Administrative Relations between Union and the states: A critical study

Abstract
The present study examines the critical analysis of administrative relations between union and states. One of the most difficult problems under a federal system is the adjustment of administrative relation union and the states. In the absence of clear provisions in the constitutions, considerable difficulty is often experienced by the union and the states in the discharge of their responsibilities. Here the pattern that is adopted is based mainly on that which was established under the Government of India Act of 1935.

Keywords: Constitution, Parliament, Safety and Stability, Difficult Decision, Bitter Experience

1 Introduction
Under the Indian Constitution, Administrative relation are dealt with in Chapter II, Part XI. The framers took the most care in devising this part of the constitution in order to assure harmonious relation between the union and the states. It is notable, however, that though legislative and judicial power is defined by the constitution, this is not the case with the executive in our constitution. Some constitution experts, for example, Wade and Phillips, try to define executive function, by including in it not only the direction of national policy, but also the execution of affectation of that policy be administrative acts.” The executive functions so understood includes the initiation of legislation, the maintenance of order and the promotion of social and economic welfare and indeed all administration. The Supreme Court of India in a number of cases has tried to define the executive functions. In present time, a state has become a Welfare state and as a consequence, executive has gained importance even at the cost of Legislative and Judicial functions. As in most federal constitutions, under the Indian constitution also, the executive power of the Union and the state extents to matters with respect to which the union and the states are competent to make laws. However, A special provision has been made in relation to Concurrent list matters. The executive power in relation to Concurrent list matters vest in the state but such power may be vested in the Union either by the constitution or by a law of parliament. Indian Parliament has vested executive functions in the union over concurrent list matters under several Acts.
2. Administrative Relations

Articles 255 to 256 seek to regulate administrative relations between the union and the states. The constitution of India seeks to achieve a smooth working relationship between the two levels. It provides that the executive powers of the State Government are to be exercised in such a way as to ensure compliance with the laws made by parliament.

Article 257 provides that (i) The executive power of every state shall be exercised as not to impede or prejudice the exercise of the executive power of the centre, and the executive power of the centre shall be extended to the giving of such direction to a state as may appear to the Government of India to be necessary for the purpose.

(ii) The executive power of the union shall also extend to the giving of directions to a state as to the construction and maintenance of means of communication declared in the direction to be of national or military importance.

Provided that nothing in this clause shall be taken as restricting the power of parliament to declare highways or waterways to be national highways or national waterways or power of centre with respect to the highways or waterways so declared or the power of the union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(iii) Where in carrying out any direction given to a state under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to measures to be taken for the protection of any railways, costs have been incurred in excess of those which should have been incurred in the discharge of the normal duties of the state of such direction had not been given, there shall be paid by the Government of India to the state such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the state.

(iv) The executive power of the union shall also extend to the giving of directions to a state as to the measures to be taken for the protection of the railways within the state.

Article 258 power of union of confer powers, etc. on state in certain case.

(i) Notwithstanding anything in this constitution, the President may, with the consent of the Governor of a state, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the union extends.

(ii) Where by virtue of this article power and duties have been conferred or imposed upon a state or officers or authorities thereof, there shall be paid by the Government of India to the state such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of any extra costs of Administration incurred by the state in connection with the exercise of those powers and duties.

Article 258 A. Power of the states to entrust function to the Union. Not with standing any thing in this constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the union extends.

Article 259. Armed forces in states in part B the first schedule-Rep. by the constitution (Seventh Amendment Act 1956, Sec 29.)
Article 260 Jurisdiction of the Union in relation to territories out-side India Government of India may be agreement with the Government of any territory not being part of the territory of India undertake any executive, Legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to and governed by any law relating to the exercise of foreign jurisdiction for the time being in force.

Article 261, it directs that full faith and credit shall be given to public acts, records and judicial proceedings of the union and the states in all parts of the India territory, which adds a lot to the smooth working of the centre state relations.

Article 262, Parliamentary control over inter state rivers and provisions for adjudication of any inter-state water disputes have taken away a whole host of possibilities of friction between the centre and the states themselves.

Article 263 empowers the president to establish an inter-state council to inquire into and advise upon inter-state disputes between the union and the states and make recommendations for better co-ordination of policy and action.

