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Federalism in India: Time for a Relook?

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Federalism has been part of the public discourse in India for many decades, before and after independence in 1947, but it has gained greater importance since the 1990s when the country's national polity saw the advent of the coalition era. With the states now asserting their position in areas which were considered the prerogative of the Centre, this Paper strives to analyse some of the related issues and suggests possible paths for the future.

Federalism in India is under strain. The role of Centre and States as envisaged in the Constitution over 60 years ago versus the socio-political-economic realities of today are putting considerable strain on the principles of federalism and functioning of the Central Government.

The recent stand of West Bengal on River Teesta embarrassed the foreign policy position of Government of India with Bangladesh. The Tamil Nadu Assembly unanimously passed a resolution seeking imposition of economic sanctions on Sri Lanka.¹ Jammu and Kashmir and Punjab have been asking the Centre to take them on board while discussing water issues with Pakistan. Foreign Direct Investment in retail was opposed by several states on the grounds that the move would hurt the interest of farmers and retailers in their states, forcing the Central government to postpone the move.

Similarly, the fate of the proposed National Counter-Terrorism Centre (NCTC), the Lokpal Bill, the amendment to the Railway Police Force Act to abolish state controlled Government Railway Police (GRP) and the Border Security Force Amendment Bill extending the policing powers of the para-

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military forces remain uncertain with fierce opposition from regional parties and affected states with strong arguments around the interpretation of federalism in the Indian Constitution.

Federalism and the Indian Constitution

The framing of the Indian Constitution and enunciation of the principle of federalism would have weighed heavily on the conscious and subconscious minds of the members of the Constituent Assembly (CA), formed in December 1946.² Writing of the Constitution against the backdrop of the partition of the country, the accompanying communal frenzy and integration of 565-odd princely states with erstwhile British provinces into one functioning unit, would have made the task even more complex.

The Constituent Assembly, after prolonged debates, settled for “unitary” federalism in the backdrop of the challenges confronting the emerging or just emerged independent nation.

Even though the framers of the Constitution were divided on the issue of federalism as indicated by the prolonged and passionate debates that took place in the Constituent Assembly, there was a general consensus towards building India as a nation and a comprehensive understanding of the nation as a whole; they did not approach the issue of constitution writing visualising India in parts. Further, historical experiences, like the rise and fall of the Mauryan, Gupta, Mughal and other empires, could also have built the argument in favour of “unitary federalism”.

Before the formation of the Constituent Assembly, the Cabinet Mission Plan had “outlined a central government with very limited powers to be confined to foreign affairs, defence and communications”³ However, the Indian National Congress and the Muslim League could not reach an agreement on the Plan. Further, the first report by the Constituent Assembly also envisioned a relatively weak Centre as advocated by the Cripps and Cabinet Mission Plans. “The passing of the India Independence Act and the eventual Partition of India led the Constituent Assembly to adopt a more unitary version of federalism”.⁴

Interestingly, Mahatma Gandhi was in favour of a decentralized structure and had expressed a preference for a panchayat or village-based federation.⁵ Dr B. R. Ambedkar and Prime Minister Jawaharlal Nehru were in favour of a unitary state while Home Minister Sardar Vallabhbhai Patel and many others stood for the cause of federalism.

Ultimately a healthy compromise was arrived at, to ensure a balance of power between the Centre and States and the Constitution described India as a 'Union of States' implying that its unity is indestructible. It prescribed the structure of the Union government and also that of the state

governments, together with one common citizenship for the whole of India⁶ rather than a dual citizenship.

The federal system brought the provinces together and placed them all on the same legal footing. “Use of the term 'union' indicated that Indian federalism did not come into existence due to some mutual agreement or compact among the constituent units. These units were also not given freedom to secede from the union. There were no provisions of safeguards for the protection of states' rights because the states were not sovereign entities at the time of the formation of the Union”.⁷

It goes to the credit of the framers of the Constitution that they had visualised and anticipated contingencies which might arise at some point in the future and had made provisions to meet them. As pointed out by constitutional experts, “The Constitution by adapting itself to changed circumstances strengthens the Government in its endeavour to overcome the crisis”.⁸ “It is rather a merit of the Constitution that it visualises the contingencies when the strict application of the federal principle might destroy the basic assumption on which our Constitution is built”.⁹

