative, legislative and financial relations, is intermeshed with an informal structure of political, socio-cultural and economic linkages. Associated with these is a political process of bargaining and cooperating with that structure. It is at this political process that we must look at when we think of the strengths or weaknesses of the federal structure to meet the various demands made upon it.

V. Centre-state Relations in India: Tension Areas

a) Legislative Relations

Part XI; Chapter I of the Constitution deals with the legislative relations between the Union and the states. Arts.245/255 comprise the entire gamut of legislative relations. A number of contentious issues have been identified by states wishing to recast these relations. Three types of encroachments upon states' powers have been identified (in the State List). First, entries in List II having an interface with items in List I, are subject to the provisions in List I and III. The examples of such entries in the states List are Entry 13, 17, 23, 24, 32, 33 and 54. The Union is empowered under articles 7, 52, 53, 54, and 56, of List I to legislate on such objects as Industries, Mines; Minerals and water which occur in the state List mentioned (see note on page.48).

Second, some entries in the Concurrent List are subject to either List I (for example entries 19 dealing with drugs and poisons, is subject to entry 59 of List I; and 32 dealing with shipping and navigation on inland waterways is subject to provisions of List I) or to any law made by parliament. (For example entries 31 (Ports), 33 (a) (the product of any industry and 40 (archaeological sites of List III).

Third, through several entries in the Union List itself the state List can be encroached upon by the Union either in the public interest or for reasons of national importance (e.g. List I-Entries 52, 53, 54 and 56). Certain acts may also be mentioned which similarly erode the states powers of legislation – such as Industries (Development and Regulation) Act 1951; the Mines and Minerals (Development and Regulation) Act, 1957.

Of the articles which have an interface with both the central and the state Lists Articles 246, 248, 249, 250, 251,252, 254 may be specially mentioned. Art.246 states (i) Parliament has exclusive powers to make laws with respect to matters enumerated in the Union lists, enumerated in the Seventh Schedule of the Constitution; (ii) subject to clause (i) the states have power to make laws with respect to matters contained in List III; (iii) subject to clauses (i) and (ii) states also have the power to make laws for such state or any part of it with respect to matters contained in List II.

Art.248, grants the residuary powers of legislation to the Union parliament. Art.249, grants the power to the Union parliament to legislate with respect to any matter contained in the state List in the national interest. Similarly, Art.250 empowers parliament to legislate on any matter in the state List if a proclamation of emergency in in existence. The import of Art.251 is much more significant, since it states that the state legislatures have powers to legislate on any matter which they are entitled to, however. if any provision of such a law is repugnant to any provision of a law made by parliament, which is has the power to make then the Union law whether passed after of before the state law shall prevail. Finally by mutual consent if two or more states decide that it is feasible that a particular matter relating to their common interest should be regulated by Union law then through resolutions of their state legislatures such law-making power may be passed on to the Union parliament. The clause of repugnancy indicated in Art.251, is followed up in Art. 254 through the clause of 'inconsistency'. In case of inconsistency betweerr the Union and state laws the Union law shall prevail.

b) Administrative Relations

Articles 256-263 constitute the administrative relations as enshrined in the Constitution. Almost all the articles indicate the general direction of the administrative relations – "to ensure compliance" of the states with the laws made by the parliament (Art.256). Arts.256 and 257 include:: the provisions for 'giving directions to a state'. These articles read along with Arts. 356 and 365 (the emergency provisions) provide a vast scope to the Union government to arbitrate in states' affairs. Directions to states can be given for various reasons: For the construction and maintenance of means of communication de-

clared to be in the national interest; for the protection of railways within the territory of states (Art.257). the Union government can also give directions under Arts.339(2) and 350(A). The former relates to directions for drawing up schemes for the welfare of scheduled tribes and the latter to directions for providing facilities for instructions in the mother tongue at the primary stage to children of linguistic minorities. Though directions to states have rarely been given, yet the import of the four articles read together imply: in case of receipt of an adverse report from the Governor (Art.356) detailing "non-compliance" with the directions given by the Union government Art.365 – "effect of failure to comply with or to give effect to, the directions given by the Union, i.e. "it shall be lawful for the president to hold that a situation has arisen in which the Government of the state cannot be carried in accordance with the provisions of this Constitution".

Art.258 once again confers an authoritative role on the Union government, despite the fact that the state governments may have no powers to make laws on certain particular matters, the Union may impose powers and duties, or authorize the imposition of powers and duties for the fulfilment of such functions.

Regarding disputes relating to inter-state waters, parliament may by law provide for the adjudication of any such dispute (Art.262), parliament may also provide by law that neither Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint (Art.262 (I)).

