

Indian Federalism under Stress

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Abstract

In a period of widespread corruption, coupled with economic downturn, disconcerting issues related to autonomy and separate states, the management of grassroots level affairs by local communities in the wake of political consciousness and local aspirations and the issues of Centre-state relations are back on the political agenda. A legitimate question that arises in this context is: do we need to rethink federalism in India? This paper attempts to highlight the present challenges to the centre-state relations and explores the directions in which the national and state governments should move if the country is to achieve its goals of a strong, stable, economically vibrant nation.

Keywords: Indian Constitution, Decentralisation, Regionalism, Fiscal Federalism

1. Introduction

Sixty seven years in the life of a nation such as India appear perhaps inadequate to judge the efficacy of its Constitutional institutions and the system of governance. In a system of multi-level governance, operating essentially within a federal framework, like that of India, harmonious relations between the Centre and the States are critical to the stability, integrity, security and economic development of the country. Strengthening of the federal system is necessary for meeting the aspirations of the people governed by the respective State Governments and also for preserving the unity of India. The nation today is passing through critical times. 'Federalism' in India is under a great stress. The role of Centre and States as envisaged in the Constitution over 67 years ago versus the socio-political-economic realities of today has come under a considerable strain on the principles of federalism and functioning of the Central Government. The contemporary debates centered around Foreign Direct Investment (FDI) in retails, The Goods and Services Tax (GST), Right to Food Act, Prevention of Communal and Targeted Violence (PCTC) Bill, Tamil Nadu's stand on Sri Lanka, West Bengal's stand on River Teesta water-sharing treaty, the Lokpal Bill, the National Counter-Terrorism Centre (NCTC), and the imposition of President's rule in Arunachal Pradesh and Uttarakhand state raise a number of disturbing questions regarding the very nature of Indian federalism or popularly called Centre-state relations in India. The question that arises in this context is: do we need to rethink Indian federalism? What extent the multifarious conflicts can be seen as emerging from the relationship between the Union and its constituent units and the tendency of the so-called Centre to centralize powers in its hands? Can rebuilding federal structures and balancing power sharing mechanisms help in resolving conflicts? This paper seeks to

provide a brief survey of how federalism has evolved in India during the past 67 years and attempts to highlight the present challenges to the Centre-state relations and explores the directions in which the national and state governments should move if the country is to achieve its goals of a strong, stable, economically vibrant nation.

2. Development of Indian Federalism

No system of governance can be properly understood without a reference to the socioeconomic and political context in which it was born and consolidated. Given the complex and peculiar circumstances in which the nation became independent in 1947, it is not difficult to grasp the arguments defending centralised government. It is also obvious that in view of India's well-entrenched multicultural character, federalism was considered to be the best possible structure. The roots of Indian federalism can be traced to the British colonial regime. The British influence, experience with the workings of provincial autonomy under the 1935 Act, and the popularity of federalism in the 20th century as a desirable political system for plural societies influenced the framers in favor of federalism (Kothari, 1970). The Constituent Assembly devised a system which seemed most suited to the needs of the time and the requirements of a federal society. The founding fathers built the fabric of Indian Federalism on three pillars, Viz., a strong Centre, flexibility, and co-operative federalism.

India represents a classical federation with Constitutional demarcation of functions and finances between the Union and the States. Article I of the Indian Constitution declares: 'India shall be a Union of States'. The choice of wording was deliberate, given the threat of fissiparous tendencies in the country, and the need to keep it together (Sen, 1988). The Constitution of India provides for a relatively clear vertical division of powers between the Central legislature and the state legislatures, both constituted through direct elections, respectively, in the Seventh Schedule. The Seventh Schedule to the Constitution specifies the legislative domains of the Central and State governments in terms of Union, State and Concurrent lists. The Union controls the 'Union list', consisting of areas that involve national interests, 97 items in all, 'State list', 66 items in all and the 'Concurrent list' holds 47 subject of overlapping interest, where both Centre and state can make laws. The Constitutional scheme of governance at the Centre and in the States broadly deals with three types of relations namely (a) Legislative Relations (Articles 245-255); (b) Administrative Relations (Articles 256-263); and (c) Financial Relations (Articles 264-293). The Constitution has evolved the Finance Commission for the purpose of distributing financial resources between the Centre and the states (Verney, 2003).

