

The Polity in the Working of Indian Federalism

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Abstract

The objective of this paper is to ascertain the principle functioning of India's true democratic federal structures. Indian federalism is not a static entity. The active federal polity has been well accommodated in terms of nation-building besides its tall orders of developing the diverse level of agencies and society. This article examines the processes of federal structure vis-à-vis its strength, realities and challenges of its working principles alongside the emergence of coalition politics. The flexibility of the federal process has made it possible for the state in India to accommodate its pluralistic nature.

Introduction

India's federal polity has tremendously evolved leaps and bounds during the last sixty seven years since the Constitution of India was adopted. The federal system has served extremely well for India to promote our democracy, to strengthen the national unity and to achieve economic prosperity. India's political structures are widely recognised as a vigorous institution though in the presence of the federal species. Self rule and shared rule have been combined in unorthodox ways which have enabled the Indian Union to not only survive but also flourish in all its diversity.

K.C. Wheare defined the concept of "federal" as a state which has a division of powers between general and regional authorities, each of which, in its own sphere, is co-ordinate with the others and independent of them¹. Federalism is a basic feature of the Constitution of India, according to Supreme Court of India, in which the Union of India is permanent and indestructible. Federalism is a

mechanism for effective governance of a union to reconcile unity with municipality, centralisation with decentralisation and nationalism with localism. ²Undoubtedly, federalism in India has been under huge strains. The expansion of political participation in the last two decades has placed historically disadvantaged and marginalized groups at the centre of a political system and of governance at all levels. ³Tension and conflict of the interests of the Centre and the respective units is an integral part of federalism. Federalism with a strong Centre was inevitable as the framers of the Indian Constitution were aware that there were economic disparities as several areas of India were economically as well as industrially far behind in comparison to others. The nation was committed to a socio economic revolution not only to secure the basic needs of the common man and economic unity of the country but also to bring about a fundamental change in the structure of Indian society in accordance with the egalitarian principles.

¹ K.C. Wheare (1971) 4thed, *Federal Government*, The English Language Book Society and Oxford University Press, London, p. 33.

² D.D. Basu (2008) 2nded, *Comparative Federalism*, Wadhwa and Company, Nagpur, pp. 5-6.

³ Bidyut Chakrabarty (2003), 'Federalism and Change: India in the First Fifty Years' in B.D.Dua and M.P. Singh (ed.), *India Federalism in the New Millennium*, Manohar Publishers & Distributors, New Delhi, p. 117.

Given the plurality of colours, languages, tribes, cultures, etc, India has in principle provided polity of states with a firm resolve and a source of great power against the centre. For stability and unity, state-nations generally require policies that are respectful of such territorially concentrated cultural diversities⁴. India's federal experiment has on the whole been a success. Against the background of all these assets and unfolding events, it is worth to pinch through the landscape pillars and structures of India's federal polity.

Strength of Federal Structure

i). Dominant principles of decentralization.

India depicts a classical federation with Constitutional demarcation of functions and finances between the Union and the States. Elaborate legislative, executive and judicial arms of government are constituted at both Central and State levels. The Seventh Schedule to the Constitution specifies the legislative domains of the Central and State governments in terms of Union, State and Concurrent Lists. Both the Centre and States are co-operating and co-ordinating institutions having independence and ought to exercise their respective powers with mutual adjustment, respect, understanding and accommodation.

Decentralised and grass-root planning and implementation are features of shared governance; and this, in turn, reflects the correct image of federal governance. Social federalism cannot be sidelined in the name of political federalism. With the 73rd and 74th Constitutional amendments in 1993 over a quartermillion local government units have been created in urban and rural areas to provide an

enabling environment for decentralized provision of public services⁵. M. Govinda Rao (2002), 'Dynamics of Indian Federalism', *Centre for Research on Economic Development and Policy Reform*, Working Paper No. 140, July, Stanford University, USA, p. 4.

This is one of the inherent cornerstones of India's grassroots democratic ideals of social justice.

ii). Actions of a strong union.

The Constituent Assembly created an indestructible union of destructible states. Secession was banned explicitly in the early years, but constitutional flexibility enabled other forms of search for solutions. Overall, the shift from reluctant to robust federalism was forwarded on by the political process, which made it difficult to ignore the true nature of the Indian federation. The Strong Centre framework has proved remarkably resilient, even during the phase when the clarion call was to roll back the State. Given the nature and extent of social diversities and cleavages, the judicious intervention of a strong central state is often considered indispensable for maintaining social harmony. This phase of India's federal development was marked by the stunted growth of institutional devices designed to cope with the needs of cooperation and coordination. Single party dominance obscured the challenges that lay ahead.