Certain other provisions relating to the administrative relations are needed to be mentioned. In 1946 the need was felt for the creation of an All India Administrative Service which would meet the requirements of the provinces and from which the central government could also draw upon these officers for meeting its own needs. Thus the Indian Administrative Service and the Indian Police Service were created, Art.312 of the Constitution recreates these provisions. However, by virtue of Clause 3 of the AIS Act 1951, joint control over these officers is provided by the Union and the states. But Clause 3 clearly specifies that the location of ultimate authority lies with the Union government and by that measure a significant amount of remote control is provided by the latter. This factor has been consistently opposed by almost all state governments.

Art.355 envisages that the Union government undertakes the responsibility to protect every state against external aggression and internal disturbances. However, in accordance with the provisions of Entries 1 and 2 of the states List, law and order are the prerogative of the states. Since 1976 and the 42nd Constitutional amendment Entry 2A of the Union List was superimposed on these provisions ensuring the deployment of armed or any other force of the Union in aid of the civil power in the state. This provision in fact grants the

deployment of armed forces by the Union sumoto – this goes against the precept "in aid of civil power" of Entry I List II. "Aid" has a necessary conjunct-request for aid. This can never be imposed, but is voluntarily accepted.

The prerogative for setting up certain central agencies has been with the Union government. The objectives behind the setting up of such agencies as: the Agricultural Cost and prices Commission, the Food Corporation of India, the Bureau of Industrial Costs and Prices and the National Savings Organization, have been manifold: The need for uniform pricing policy throughout the country; the need for uniform policies and arrangements in areas such as: Employers' welfare; the need for uniform policies for projects such as the Central Electricity Authority and Central Water Commission, which have an inter-state application. Thus Art.369 brings under the purview of the Union parliament the 'temporary power to make laws with respect to certain matters in the state List as if they were matters in the Concurrent List.' Under these provisions are, 'trade and commerce within a state, and the production, supply and distribution of cotton and woollen textiles, cotton in a raw form (including ginned cotton and unginned cotton or kapas), cotton seed, paper (including newsprint), food-stuffs (including edible oil-seeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivates of coal), iron, steel and mica'.

The states have objectively assessed the benefits arrived at from these provisions and the agencies set up to regulate their activities. By and large the chief allegation against the operation of central agencies has been the uniformity they set to bring about. states with particular local conditions feel that the very particularity of their conditions calls for decentralized regulations. For instance the state of Maharashtra has often complained that its climatic conditions being much more adverse than other cotton-growing regions in the country, it has to bear much higher per unit cost of production, this difficulty however was not reflected in the uniform prices of the Agricultural Costs and Prices Commission.

Finally the administrative provisions include the provisions for the setting up of an Inter-state Council (Art.263). If the President feels that the public interest would be better served by the establishment of such a council, charged with the duties of:: a) inquiring into and advising upon disputes which may have arisen between states; b) investigating and discussing subjects in which all or some of the states or the Union and the states may have been involved; c) making recommendation with respect to any such subject or in particular any subject in which better coordination of policy is concerned he may law set up such a Council. After much fanfare the Narasimha Rao Government set up the Inter-state Council, which has since then met several times to discuss vari-

ous controversial issues, such as Art.356 but no firm conclusions have been drawn by it.

In general on the question of administrative provisions, the allegations made by the states repeatedly, has been that the provisions militate against the very concept of federation. Even a matter such as regulating local/regional administrative officers is sought to be controlled by the Union. It is not an exaggeration to say that the administration retains to a large measure the traits of a colonial regime.

c) Role of the Governor

The Governor is the main functionary with respect to the continuing dialogue between the Centre and the states. Art.154(I) states that the executive power of the state is vested in the government and is exercised by him either directly or through officers subordinate to him. The following set of articles define the Governor's role in the Centre-state administrative set-up. 1) Arts.239(2), 371 371(A) and 356; 2) Appointment of the Chief Minister under Art.164. 3) proroguing or dissolving the Assembly under 174(2). 4) withholding of state bills for the president's assent under Arts.200 and 201 of the Constitution. 5) The Governor's use of discretionary powers – Arts 163(1) and (2).