The Constitution describes India as a “Union of States”. Strangely, however, in all our discourses and writings on the Indian polity and Constitution, we rarely use the term ‘Union’. In particular, in matters of relationship with the states we keep using the terminology ‘Centre-state relations’ instead of the constitutionally ordained ‘Union-state relations’. This is a sad hangover from the colonial period and the 1919 Government of India Act. A great deal of mischief has been caused by the wrong use of these words. India’s federal system, unlike other major federations, is tilted more towards the Union. India’s Constitution has been variously described as quasi federal, federal with a strong unitary or pro-centre bias, federal in structure but unitary in spirit, federal in normal times but with possibilities of being converted into a purely unitary one during Emergency, etc (Bagchi, 2003). The provisions related to creating and altering the boundaries of states, the appointment of Governors, the amendments to the Constitution, the draconian laws like the imposition of President's Rule in States, the CRP, CISF and BSF matters and other fiscal provisions are un-federal in nature.

India's federalism has undergone a three-phase evolution in the last six decades. The first phase of federation of the political process extended from the time of independence to mid-1960s. The framework of Centre-State relationship had worked fairly smoothly till mid-sixties and the institutions created under or inspired by the Constitution for this purpose enjoyed complete trust and respect of all concerned. This harmonious functioning was, perhaps, possible because this period was characterized by, by and large, a single party that is the Congress Party, domination of the Governments both at the Centre and in most of the States (Kothari, 1964). The Centre-State relations were not really put to any severe test during this period. Whatever differences or occasional conflicts arose, were endeavoured for mitigation and resolution, not as between two different Governments but more between two entities of the same system. The second phase of the development of Indian federalism began with the fourth general election (1967), which drastically reduced the overwhelming strength of the Congress party in the national Parliament to a simple majority and nearly half the states moving out of Congress control and into the hands of opposition parties or coalitions, and led to a radical change in the nature of centre-state relations (Arora, 2000).

With the prolonged period of coalition governments at the Centre, the third phase in the federalization of Indian politics began at the end of the 1980s. Regional parties, such as the Dravida Munnertra Kazagam (DMK) of Tamil Nadu or the Rashtriya Janata Dal (RJD) of Bihar, have asserted their interests more openly over the past one-and-a half decades of coalition and minority governments. However, the Indian federalism stands gravely endangered by populist imperatives originating in the states which trespass into the Union's jurisdiction to the extent of enervating the Parliament and the Union Executive. The last two decades have seen the emergence of coalitions with constituent

parties from around the country. This has led to a regional assertiveness, redefining the structure of governance at both the State and Central levels (Roy, 2011). The failure of any of the national parties in terms of gaining majority in the central Parliament, and their growing dependence on the support of the regional parties to run the government at the centre, have allowed the federal units to bargain and influence important policy decisions at the centre.

3. Decentralisation and Federalism

Local self-governments play a critical role in enhancing democracy across federal systems besides bringing governance closer to people through both representative and participatory democracy, particularly following the 73rd and 74th Amendments to the Constitution. Local governments in both urban and rural India, although constitutionally mandated, experience a very weak existence in their own right in terms of being subservient to the state government. The local governments have no power to legislate, nor do they possess the capacity to approach courts for resolving disputes related to the respective constitutional powers of second and third orders of government (Sathyamurthy, 1996). The implementation of flagship programmes initiated by the central government like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Public Distribution System (PDS), Jawaharlal Nehru National Urban Renewal Mission (JNNURM), Bharat Nirman programme and universalisation of education (Sarvashika Abhyan) have undermined the effective functioning of local governments. Further, the allotment of local area development funds/grants to federal and state legislators (MLA/MLC/MP grants) also has undermined the effective functioning of these institutions (Mitra & Pehl, 2010).

The states show more interest in the share of sovereign power, but they are not willing to share the same with local governments. Economic reforms have helped the states in attracting more investments and strengthening state capitals, in the process; on the other side; coalition politics has enhanced the political clout and the status of regional leaders with respect to national politics. But neither of the above guarantees nor promotes the third-tier of federal governance. Democracy must begin at local levels and to be safe and lasting, it must be crowned with a federal polity. If we are serious about providing multi-tier government and taking it to the doorsteps of the people at the grassroots levels, the Constitution should clearly provide for the distribution of powers between the Union, the States and the local governments by way of making the 11th and 12th Schedules mandatory. Hence, the effective functioning of local governments depends upon the commitment of the central and state governments to the decentralisation of powers and supporting of civil society organisations as well.

