The Concept Of Administrative Relations Between Center-State With An Emphasis On S.R Bommai v/s Union Of India, 1994

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Administrative Relations between Centre and States

The administrative relations between the Centre and the States are stated under Article 256 to Article 263 of the Constitution of India. The Government of India also constituted the Punchhi Commission in 2007, to determine the Centre-State Relations.

Article 246 of the Constitution deals with the subject matter of laws which are to be made by the Parliament and the State Legislatures. The Constitution, under Schedule VII, lays down three lists. These lists divide the subjects between the Centre and the States. The List I is the Union List, List II is the State List and List III is the Concurrent List.

As a set rule, the Central Government has administrative authority over the matters on which the Parliament is empowered to make the laws. The State Government exercises administrative authority over the matters specified in the State List.

The obligation of States and the Union

Article 256 of the Constitution of India can be divided into two parts.[1]

Firstly, it lays down that the executive powers of the State are to be exercised in such a manner that it complies with the laws made by the Parliament or any other existing laws which are applicable in the State. Secondly, it states that the executive power of the Union includes in its ambit such directions that are given to the State by the Central Government, which it deems necessary for the purpose.

It appears from reading the provision that if the States duly comply with the first part, then the second part does not seem necessary. Whereas, if the second part indeed serves its purpose sometimes, then it is evident that the States are guilty of violating the first part of the provision.

The Constitution lays down this provision with the assumption that the States will be, at some juncture, guilty of either wilful defiance or negligence of its duties.

Article 256 is the successor of Section 122 of the Government of India Act, 1935. Although this provision is particularly silent about the consequences in case of non-compliance, the drastic sanction is laid down in Article 365 of the Constitution.

To explain, if a State fails to comply with the directions issued by the Centre, then it is lawful for the President to hold that a situation has arisen wherein the State government cannot be carried on according to the provisions of the Constitution. Consequently, a state emergency can be imposed. The primary theme of this provision is that there should be a proper execution of the central laws in all the states.

Control of the Union over States in certain cases

Article 257 of the Constitution of India, 1950 deals with this subject.

Article 257(1) provides that the exercise of the executive powers of the State should be done in such a manner that it does not hamper or prejudice the exercise of the executive powers of the Centre. Further, the second part of this clause is similar to that of Article 256. It lays down that the Centre can issue directions to the State Governments for purposes deemed necessary.

Article 257(2) provides that the executive power of the Union to issue directions to the States shall also extend to the matters of construction and maintenance of means of communication declared to be of national or military importance. Although communications is a State subject under Entry 13, List II, Schedule VII of the Constitution – the Union has been empowered to issue directions.

The proviso states that nothing in this particular provision will be considered as restricting the power of the Parliament to:

- Declare certain highways or waterways as national highways or waterways;

- Construct and maintain means of communication as a part of its functions with reference to naval, military and air force purposes.

Article 257(3) provides that the executive power of the Union to issue directions to the States shall also extend to the measures required to be taken for the protection of the railways within a particular State.

Article 257(4) provides that for the purpose of compliance to the directions under clause (2) or clause (3), the States incur excess costs, which would not have occurred in the discharge of the normal duties of the State in the absence of such directions, then these costs shall be paid by the Government of India such sum as may be agreed. If there is a default of agreement, the sum of the extra costs so incurred by the State will be determined by an arbitrator appointed by the Chief Justice of India.

Power of the Union to confer powers, etc. on States in certain cases

Article 258 of the Constitution of India, 1950 lays down the contents of this subject.

Article 258(1) begins with a non-obstante clause. It states that the President, with the permission of the Governor of the State, can entrust conditionally or unconditionally the State Government or its officers to perform functions which are related to any matter which is included in the ambit of the executive power of the Union.

Power of the States to entrust functions to the Union

This power is laid down under Article 258-A of the Constitution of India. The article begins with a non-obstante clause. It states that the Governor of a State, with the consent of the Union Government, may entrust conditionally or unconditionally to that particular State's government or its officers, functions which are related to any matter that is included in the scope of the executive power of the State.

This provision was inserted into the Constitution by the Constitution (Seventh Amendment) Act, 1956.[2]

Jurisdiction of the Union in relation to territories outside India

Article 260 of the Indian Constitution deals with the jurisdiction in relation to foreign territories. The article states that the Indian Government can enter into an agreement with the Government of any territory which is not a part of the Indian territory. This agreement is entered into to undertake any executive, legislative or judicial functions vested in the Government of that territory. All such agreements are subjected to and governed by any law which pertains to the exercise of foreign jurisdiction for the time being in force.