The first set of articles indicated in 1) above concern special responsibilities given to the Governor by the Constitution. Despite the fact that it is alleged that these set of articles create the possibilities for the Governor acting as the agent of the Union. The first there articles concern the Governor's responsibilities with respect to certain areas viz. – Art.239(2) refers to the appointment of the Governor as administrator of an adjoining Union territory in such cases the Governor can function independently of his Council of Ministers. Similarly Arts.371 (A) and 371 concern the state of Nagaland and specific areas of Gujarat and Maharashtra. The Governor has specific powers to set up development boards for Vidarbha, Marathawada and the rest of Maharashtra as the case may be. Also for Saurashtra, Kutch and the rest of Gujarat as the case may be. Similarly the Government of Nagaland shall by public notification establish a regional council for the Tuensang District. The Governor also has considerable scope to exercise his individual discretion so far as the law and order situation is concerned. (Art.371A). This in effect means a considerable amount of powers regarding the assessment of the political situation in the state. However, during the tenure of Governor M.M. Thomas, the ensuing situation clearly indicated that the Governor remained a victim of circumstances as generated by the Centre. The ruling non-Congress Ministry had lost majority due to large scale defections to the Congress. However, Dr. M.M. Thomas deferred taking an immediate decision in favour of

the Congress in allowing them to form the Ministry. This delay incurred the wrath of the Congress at the Centre and Dr. Thomas was recalled unceremoniously. The state Legislative Assembly was extremely perturbed at the turn of events as after a considerable period of time the state had found in Dr. Thomas a Governor having a sympathetic outlook towards the troubled states.

Art.356 (Provisions in case of failure of Constitutional machinery in a state) has excited controversy since the very inception of the Constitution. The state of Tamil Nadu in 1984, in their depositions before the Sarkaria Commission, indicated that till 1984, 87 instances existed when Art.356 had been used indiscriminately. Similarly the then Akali Government of Punjab had indicated that there were basic flaws in the article. i) There is no analogous provision at the Centre for imposing President's Rule; a council of minister's at the Centre advises the president at the Union level, similarly, a caretaker council of ministers may exist at the state level till elections are held in the state. ii) No circumstances have been explicitly defined regarding its use, thus in 1977 and again in 1980, government of several states were unceremoniously dissolved through such dissolution was not justified. iii) The principal of natural justice is never applied in the case of Art.356 the Inter-state Council should be invoked to decide on whether such situations exist in the states concerned which calls for the invocation of President's Rule in a state. Art.356(i) states "If the president on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the Government of the state cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation assume to himself all or any of the functions of the state and all or any of the powers vested in or exercisable by the Governor, other than the legislature of the state. "A white paper was brought out by the Government of Karnataka under the tenure of Chief Minister Ram Krishna Hegde. It detailed the Constitutional position as envisaged and its perverse uses today. The suggestion was, that the Governor should first send a notice to the Council of Ministers specifying the matters which according to him had the effect of the Government of the state not being carried out in accordance with the Constitution when a duly qualified Council of Ministers was in office.

That possibilities for the perverse usage of Art.356 continue to guide politics, was visible after the installation of the BJP-led coalition at the Centre in 1998. The regional party leaders (allies in the coalition) saw in this opportunities to use the Article to exercise personal vendetta in their home states. Thus, Jayalalitha (AIADMK) called for the ouster of the DMK government in Tamil Nadu, as it was anti-national, similarly, George Fernandes (Samata Party) called for the unseating of the Rabri Devi government in Bihar; Om Prakash Chautala of Haryana's Lok Dal, also wished for the ouster of Bansi

Lal's HVP. However, three factors indicate that the indiscriminate application of Art.356 is not warranted: (a) Justice P.N. Bhagawati and A.C. Gupta stated in 1977,

> . . . merely because the ruling party in a state suffers defeat in the elections to the Lok Sabha or for the matter of that, in the panchayat elections, that by itself can be no ground for saying that the Government of the state cannot be carried on in accordance with the provisions of the Constitution. The federal structure under our Constitution clearly postulates that there may be one party in power in the state and another at the Centre. It is also not an unusual phenomena that the same electorate may elect a majority of members of one party to the Legislative Assembly while at the same time electing a majority of members of another party to the Lok Sabha . . . even if it were indicative of a definite shift in the opinion of the electorate, that by itself would be no grounds for dissolution . . .

(b) The Sarkaria Commission cited among the cases in which Art.356 cannot be used one: "Where Art.356 is sought to be invoked for superseding the duly constituted Ministry and dissolving the state Legislative Assembly on the sole ground that, in the General Elections to the Lok Sabha the ruling party in the state has suffered a massive defeat".

(c) The demand for dismissal of a state Government must come constitutionally, according to the new Attorney-General of India, Soli Sorabjee – these decisions cannot be taken on the basis of political inclinations of a particular political party. Sorabjee was also categorical that an amendment to Art.356 was needed, which would not only ensure safeguards for the article, but leaves the final decision for the implementation with the President.