4. Fiscal Federalism

Fiscal federalism in India has always been deeply problematic with vertical and horizontal imbalances not only persisting till date, but also getting aggravated in many cases. The transfer system as it has been operating so far has not been able to offset the fiscal disadvantage of the poorer states (Saez, 2002). While attempts have been made to alleviate the regional disparities through equalization transfers their impact remains blunted by various factors such as invisible transfers, tax exporting by relatively advanced states and the subsidized lending by the centre. The functioning of the internal common market is impeded by fiscal and regulatory barriers with respect to the movement of goods and factors of production across states like the origin-based tax on interstate sales, viz, the Central Sales Tax and restrictions on the movement and marketing of food grains. There is need of urgent reforms as creating a congenial macroeconomic environment, providing efficient infrastructure, minimizing microeconomic inefficiencies and developing market institutions and governance. Reforms suggested in respect of the transfer system include: defining the role of the Finance Commission and the Planning Commission in terms of greater clarity, the need to incorporate incentives for efficiency in equalization transfers through a truly normative approach.

Democratic decentralisation in the context of parliamentary multiparty system has major implications for the Centre-state financial relations in India. The structure of local governance differs across various parts of the country and so does the degree of fiscal decentralisation. In some regions, the fiscal decentralisation has been more successful, not in terms of delivering public services, mobilizing physical and human resources, but in unleashing incentives for exploiting the developmental potential than in other regions (Rao, 2001). Local governments are yet to achieve a fair degree of financial autonomy. They still depend upon higher level governments for about 70-80 per cent of their expenditure. The total expenditure of local governments as a proportion of the combined expenditure of the Union, states and local governments amounted to 6.4 percent for 1998-1999 and 5.1 percent for 2002-03. The decline in the expenditure of local governments from 3.9 percent for 1998-99 to 3.3 percent for 2002-03 is a matter for concern. With economic liberalization must come, the decentralisation of political power and management, income tax, corporation tax, while, indirect tax could be moved to the concurrent list. It won't amount to the violation of the basic structure of the Constitution nor the parliamentary system.

5. Regionalism and Federalism

Regionalism has remained perhaps the most potent force in Indian politics ever since independence (1947), if not before. The regionalist movements in India are not claiming just for more autonomy and further federalization of the polity, but also for the recognition of the cultural identity

of those communities as well as their demand for the economic care of their region (Bhattacharyya, 2005). Despite being federal right from the beginning, the Indian state has always insisted on a strong centre. This could be because of the recognition of the inherently fragile character of the nation and frequent threats of secession. This has made the centre insecure about the integrity of the nation. It has been continuously trying to strengthen the centre on the grounds of national integration, mainstream-periphery, extremist and hostile threats to the integrity of the nation and so on. Recent development like: demand for separate statehoods like Vidarbha, Bodoland, Bundelkhand and others and also regional considerations have begun to dictate vital strategic national interests like: Tamil Nadu's stand on the relationship with Sri Lanka and West Bengal's on Teesta water-sharing treaty and FDI in retail trading show the changing trends of the times that the centre can no longer afford to ignore state related concerns or while framing foreign policies.

Indian federalism is seen as a means of accommodative regionalism in India. Federalism is seen here as a political equilibrium-an appropriate balance between shared rule and self-rule (Verney, 2003). Federalism and regionalism may complement each other in the practical political processes. The need for a balance is of utmost importance if the unity of the country is not to be risked. A Federation rather than a nation-state is better able to accommodate ethnically distinct regions because, while the nation-state demands uniformity, federalism is based on the recognition of differences. A two-tier federation may not be sufficient to accommodate regionalism of many forms and levels. A tier below the 'state' or 'province' with an appropriate constitutional guarantee may be necessary for regional accommodation. Unless the regions feel the presence of 'nation' in them, parochialism would grow in strength. The creation of states and an autonomous space by the Indian state apparently in pursuance of the federal principle is actually an attempt creating a local power structure base rather than devolving powers.