Provisions with respect to an inter-State Council

Under Article 263 of the Constitution of India, if the President believes that the establishment of an inter-state council would help in serving the public interests, then it is lawful for the President to establish such Council by order. He shall also define the nature of duties to be performed by the Council, its organisation and the procedure to be followed.[3]

The President can charge the Council with the following duties:

- To inquire into and advise upon disputes which may have arisen between States;
- To investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States display a common interest;
- To make recommendations upon any subject and in particular, to make recommendations for enhanced coordination of policy and action pertaining to that subject.

Conclusion

The aim of the Indian Constitution is to establish either collaborative or cooperative federalism. Through the division of powers between the Centre and the States, a certain autonomy is granted to the States to ensure that the administration at the grass-root level remains efficient. Simultaneously, the Centre exercises its power over the States to maintain a balance.

There are several challenges in the way of maintenance of a federation but the key solution is healthy debate and discussion between the parties involved.

S.R. Bommai V. Union of India

Decided On: 11.03.1994

Judges/Coram: S.R. Pandian, A.M. Ahmadi, Kuldip Singh, J.S. Verma, P.B. Sawant, K. Ramaswamy, S.C. Agrawal, Yogeshwar Dayal and B.P. Jeevan Reddy, JJ.

Introduction

The case of **S.R. Bommai Vs. Union Of India**[4] proved to be a very landmark judgement in the history of India. The biggest judicial organ of India "Supreme Court" was called upon after around forty two years of the adoption of the grand norm of the country "The Constitution of India", to interpret the basic structures of the Constitution relating to a provision of an article which was said to remain a dead letter.

Till the judgement of this case, the presidential rule as per the provision of the Article 356[5] (which was said to remain a dead letter) has been called upon upto 95 times in the country. This clearly determines the need to resolve the problem arising in this sphere of law and to grab the attention of Judiciary. In this case Supreme Court had discussed the issues associated with Article 356 in depth. A Constitutional bench of 9 Judges heard the argument on the behalf of both the parties and the majority view is deductible.

Facts of the case
The Governor of Karnataka received nineteen letters by the council of ministers stating that they are withdrawing the support from the ruling party and hence due to the non-majority Governor forwarded a report to the president about the deflection of Council Of Ministers from the party in ruling.

The Governor stated in the report that the existing Chief Minister Mr. S.R. Bommai failed to call in majority for the majority of assembly and thus the president's rule should be imposed in the State under Article 356(1) of the Constitution of India. The very next day of sending the report, seven out of the nineteen ministers complained about the misrepresentation in their respective letters and Hence.

Mr. S.R. Bommai, the Chief Minister and the Law Minister visited the to summon the assemble same day in order to prove the Majority of his government in the assembly. The report of the same was forwarded to the President But again on the same day, the President received another report from the Governor which states that Mr. S.R. Bommai, the then Chief Minister of Karnataka has lost his confidence of Majority and has requested the president to proclaim the emergency in the state under Article 356. On the basis of this report, the president proclaimed the emergency.

A writ petition was filed challenging the validity of the proclamation in the special 3 judges bench of Karnataka High Court but it was dismissed and Thus he preferred this appeal.

The Similar question of law arose in the case of Meghalaya, Nagaland, Madhya Pradesh, Rajasthan and Himanchal Pradesh and hence all the petitions were heard conjointly by the 9 judges bench of Supreme Court.

Issues:
1. Whether the presidential rule proclaimed under article 356 is justified.
2. Whether the President enjoys unrestricted power to proclaim emergency.
3. Whether the proclamation comes under the scope of Judicial review.

Judgment
The Hon'ble court held that the power of president to proclaim the emergency in a state i.e. the presidential rule is subject to some restrictions and it should be on the basis of the report and opinion of governor and not in the sole satisfaction.

The Hon'ble court also held that the court owns the power to Judicial review of the proclamation and id it is found to be malafide, the court can stuck down the proclamation even if it has received the consent of both the houses.

Analysis
The Hon'ble court crtically examined three broad issues i.e. the nature of Federalism, Secularism and the proclamation being under the scope of judicial review.