2) "The Chief Minister shall be appointed by the Governor . . ." (Art.164): Such appointments have always been shrouded in political controversy particularly in situations where no political party can claim majority in the state Assembly. Iqbal Narain says that a Governor can exercise situational discretion during such times. The Governor can i) invite the leader of the largest single party closest to majority support to form the Government and to prove his majority on the floor of the House (example A.N. Banerjee in Karnataka in 1983). He may choose the centre's nominee and give him/her all the time in the world to muster support (e.g. Tapase in Haryana in 1982; as also Khurana in Tamil Nadu in 1988). Governors have at times adopted different norms to guide their behaviour – in 1965, the Governor of Kerala did not invite the leader of the largest single party, the CPI, to form the Government, however, in 1967 the Governor of Rajasthan ignored the claims of the United Front

which had 92 out of the 184 MLAs supporting it and called the leader of the single largest party, the Congress to form the Government. It has been felt that necessary amendments should be undertaken with respect to Art.164 so that the state Assembly could be convened for choosing a Chief Minister within a fortnight of the declaration of the results of an election. It has also been held, that the Chief Minister should always be person who enjoyed the confidence of the state Legislative Assembly.

Perhaps the greatest fiasco in appointing a Chief Minister under Art.164 was committed by the Governor of Uttar Pradesh Romesh Bhandari in the Kalyan Singh – Jagadambika Pal Case in 1998. Kalyan Singh (BJP) and Mayawati (BSP) had embarked upon a unique arrangement for their coalition in 1997. The latter was to be the Chief Minister for the first 6 months, to be followed by the former. However, during Kalyan Singh's tenure, Mayawati withdrew support to his government. Nevertheless, Kalyan Singh could prove his majority, on the floor of the House in October 1997, with the help of a breakaway group of MLAs from the Congress (The Loktantric Congress) and a group of BSP MLAs (The Loktantric BSP). On 21 February, 1998, a motley crowd of various party members, MLAs led by Jagadambika Pal of the Loktantric Congress, informed the Governor that his party had withdrawn support to the Kalyan Singh Government and staked the claim to form the Government. The Governor, without giving any opportunity to the sitting Chief Minister to prove his majority, installed Jagadambika Pal as the Chief Minister. However, the appointment was stayed by a High Court order and Kalyan Singh could resume functioning. He successfully proved his majority subsequently.

This incident brought to light once again significant ruling given in the S.R. Bommai Case (1994) by the Supreme Court. Justice Jeevan Reddy had held: '. . . whether the Chief Minister had lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere except the floor of the House . . . Democracy means . . . such questions should be decided on the floor of the House'.

3) Art.174 (2) indicates the Governor's power to prorogue or dissolve the Legislative Assembly – the Art. had a close relationship with Art.356(i). Under the former the Governor actually dissolved the House but under the latter he makes it possible for the president to assume the offices of the state/government on the basis of a report sent by himself. Art.174 (2) (b) raises the questions of the rights of the opposition parties in the House. Once a Ministry is about to fall should not the opposition claim the right to form an alternative Ministry? The Governor should respect such rights rather than suspending or

dissolving the assemblies. The case of West Bengal in 1971 may be cited. Since the Congress was a major partner in the Ajoy Mukherjee Ministry, when its fall was imminent in 1971, the Assembly was dissolved within 4 months of the elections. However, the recommendations of Rao Birendra Singh in Haryana, of Gurnam Singh in Punjab (1967), of Charan Singh in UP (1968) and a host of other cases indicate that such recommendations are usually rejected with respect to the dissolution of Assemblies, if the recommendations are from parties in opposition to the ruling party at the Centre.

4) Arts.163(1) and (2) as well as Arts.200 and 201 in a sense have the same frame of reference – the Governor's use of discretionary powers. Art.163 does define the scope of the Governor's discretionary power. Some state governments arguing the justifiability for the retention/non-retention of these provisions before the Sarkaria Commission indicated that the Governor's discretionary powers were bound by Arts.164 (appointment of Chief Minister), 356 and 365 (effect of failure to comply with or to give effect to, directions given by the Union). The Akali Government of Punjab felt that the interpretations given by the Constituent Assembly had been discarded. Thus the expression, "by or under this Constitution" in Art. 163 (1) covers "all situations in which powers to exercise discretion is either expressly mentioned or necessarily implied". Governor's have actually been acting on this wider interpretation. This is made possible by the fact that under clause (2) of Art.163 the Governor is empowered to decide himself, in his discretion whether or not any matter exists, with respect to which he can exercise his discretion under the Constitution. Such action (discretion) cannot be challenged in a court of law. The Supreme Court has interpreted "at his discretion" to have the same meaning as "in his individual judgement" – this was the practice under the 1935 Act. Thus whether by express provision or by necessary implication the Council of Ministers is not excluded from giving advice but the Governor is not obliged to accept the advice.