6. Internal Security and Federalism

National security is a common concern for the Union and the states. Both are equally interested in unitedly fighting terrorism and other ethnic threats facing the nation. At the operational level, the Union forces have to inevitably function in cooperation with the state police, thereby translating into practice the concept of operative federalism (Mitra & Pehl, 2010). Internal security has always been a critical issue for the Indian state though not recognized officially as such. When the Constitution was framed more than 65 years ago, our internal security tasks were simple, i.e., dealing with dacoities, robberies and insurgencies of the Telangana kind. Our founding fathers had a fair degree of confidence in the ability of the States to deal with any kind of internal security threats alone. In their keenness to preserve and protect our federal State, they made the Police a State subject. However, the state has found

itself unable to act alone, in view of the fact that the threat of terrorism or insurgency is no longer a 'law and order' issue to be handled by the state government. The Maoists have particularly taken advantage of the current constitutional arrangement of the state government's control over the police force. The current model of individual states dealing with the Maoists has proved to be a failure because the country continues to persist with a colonial police structure. The current NCTC controversy is nothing short of the Constitutional illiteracy or the wilful distortion of the Constitution. There is an alarming loss of trust and confidence between the Centre and states which has damaged the spirit of federalism. In this regard, there is a need for a rethink on the sharing of power between the centre and states as to prevent the issue of internal security from becoming a seed of political contention within the Indian federal structure.

7. Resource Federalism

Buoyant commodity markets and liberalised investment rules are attracting foreign and Indian capital to resource rich states in India. Given their financial and development problems, these states see the resources—minerals, oil, natural gas, and hydropower—as key revenue and development handles, and are demanding a greater share of the economic benefits of their development (Noronha et al., 2009). While the centre and states are proactively engaged in creating investment opportunities in resource development, the local people in resource-bearing states are concerned that the authorities may overlook local environmental and social responsibilities. It is against the backdrop of the states demanding a more "fair" distribution of resource rents, and of the local people demanding a better recognition of rights and compensation for the adverse effects of resource development (Baviskar, 2003). The recent demand by states like: Odisha, Chhattisgarh, Jharkhand, Goa and others shows that there is need to revisit the Constitutional mechanism for fair distribution of national resources between Centre and States.

The resource federalism needs to recognise the three perspectives with respect to resource development: agency, spatial, and temporal. While the states have a right to allow the exploitation of minerals, they have to have the prior approval of the centre in respect of some major minerals as specified by the central legislation. However, there is a transgression into the states' domain in the working of resource federalism through the Mines and Minerals Development and Regulation (MMDR) Act. The sources of disagreement between the centre and states revolve around the manner of royalty fixation; delays in revising royalty rates for coal; control over mineral development by the centre which does not reflect states' need for new investments; and matters of cess and other charges on mines and other minerals under Entries 49-50 of List II (Noronha et al., 2009). Hence, resource federalism can be strengthened through the creation of more independent bodies for resolving issues related to

centre-state interests, expanding the space for local governance; improved compensation and the sharing of resource revenues; and enhanced local institutional capacity.

8. Concluding Remarks

The preceding discussion clearly brings out the changes that have taken over the Indian federalism in the last six decades. India needs a strong Union with strong States. The federal structure has come to stay and needs to be strengthened. The only way to preserve 'India, that is Bharat' as a 'Union of States' is to work for building it as a 'Federal Union' with multiple tiers of government and sharing of powers from the lowest grass root levels of Panchayats to the Parliament and the Government of the Union. More innovative federal structures need to be devised. It is necessary to address the deep-rooted sources of conflicts. Apart from restructuring the federal Union, we need administrative reforms, parliamentary reforms and over-all reforms for good and clean citizen-friendly governance. Hence, it is appropriate to restructure the Union-state relations, in order to correct the existing imbalances and to strengthen the federal system by empowering the States with a greater degree of autonomy. A great deal needs to be reformed in the domain of our politics, but most of the desirable reforms can be brought about within the constitutional framework by way of exhibiting a strong political will, executive action or ordinary legislation. Only in respect of rare cases, constitutional amendments may be deemed necessary. These can be enacted under the existing constitutional provisions without violating the basic structure of the constitution.

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