Nature of Federalism in Indian Constitution

All the judges agreed in the nature of the Federalism in the Indian Constitution that it holds the Federal character but with some unitary features since it gives more power to the central government instead of the federal/state government. However the judges agreed on the point that the states are supreme in their sphere. The Hon'ble court held that the Federalism is the basic feature of the Indian constitution

It can be clearly seen that the Hon'ble court attempted to portray that the Union government is indestructible as per the Indian Constitution, which is the need of the hour. But at the same time the court seems to be balancing this new view by stating that as per the federal character of the constitution the power of the proclamation under article 356 must be used very sparingly and must remain a "dead letter" as said by Dr. B.R. Ambedkar.

The ratio of Sarkaria commission recommendation is still not known. Two judges endorsed the report, two fell a very short of it by saying it for 'serious consideration', Justice Ramaswamy J. endorsed the report but said that it should not be in the part of the judiciary but on the Union Government, while the rest two judges concurred with the 'serious consideration' thing. Thus the legal status of Sarkaria Commission report is still in dilemma.

Secularism
One of the most popular reasons known for the dismissal of these appeals was that the Supreme court held that the secularism is a basic feature of the constitution and while upholding the same the hon'ble court held that the religious differences can't be included in the politics.

If a party in the ruling state does not follow the basic structure of the constitution then it will be unconstitutional which in further means that the government can't be carried out as per the provisions of the constitution. As per the view of judges the addition of Secularism in the constitution is the act which made the fact explicit, which was in past an implicit.[6]

After stating that the secularism is a basic feature of the Indian constitution, the hon'ble judges referred to the provisions of Representation of People Act, 1952 which prohibits the seeking of votes in the name of religion, which in further supported on upholding the secular feature in the basic structure.

All the judges agreed that the Secularism is the basic structure of the constitution and violation of any basic feature of the constitution including the Secularism can be a basis of issuing of proclamation under Article 356. However in the view of researcher, it can be a very dangerous precedent as it gives the power to issue the proclamation in even a very minor act.

Judicial Review
The hon'ble court examined the power of Judicial review in two parts, one of it being the political question while the other being the Application of Article 74(3) and section 123, Indian Evidence Act.

- **Political Question:**
  Justice J. Ahmedi held that the decision of issuing the proclamation under article 356 on the basis of the report he receive from the Governor is totally a political decision and it is next to impossible to evolve any criteria or set of rules to judicially manage the same. Therefore since the nature of the proclamation is not like one to be judicially justifiable, it is not justifiable.

  Hon'ble J. Ramaswamy held that as far as the decision of proclamation does not have the malafide intention, it could not be challenged on the basis of inadequate or insufficient material to issue the prolaimation. The decision is a political one.

  All the other judges also held the same view that the decision can not be challenged on the basis of inadequate material because it is the circumstances which becomes the base for the decision and the judiciary can't travel to the political arena and encroach upon policy making.

- **Article 74(2), Constitution of India & Sec. 123, Indian Evidence Act.**
  Hon'ble Justice J. Ramaswamy held that Art. 74(2) of the Indian Constitution should be harmonized with Article 142 and the advice of the council of ministers can't be ecamined. Article 74(2) and Article 142, Constitution of India, states that the advice of council of ministers should never be asked to be revealed. But at the same time hon'ble court held that while the advice of the Council of Ministers can't be asked to reveal but the court can call the material on the basis of which such decision has been taken. However the plea of Sec. 123 has to be examined on merits and a broad principle can't be laid down.

  Justice Jeevan Reddy further upheld that the scrutiny of the material on which the decision of council of ministers was based upon can be done either before or after the parliament approved the proclamation.

Conclusion
The case of **S.R. Bommai V. Union of India** is no doubt a very big development in the Constitution of India but it has left out a lot of dilemma and has not conclusively settled the matter. Hon'ble judges has pronounced 6 different judgments and these is no single judgment which indicated the ratio of majority and minority in any part.

This left many of the points in dilemma and there are many points like the legality of Sarkaria Commission's report which left in between and no minority or majority has been made. At lease all the judgements pronounced should have been complied in a single order indicating the majority and the minority.

The judgment in this case however discussed many pin points and developed the constitution on the part of

Federalism and secularism but it also shows the improper application of the art of judgment writing. The judgment should have been properly laid down the cumulative conclusions.

End-Notes:

1. http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=373
2. https://nationalinterest.in/indias-hardcoded-grand-strategy-4af0c1044e96
3. http://legalaffairs.gov.in/sites/default/files/Article
4. AIR 1994 SC 1918
5. Article 356, The Constitution of India, 1950.
6. At para 29