Arts.200 and 201 focus on another area of discretionary powers of the Governor, reservation of bills passed by the states assembly for the president's assent. state governments, time and again have defended the rights of passage of bills as exclusively belonging to the states. The Maharashtra Legislative Assembly had the unique record of having 110 bills reserved for the President's assent during the period 1976-1983.

The existing provisions which define the Governor's powers clearly indicate that there are virtually no safe-guards available to the states to protect their exclusive sphere of functioning – or to prevent the Governor from acting as the agent of the centre. The wide-ranging interpretations of his undefined discretionary powers facilitates interventions and the political situation in the states was perpetually open to manoeuvres by the centre.

d) Financial Relations

The general opinion regarding the distribution of financial powers between the Centre and the states is that since the inauguration of the Constitution there has been no systematic review of the relative financial need of the Centre and the states. In part XII of the Constitution a list of articles are mentioned which demarcate areas of functioning of the Center and the states in the financial sphere. A look at the Constitutional devolutions is necessary before their relative utility and applicability vis-a-vis the states and the Centre, can be assessed.

i) Art.268 details taxes which are levied by the Union but are collected and appropriated by the states – for instance stamp duties and excise duties on medicinal and toilet preparations.

ii) Art.269 – has a list of 6 taxes which are imposed and collected by the Union but assigned to the states:
a) taxes relating to succession of property other than agricultural land; b) estate duty on property other than agricultural land; c) terminal taxes on good or passengers carried by railway, sea or air; d) taxes on railway fares and freights; e) taxes on transactions in stock exchanges and futures markets other than stamp duties; f) taxes on the sale and purchase of newspapers and on advertisements published in them; g) taxes on inter-state trade and commerce (sale and purchase of goods other than newspapers); h) taxes on the consignment of goods, where such consignment taxes place in the course of inter-state trade – in all these cases the states are governed by law formulated by the Union parliament for determining when the sale or purchase of goods shall take place in the course of inter-state trade.

iii) Art.270 indicates taxes which are levied and collected by the Union but are distributed between the Union and the states – for instance income tax; however, 'income tax' does not include corporation tax the devolutions are significantly on the prescriptions of the Finance Commission.

iv) Art.271 grants enormous powers to the Union government, in that it allows the Centre to increase the duties mentioned in Art.269 and 270 for the benefits of the Centre the whole proceeds of such surcharge forms the property of the Consolidated Fund of India.

v) Art.272, those taxes which are assignable by the Union government as indicated in the Union List, as indirect taxes (other than medicinal and toilet preparations) which are also collected by the Union and may be – if union law so provides, shareable with the states.

vi) Art.274 details that the prior recommendation of the president is required by the states in case if change of any bill in which the states are inter-

ested.

vii) Arts.275 and 280 concern grants to states and details of the body authorizing such grants (280). 275 entails that parliament may by law determine the amount which may be granted to certain states from the Consolidated Fund of India. The Finance Commission "recommends" to the President a) the distribution between the Union and states of the net proceeds of the taxes which are to be distributed between them and b) the principles which should govern the grants-in-aid of the revenue of the states out of the Consolidated Fund of India.

Having seen the Constitutional devolutions of the financial powers it is now possible to realistically assess the utility of such devolutions. It is possible to group the states into two categories; the situationally affluent states and their progressive states plans and the regionally backward states. The needs and consequent demands of both categories of states are very different from each other. While the former call for greater devolution of financial powers to support their development plans and matching grants to reward better tax efforts the latter prefer the centralized tax structure and resource distribution since their existence is dependent on Central aid rather than their own tax efforts. Their allegation is that greater devolution of financial powers would only increase the gap between the affluent states and themselves.

It is indeed pertinent to ask what is the reason for this dependence on the Centre? 1) According to the findings of the states themselves their revenue is in no way commensurate with their expenditure. Non-developmental expenditure – such as interest payment, debt repayments, pensions retirements benefits, police, – account for a large part of the total state expenditure. Interest payment and debt repayments account for more than 60% of states expenditure. Despite increasing indebtedness the repayments capacity of states never increases because a major portion of the Centre's assistance is in the form of loans which is invested in projects which never directly yield the surplus needed to meet the repayments obligations of states. 2) The Constitutional devolution of powers indicate that the states' tax base is very narrow and highly inelastic – land revenue, professions tax, agricultural income tax and urban immovable property tax yield negligible amounts. Agricultural income tax could be more elastic but difficulties of assessment and the very sensitive politics involved prevent the state governments from imposing this tax. However it would be erroneous to say the states lagged behind the Centre in exploiting tax potentials as figures over time have indicated that the states indirect taxes such as sales tax, states excise, taxes on passengers and goods far exceeded the central taxes or oven the states own direct taxes.