For instance, even in the economic liberalisation phase, the Centre retains control over all the macro-economic levers of command. While deregulation in some areas has given more scope for state initiatives, the needs for central regulation in new ar

⁴ Ashutosh Varshney (2013), 'How has Indian Federalism Done?', *Studies in Indian Politics*, 1(1), Lokniti, Centre for the Study of Developing Societies, SAGE Publications, New Delhi, pp. 43-63.

⁵ M. Govinda Rao (2002), 'Dynamics of Indian Federalism', *Centre for Research on Economic Development and Policy Reform*, Working Paper No. 140, July, Stanford University, USA, p. 4.

⁶ Balveer Arora (2007), 'India's Experience with Federalism: Lessons Learnt and Unlearnt', A paper presented at an international seminar on "Constitutionalism and Diversity in Nepal", Organized by Centre for Nepal and Asian Studies in collaboration with MIDEA Project and ESP-Nepal 22-24 August, Kathmandu, Nepal.

has emerged. The strong centre framework is not challenged or sought to be replaced even by proponents of state autonomy. What they want is strong states and more state autonomy within the same framework⁶.

iii). Effective socialistic strategy.

The centralization inherent in constitutional assignment was further strengthened by the adoption of a planned development strategy. This not only caused the concentration of economic power but also led to the introduction of several controls and regulations with attendant distortions on relative prices and economic incentives. The recent overhauling of the Nehruvian Planning Commission into a more pragmatic 'NITI Aayog'⁷ under Prime Minister Modi's doctrine of "Make in India" initiative has brought new insights of openness. Only time will tell how effectively the new institution will work in order to ensure India's plural state of society in terms of transparency and growth in developmental sectors. So true that the International Monetary Fund and World Bank have forecast India's growth to strengthen from 7.2 per cent in 2014 to 7.5 per cent in both 2015 and 2016, overtaking China's growth — for the first time since 1999, but added that on the back of significant acceleration of investment, growth could even reach 8 per cent in 2017-18.⁸

After all is said and done, the greatest objective of India's federation was to hold the nation together without giving up the division of powers between the centre and states. Whatever other deficiencies exist, Indian federalism has certainly achieved its paramount objective.⁹

Realities of India's Federalism

i). Dynamics of structural accommodations.

Indian federalism has transformed from the revenue based law and order federalism of British to the paradigm of planned development of the Nehru era to cooperative - bargaining model dictated by the electoral weakening of the Union and the rise of strong regional parties. If the strong planned development model was intended to subordinate group demands on the basis of caste, region, language, culture and religion to the 'idea of a new India', many such group demands have been recognized within an overall federal system. The original Constitution created a federal system on the basis of principles of weighted and differentiated equality to recognize group claims so as to override demands for equal treatment. India pursues a policy of unequal federalism so that some states are differentially equal than others. For instance, the state of Jammu and Kashmir even has its own Constitution within the common Constitutional framework.

The consequential effect of group claims on the federal structure has been that the entire geographical basis of Indian federalism has been re-cast. Indian federalism has been reorganized on the basis of linguistic and cultural identity. This has been achieved through a combination of Constitutional amendments, legislation and exercising of executive power. Within states, special institutions of governance have been devised for tribals and others. All this is partly to reorganize the federal basis of group life under the Constitution as well as stave off disruptionist and secessionist pressures.

⁷ Prime Minister's Office (2015), Government establishes NITI Aayog (National Institution for Transforming India) to replace Planning Commission, Jan 1, available at http://pmindia.gov.in/en/news_updates/government-establishes-niti-aayog-/.

⁸ Mehar, Puja (2015), 'IMF predicts India will hit 7.5% growth, overtake China', *The Hindu*, April, 15.

⁹ Amit Ahuja and Ashutosh Varshney (2005), 'Antecedent nationhood, subsequent statehood: explaining the success of Indian federalism' in Phillip G. Roeder and Donald Rothchild (eds), *Sustainable Peace: Power and Democracy after Civil Wars*, Cornell University Press, New York, pp. 241-264.

ii). Conflict between the centre-state relations.

From the Rajamannar Commission of 1969 to Sarkaria Commission of 1988 and the National Commission to Review the Working of the Constitution (NCRWC), the relationship between the Union and States remains a deadlock seen as relationship between the whole body and its parts. Of late, the UPA-I government constituted a Commission on Centre-State relations (CCSR) in April, 2007 to take a fresh look at the relative roles and responsibilities of the various levels of the government and Centre-State relations.