3. The major contentious issues having a bearing on administrative and political relations between the Union and the states

3.1 The Role of Governor
The institution of the Governor, with its dual-role-as the constitutional head of the state and the representative of the Union occupies a significant place in our federal policy. As the constitutional head of the state, he unlike the president of India, has certain discretionary powers, taken almost verbatim from the Government of India Act of 1935, which are immune from judicial scrutiny. As the representative of the Union, it is his duty to inform the Central Government regarding developments in the state an he has to always keep in mind the conflicting claims of the Union and the state in a given situation and has to balance them in accordance with the constitution. This duality of his role makes his position important in the maintenance of a cordial Union-state relationship. After 1967 when non-congress Government were formed in many states, tension aggravated as the Central Government attempted to use the Governors for partisan ends.

The role of Governor in this context became one of the highly contentious issues in Union-state relations. The main issues of contention relate to the appointment of the governor by the centre and his partisan role in the formation and dismissal of state Government at the behest of the centre. The Sarkaria Commission in its survey found that the appointments made since independence till Oct. 1984 were emplaced as over 60 percent of the Governors had taken active part in politics, many of them immediately prior to their appointment. The commission made a series of recommendations pertaining to the appointment and the conduct of the Governors. As for appointment, it was recommended that the appointee should be eminent in some walk of life, should be from outside the state, should be detached person not too intimately connected with state politics and should not have taken too great a part in politics generally and particularly in the recent past. It was also recommended that the appointment should be always made after consultation with the Chief Minister of the state.

The Commission cited the constituent Assembly debates that also clearly expressed this expectation as for the role of the Governor, the Sarkaria Commission observed that in the submission made before it, the State Government were unanimous in suggesting that whether the ministry has lost majority support in the legislative assembly should be decide on the floor of the
house rather than in the Raj Bhavan and that the Chief Minister should be given a reasonable opportunity to establish such majority. The commission lent its weightily support to this view in its recommendations. The Centre, however, argues that these force or required to protect Central Government’s properties and installations. In more recent years, the State have got into the habit of inviting deployment of Central Police force even for the basic law and order work, to say nothing of special occasions such as elections duty, natural disaster, and communal riots. The maintenance of ‘parallel’ agencies by the Central Government is a very unusual feature of the Indian federal system. The states argue that since public order is a subject in the state list in the constitution, so the setting up of Central Police force is an encroachment on their jurisdiction. The clamors of the states against the deployment of these force in their respective territories has now considerably receded. The States however continue to be restive for a greater share in the divisible tax resources for more effectively exercising the responsibilities and obligations that the constitution has placed upon them.

3.2 Para Military Force

Para Military Force is an problematic are between Union and State relations. So long as the same party ruled both as the centre and the states, there was nor witnessed any problem in the deployment of Central forces, but a bitter controversy between the Centre and the stages cropped up in the late sixties when the non-congress state Governments clashed with the central Government because central force were sent to their areas either without their consent or despite their opposition. The recent growth of a party system of diverse hues and complexions has greatly contribut breeding varying attitudes of the Government over law and order. The non-congress parties opined that “Law and order is a state subject, and the prerogative of the state in the matter must be fully respected. There should be occasion when induction of Central Police Force may have to be considered. In all such cases, prior concurrence of the state Government must be taken.”

The touching and sensitive issue involved is whether the Union is constitutionally authorized to deploy the armed forces or other para-military forces without out of the consent of the State Government for the maintenance of law and order situation of a state or of the centre or should the centre seek prior consultations of a state before such a deployment of forces. The constitutions provides that “It shall be the duty of the Union to protect every state against external or internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of this constitutions.”

This Article puts explicit and not implicit obligation on the centre to protect every state against may kind of internal disturbance of domestic violence affecting the normal situation of the law and order. It there is an external aggression threatening security of the country, the central government is empowered, under Article 352, to declare a state of national emergency : but it there is internal disturbance, there is no need to invoke Article 352. Similar provisions to quall internal disturbance are found to the US constitution.