Certain devices have been used by the Centre to circumvent the Constitu-

tion and deprive the states – the income tax paid by companies was brought under the purview of Corporation Tax (non-shareable) through an amendment of the Income Tax Act; Grants in lieu of railway passenger fares are fixed in an ad hoc manner; revenue collected through Compulsory Deposit Schemes and special Bearer Bonds though flowing from the same source as income tax are not shareable with the states; instead of raising excise duties, administered prices are raised once again depriving the states from revenue.

Despite the allegations of the states, the financial liability of the Centre towards the states has increased enormously over the years. Figure 1 illustrates that from Rs.37,575 crores transferred in 1990-91 from the Centre to the states, the figure now stands at Rs.80,788 crores (B.E.) in 1997-98.

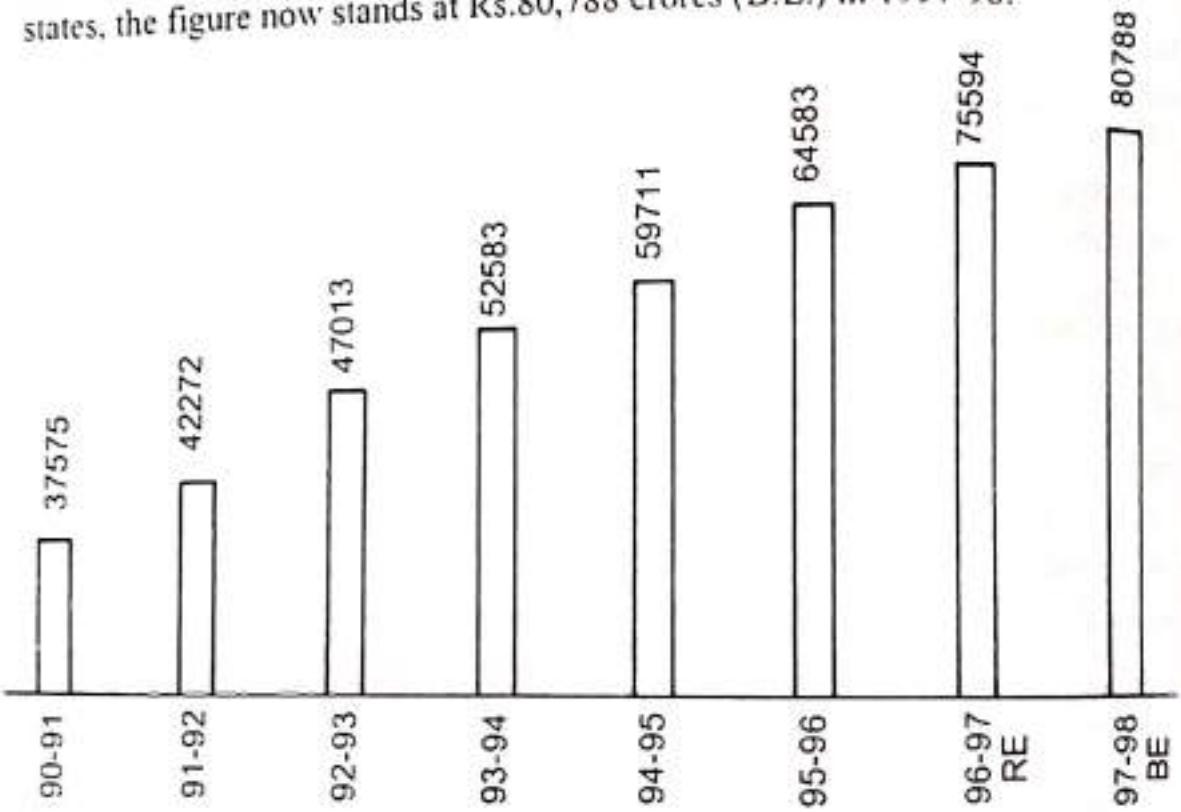

Figure 1. Resources transferred to state governments over the years (Rs. in crores). R.E. is for revised estimates and B.E. for budgetary estimates. (Source: *The Statesman*, 1 March 1997, "Text of Finance Minister's speech". The figures are from financial statement over the years.)