The basic question that the Commission identified to address was: Are the existing arrangements governing Centre-State relations- legislative, executive and financial - envisaged in the Constitution, as they have evolved over the years, working in a manner that can meet the aspirations of the Indian society as also the requirements of an increasingly globalizing world? If not, what are the impediments and how can they be remedied without violating the basic structure of the Constitution?¹⁰ In the light of the mandate assigned to it, the CCSR grouped the issues into nine broad areas and constituted nine Task Forces with a view to making the deliberations more participative and consultative. The subject areas covered by the Task Forces were: Constitutional Scheme of Centre-State Relations; Economic and Financial Relations; Unified and Integrated Domestic Market/Harmonisation of Commodities Taxes; Local Governments and Decentralized Governance; Criminal Justice, National Security and Centre-State Cooperation; Natural Resources, Environment, Land and Agriculture; Infrastructure Development and Mega Projects; Social-Political

Development, Public Policy and Governance; Social, Economic and Human Development. The Commission commented that with ever growing aspirations of the States and in some cases the concerns of the Central Government, it was felt by the Government of India that time had come to have another comprehensive look at the entire gamut of Centre-States relations so that a further positive headway can be made on this important subject¹¹.

iii). Negation in the federal form.

Asymmetric federalism is understood to mean federalism based on unequal powers and relationships in political, administrative and fiscal arrangements spheres between the units constituting a federation. Article 3 of the Constitution vests the Parliament with powers to constitute new states by separating territories from the existing ones, alter their boundaries, and change their names. The only requirement for this is that the 'Bill' for the purpose will have to be placed in the Parliament on their commendation of the President and after it had been referred to the relevant state legislature for ascertaining their views. The central government in India has the powers, and it actually does invade the legislative and executive domains of the states.

In a multi-cultural nation like India, federalism ironically appears to be looked upon both as a bogey and as saviour. This is particularly true of what is called 'asymmetrical federalism', which means a federation in which some of the federating units are accorded weightage under imperatives of compelling historical or cultural factors that create a desire for special or distinct constitutional recognition of their difference in relation to others.

¹⁰ Inter State Council Secretariat (2010), 'Evolution of Centre-State Relations in India', Report of the Commission on Centre-State Relations, Volume-I, March, Ministry of Home Affairs, Government of India, p. XXII.

¹¹ Press Information Bureau (PIB) (2008), 'Plenary Meeting of Task Forces of Commission on Centre-State Relations', Ministry of Home Affairs, Government of India, July 3, available at <http://pib.nic.in/newsite/erelease.aspx?relid=40013> accessed on 15th March, 2015.

Indian federation is based on various kinds of asymmetries¹².

In India, the inequality of states, and of regions within states, has commonly generated tensions and dissatisfactions. Asymmetrical federalism and special status provisions, including special fiscal regimes and incentives, have helped address these problems to some extent. Special Status provisions have been used to resolve issues arising from history, geography and culture. Articles 370 and 371 provide examples of such accommodative constitutional engineering. Special status and unique relationships to meet specific needs and requirements were very much a part of the original constitutional design from the outset. Sub-State autonomy structures and autonomous district councils have had a mixed record. Some have been mere transit points towards statehood, others have proved more durable.

Challenges Ahead

Without an iota of doubt, India's federal polity has taken its shape within the primary objectives set by the framers of the Indian Constitution. Apart from both the federal and unitary features supported by its strong pillars of democratic principles, yet there have been constraints and short comings in many instances. Of late, there are emerging trends of challenges and new discourse on federalism, at the same time a looming direct impact on the federal spirit.

With the advent of coalition politics, the Centre-State relationship started coming under considerable strain as different political parties assumed power at the Centre and in different States. The nation has been simultaneously witnessing the emergence and growth of

regionalism and strong identity politics. Today, the roles of the regional parties are inevitable and are commanding in power-making in many states of the Indian Union. Coalition politics has today acquired proportions which were unimaginable at the time of framing the constitution. Coalition Politics has been acting as a good source for the emergence of a collaborative-cooperative-competitive approach in Indian federal politics, particularly in the sphere of Union-State relations and inter-party behavior.

Generally, there is an intense debate on the issue of federalism in the public domain and expert opinion is sharply divided on its interpretation as enshrined in the Constitution¹³. The actual working of cooperative federalism in India has entailed the Union's exercising its influence rather than its constitutional authority. Undoubtedly, India has emerged as a major industrial, economic and military power. Any federal system is a device of shared-governance, and the Constitution of India envisages a 'creative balance' between the need for an effective Union and effectively - empowered states¹⁴. The widening gap between the rich and poor and increasing socio-economic inequality have created friction between different groups in society. The nation, after six decades of independence, is witnessing significant changes in all walks of life and faces new set of challenges needing new and innovative responses. Cooperative federalism can succeed only if a fair balance is maintained between the claims of diversity and the requirements of unity.