Article 355 gives to the Central Government sweeping power and vast scope for interpretation. It gives ample opportunity and power to the centre to use this Article immediately if a state Government is in the grip of domestic violence and internal chaos. Under this Article, the centre is not required to wait, watch and then bid for the normal request of the concerned state to send central forces. The central Government is morally and legally bound to send immediately. The central force if the internal disturbances in that state are adversely affecting the working of the state machinery central agencies of installations. This Article does not place an obligation on the centre to
obtain prior consent of the State Government before the exercise of its executive power. The centre can, therefore, even act against the wishes of the State Government and deploy force on its own will or initiative to quell internal disturbance, violence or rebellion. What is the internal disturbance and when should the Union Government invoke the said Article is a matter of pure discretion of the centre and its decisions cannot be called in question in- any court of law. Thus it is amply clear that whenever any internal disturbance arises or is likely to take place to threaten the safety and stability of the state, the centre is under constitutional obligation to render all sorts of and to the states for the maintenance preservation and protection of life and property of the state Government are not sufficient to cope with such situation of internal disturbance, irrespective of the fact that whether any request for the purpose of maintenance peace, tranquility and public law order has been received by the centre from the state Government or not. The constitutional obligations or the states, a number of times the states have not extended the desired co-operation to the centre in implementing its law even in their exclusive areas. The example of the Central Government employees strike has been given above. In 1968, the employee of the Central Government had threatened to go on a token strike for a day. In anticipation of this strike, The Union Government promulgated the Essential Services Maintenance Ordinance 1968, declaring the strike illegal and send directives to the states to deal with the proposed strike. Kerala was the first state to publicity declares that it would not implement the central directives but follow its own policies in this matter. The Chief Minister reserved his right to interpret the ordinance and to give directions to its public officials accordingly. Chief Minister E.M.S. Namboodiripad considered the centre’s action as an encroachment upon the state’s jurisdiction. He denied the allegation that he deliberately chose to ignore the ordinance.

The bitter experience of the irritants over the use of central forces during 1969-75 were taken into account in the 42nd amendment act 1976 that brought about numerous changes in the arena of Union- State relations with a view to strengthening the Centre Vis-à-vis the states. It inserted a new Article 257 A to enable to Centre to deploy not only armed forces but also any other force subject to the control of the Union for dealing with any grave law and order situation in any state. It also inserted a new entry 2A in List I for deployment of armed forces or other forces subject to the control of the Union in aid of civil powers. The 44th Amendment omitted 257 A but the entry of 2A of List I and Amendments made to entire I and 2 of List II are still in force. The position that emerges today is that the para-military forces of the Union can be deployed in a state to control internal disturbance without the prior consent of the state. It is only constitutionally important and politically expedient that irritants over deployment of para-military forces should be removed immediately. If the strains are allowed to continue, it may bring unbearable strain on the constitutional machinery. The Sarkaria Commission has also held that the existing relationship between the union armed forces and the state civil authorities and the manner of their functioning as prescribed in the relevant Union laws and procedures do not need any change. However before the Union Government deploys its armed forces in a state in aid of the civil power otherwise than on a request from the state Government, or declares an area with in a state as ‘disturbed’ it is desirable that the state Government should be consulted, whenever feasible, and is co-operation sought, even though prior consultation with states is not obligatory.

3.3 All Indian Service

Another problematic are between the union and states is the continuation of All Indian Services. The Constitution provides for the creation of additional All- Indian Services as well, if the Raj Sabha passes a resolution supported by not less than two-thirds of the members present and voting that it is
necessary or expedient in the national interest to do so. Parliament may be law provide for the creation of one or more All-Indian Services common to the Union and the states and also regulate the recruitment and the conditions of service of persons appointed to such service. However, it will not be out of place to point out that up to 1967 some of the I.A.S. officers could not adjust with the state leaders, some of them became a part to maladministration but the majority of them justified the objectives for which the I.A.S. was constituted it is being apprehended and rightly so that in the present content of thing the I.A.S. “may fail to adjust well to the fast changing political landscape of the state especially where coalition cabinets are collapsing like a house of cards.” In the alternative they can play a moderating role. They can project the right demands of the state before the centre and likewise convince the state that the centre will not tolerate more then the specified limit. Thus they can smoothen the Union-State relations and can work as errand boys, messengers, informers, negotiators and coordinators of Centre state activities

4. Conclusion
The Sarkaria Commission has rightly observed that “any more to disband the All India Service or to permit a state Government to opt out of the scheme must be regarded as retrograde and harmful to the larger interest of the country.” The Commission, fully convinced of the utility of the All India Services has gone to the extent of suggesting that All India Services in sectors like agriculture cooperations, industry, engineering, medicine and education should be created. Thus, All India Service constitute a dependable means of creating public functionaries who in course of their employment acquire a varied experience, a breadth of vision and outlook, a capacity to co-ordinate and synthesize conflicting interest and deeper understanding of the socio-economic development of the country as a whole without loosing, sight of the needs of the constituent units.

5. References