Figure 2a indicates that the inputs forming the Centre's total revenue receipts are not as buoyant as alleged by the states. For instance, internal borrowing constitutes 23% of the Centre's total receipts (the 100p used as 100%); the very lucrative corporation tax and income tax contribute merely 8% each to the central kitty; non-debt-capital receipts and non-tax revenue each contribute 5% and 15% respectively. That leaves only excise and customs, however, even their performance is not that laudable, since they contribute 19% each. On the other hand the expenditure chart (Figure 2b) of the Central government indicates a heavy weightage given to non-growth factors

interest on its borrowings constitute 25% of its total expenses, subsidies – 7%, defence retains considerable hold – it constitutes 13% of its expenses, states and UT plan assistance, non-plan assistance to state and UT government, state's share of taxes and duties – all these constitute 31% of the total expenditure; that leaves only 13% for the central plan and 11% for other non-plan and 11% for other non-plan expenses. Both the charts indicate lop-sided planning, which has to be corrected.

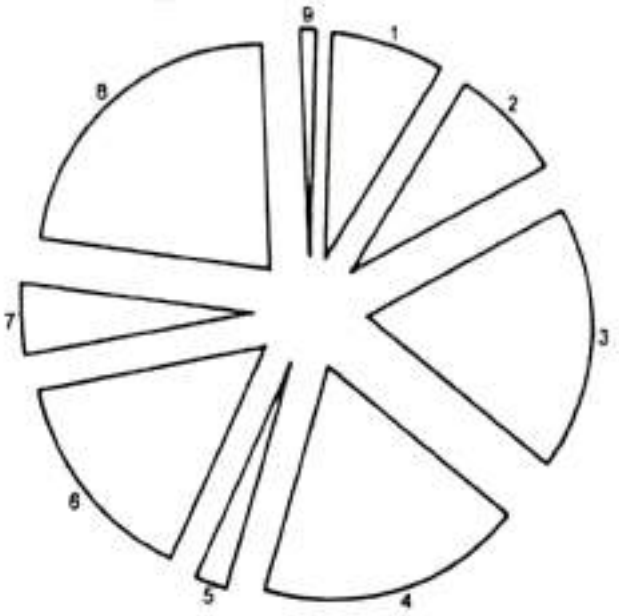

Figure 2a. A broken pie chart to show how each rupee is earned by the central government. 1) Corporate tax (8%); 2) income tax (8%); 3) customs (19%); 4) excise (19%); 5) other taxes (15%); 6) non-tax revenue (15%); 7) non-debt capital receipts (5%); 8) internal borrowing (23%); 9) external borrowing (1%). (Source: as for Figure 1.)

The Finance Commission was envisaged as the balance wheel of the federal system, however, it has not so far been able to mitigate the rising grievances of the states nor has it been able to encourage them towards better performance in the financial sector. In a constitutional arrangement characterized by separation of revenue mobilizing powers between the Centre and the states, particularly taxing powers, the Finance Commission tries to regulate the extent to which central revenues would be transferred to states. A major allegation against the Finance Commission is that it has never attempted to estimate the real financial needs of states, in relative terms. Actually the financial need has to be measured according to the levels of development, disparities in the revenue potentials, the standards of essential public services in different states and so on. The estimated budgetary gap, assessed by the Commission only for the limited period of determining the grant-in-aid cannot be held representative of the real financial needs of a state. Moreover, the revenue potentials are also often exaggerated.

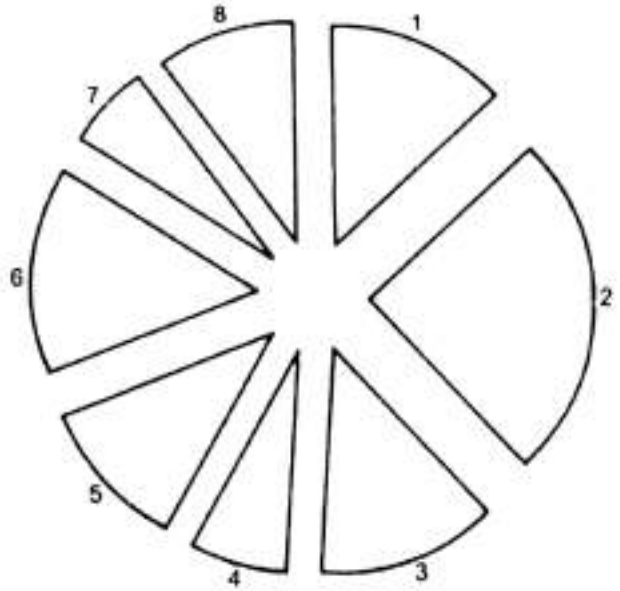

Figure 2b. Exploded pie chart to show how each rupee is spent by the central government. 1) Central plan (13%); 2) interest (25%); 3) defence (13%); 4) subsidies (7%); 5) other non-plan expenses (11%); 6) states' share (15%); 7) non-plan assistance to states (6%); 8) state and union plan assistance (10%). (Source: as for Figure 1.)