Globalization has produced paradoxical results in the sense that while it has allowed more autonomy of action in favour of the state to reap

¹² See in Rekha Saxena (2005), 'Indian Model of federalism', *The Federal Idea, Centre for Policy Alternatives and the Forum of Federations* (Canadian International Development Agency and Foreign affairs), Negombo, Canada, April 3-5, pp. 35-38.

¹³ Government of West Bengal (1978), 'Views on Centre-State Relations', *Department of Information and Cultural Affairs*, Government of West Bengal, Calcutta.

¹⁴ Granvile Austin (1999), *Working A Democratic Constitution*, Oxford University Press, New Delhi, pp. 560-564.

the benefits of globalization, this has at the same time prepared the long term basis of crisis in Indian federalism itself. In fact, globalization is also seen in the context of decentralization of power. Post-1991 liberalisation has put India's growth in a fast-track pace, however, inequality and regional imbalance has also increased tremendously. The states have been engaged in fierce competition among themselves for foreign direct investment (FDI) and special economic zone (SEZ) models of development giving rise to a new division among the states such as forward and backward states, inter-jurisdictional competition in place of inter-state cooperation, and weakening loyalty to the union. With the weakening of the welfare state, the newly created conflicts out of disparity in regional development, and widening inequalities following globalization remain unmitigated¹⁵.

The growing inter-state and regional disparities are a very real threat to the authority of the central government because of its own commitment to private investment led-growth¹⁶. The gradual withdrawal of the very meager welfare measures, and the relative absence of any social security, or safety nets, have meant that there is mass protest against globalization led by various forms of grass-roots political activism. This penetrates into the very democratic principle of authority of the party(s) in power in the states.

Conclusion

Federalism may be created by a Constitution, but what sustains it is politics itself. On close analysis, one can find out that the problem of Indian federalism is an exercise in politics. The nuances of this relationship are ultimately political and may

not immediately be derived from the Constitution. Unless leadership becomes enlightened and willing to rise above party politics, federalism will suffer with dangerous consequences in political, social and economic spheres.

Prof. Morris Jones talks of Indian federalism as 'bargaining federalism'. He says- whereas the emphasis in the Constitution is on demarcation, that of political relations is on cooperative bargaining¹⁷. Federalism in India is fundamentally rooted in two simultaneous pursuits of nationhood: an embrace of state-based cultural diversities and a commitment to the larger Indian political community. Many political battles were fought by the states against the centre, but few were taken to the brink of breaking nationhood. Embracing diversities, the centre also did not on the whole seek to obliterate the many identities of Indian citizens, regions or states. Coalitional politics has brought democracy to a broader test at one level, but at the same time also made national security bulkier challenges. The laws concerning India's centre-state relations, especially those concerning states having exclusive responsibility for public order are obstructing the evolution of a solid organizational structure to deal with internal and external threats. Constitutional amendments may resolve this problem, but such amendments are extremely unlikely to go through in a coalitional political atmosphere¹⁸.

One very basic deficiency of institutional plan and the federal system is vividly the want of stronger mechanism for a coordinated attention and collectiveness of states versus the Central government. Coordination mechanisms such as the informal conference of Chief Ministers and to some extent, also the Interstate Council have largely proven to be limited in their effectiveness. In its

¹⁵Chanchal Kumar (2014), Federalism in India: A Critical Appraisal, *Journal of Business Management & Social Sciences Research*, Volume 3, No.9, September, p. 38.

¹⁶ C.P. Bhambhri (2003), 'Central Government in the Age of Globalization: New Directions of Indian Federalism', in B.D.Dua and M.P. Singh (ed.), *India Federalism in the New Millennium*, Manohar Publishers & Distributors, New Delhi, p. 331 .

¹⁷W. H. Morris Jones (1971), *The Government of Politics of India*, Hutchinson, London, p. 152.

¹⁸AshutoshVarshney (2013), pp. 60-61.

own way, therefore, the Indian experience with the unprecedented and unconventional expansion of the federal principle serves to enrich the theory

of federalism in confirming or disconfirming received knowledge about the strengths and weaknesses of federal systems the world over¹⁹.

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¹⁹Chanchal Kumar (2014), p.40.