The emergence of the Planning Commission also hinders the smooth functioning of the Finance Commission. As an advocate of national planning it puts into shade the independent functioning of the latter under Art.275(i). Confusion occurs as states present different estimates of their revenue in keeping with different modes of assessment applied by the two Commissions to identify the requirements of the states. By increasing part of financial assistance flows from the Centre on the basis of recommendations made by the Planning Commission the Centre imposes its own policies and programmes on states even in the case of items which are constitutionally within the purview of the states. Moreover the numerous and specific terms of reference in the Presidential Order setting up Finance Commissions intervenes with their functioning.

The Xth Finance Commission, as a deviation from other Commissions, has recommended a novel approach. It recommends – a) all central taxes be included in the divisible pool of which a certain percentage (29%) would be earmarked as states' share. b) it also recommends fixing the states' share for a period of 15 years – even though a deficit may develop on the Centre's revenue account. By allowing the states to undertake greater plan responsibilities, and by reducing its own plan size, the Centre can overcome its deficit. c) finally, if non-specific grants are raised in lieu of any additional increase in states' share in central taxes, then it could be done through revenue gap grants and revenue plan grants.

In a significant recent development,* the Lok Sabha has passed the Constitution (89th Amendment) Bill enabling a rise in the states' share in the Centre's tax revenue to 29 percent as per the recommendations of the Tenth Finance Commission. By including "all central taxes" in the divisible category the Central government has tried to meet the prime allegation of the states regarding lack of buoyancy in their share of divisible taxes. However, the above scheme will be effective only for a period of five years (from 1 April 1996) as suggested by the Inter-State Council and would be subject to revision by subsequent Finance Commissions.

Conclusion – Trends Today

The above discussion of the Indian federal structure indicates that the dialogue between the Centre and the states/the Centre and the periphery is not only an on-going process but is a reflection of the world-wide phenomenon. On the one hand lies the units' concern with great regional identity and on the other, the concerns associated with national defence, progress and territorial unity. Such issues compel a world-wide centripetal pull.

What is the trend visible in India? On the economic front as we have already observed, the issue of Centre-state relations deeply divide the states into the affluent and the non-affluent. It is quite rightly said by Sucha Singh Gill that affluent states such as Punjab, Maharashtra and Gujarat cannot be treated at par with states such as Bihar or Orissa. The pressures on the Centre are invariable in favour of the less affluent states. So the affluent have to fall back on their resources to finance their development plans or even their recurring expenses. "Efficient resource management" seems to be the only way out. However, as Gill says, differential treatment by the Centre is also necessary to allow such states greater leeway in plan implementation for the purposes of "efficient resource-management".

On the social front the claims of the sub-units has been the most vociferous. The Central government has dealt with these claims which have emerged as social movements, only from the perspective of national unity and integrity. However, the subnational identities based on caste, or religion have never been fully dealt with through any constitutional arrangements. The existence of these contradictory features has resulted in the breaking out of regional violence now and again. Most of the regional uprisings occur on the basis of interpretations of "relative deprivations". The course of these movements, such as the Punjab Akali movement , the Assam uprisings or even the North East-ern agitations indicate that their objectives are more or less similar: sufficient scope for the legitimate recognition of regional identities at the local level and

*On 9 May 2000, *The Statesman*, 10 May 2000

scope for political linkages at the national level as well. This sort of a situation calls for sufficient devolutions of powers. However, this seems to be the only method for retaining a viable pluralistic structure.

On the political front the existent Constitutional structure is highly biased against the states – a high degree of political manoeuvrability is possible by the Centre and this erodes the spirit of the Constitution.

A few words are needed about the judicial structure in existence – particularly the usefulness of a pyramidal court structure for a federation. Over four decades the Supreme Court has consistently recognized the conventions of the British parliamentary system as the one on which are based important provisions of the Constitution concerning the relationship between the head of state and the Chief Executive of the Centre as well as in the states. This feature has been brought out in innumerable cases, particularly in Supreme Court Advocates on Record Association vs. Union of India (1993). In this case, justice Kuldip Singh aptly said, "Once it is established to the satisfaction of the Court that a particular Convention exists and is operating then the conventions become a part of the 'Constitutional law' of the land and can be enforced in like manner."

A dictatorial marshalling of the regions was never envisaged by the Constitution-makers. The articles which allow a highly interventionist role to the Centre should be reinterpreted in order to allow the spirit of "cooperative federalism" to emerge.