Scholars and experts have held different views while interpreting the federal nature of the Indian Constitution. Some say that it has the “essential characteristics of federalism” like: written constitution, distribution of powers, supremacy of the constitution, rigidity, and authority of courts; others claim that it is not federal as many classical elements of federalism are absent in the text”.¹⁰ According to this school of thought, the Indian Constitution is not federal enough as it lacks dual polity or dual form of Government. In the case of the US Constitution, the field of government is divided between the Federal and State Governments which are not subordinate to one another but are co-ordinate and independent within the spheres allotted to them. They argue that the existence of co-ordinate authorities independent of each other is the gist of the federal principle, and in the absence of this feature the Indian Constitution does not qualify to be described as federal.¹¹

It is further argued that “the Constitution guarantees individual rights of certain groups such as Scheduled Castes and Scheduled Tribes, and minorities, but not to states as such. It does not concede even the right of equal representation to the states in the Upper House of the Union Parliament. India's Constitution is not a covenant, or compact, between the states; rather the states are the creation of Constitution and subsequently of Parliament”.¹² Article 2 of the Constitution empowers Parliament “to admit into Union, or establish, new States on such terms and conditions as it thinks fit”.¹³ Article 3 gives more comprehensive powers to Parliament for “formation of new states and alteration of areas, boundaries or names of the existing States”.¹⁴

Part XI of the Indian Constitution elaborately defines the power distribution between the federal government (Centre) and the States. This part is divided into legislative and administrative powers. The

Seventh Schedule of Constitution created three lists of subjects, one each meant for the Centre and States, and a concurrent one of subjects that fell under joint domain of the Centre and states. List 1—Union List—has 97 subjects in respect of which the Centre is empowered to enact laws. List 2—State List—has 66 subjects that fall under the competence of a State for legislation. List 3—Concurrent List—has 47 subjects on which both the Centre and the States are empowered to legislate and enact laws.¹⁵ Not only did the Constitution clearly demarcate the powers of the Centre and States but it also made provision of Articles 249, 250, 252 and 253 which enable the Centre to legislate on issues included in the State list. In this manner, the Constituent Assembly took care of every possible exigency.

Professor Ronald L Watts, a renowned expert on federalism, defends the Indian approach saying: “In some cases, however, where territorial social diversity and fragmentation is strong, it has been considered desirable, as in Canada and India initially, and in Spain, to give the federal government sufficiently strong, and even overriding, powers to resist possible tendencies to balkanization”.¹⁶

Emerging Challenges and the New Discourse on Federalism

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 model of 'cooperative federalism' for which foundations had been laid in the Constitution also became a reference point in the debate on evolving principle of federalism in the Constitution. 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 Constitution.¹⁷

Undoubtedly, India has emerged as a major industrial, economic and military power. At the same time, its soft power has also been ascending. This has resulted in empowerment of the political class with contradicting voices pulling society and the polity in opposite directions. At the same time, 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.

The country has also been transiting from being one with a feudal culture to an industrial society. The process is undoubtedly slow but it is pushing citizens and inhabitants to often co-exist with value norms of both feudal as well as industrial societies. This has resulted in generating friction and fissures in society and pressure points in the polity. It has given birth to parallel and multi-layered discourses in polity and society. Further, the nation has been simultaneously witnessing the emergence and growth of regionalism and strong identity politics. States are increasingly assuming significance in the

backdrop of more and more political parties occupying the political space which till 1967 was primarily the turf of the Indian National Congress. Today, regional parties are in power in nine of the 28 States of the Indian Union. The two national parties—Indian National Congress and Bharatiya Janata Party (BJP)—are in command in the remaining 19 states. Linguistic diversity along with polycentric socio-cultural spread of the nation has raised questions on the role of a powerful Union government. Coalition politics has today acquired proportions which were unimaginable at the time of formation of independent India.

The issue came to the fore in 1969 when at the instance of Chief Minister M. Karunandihi a three-member expert committee was formed by the Government of Tamil Nadu under the chairmanship of Dr P. V. Rajamannar to examine the working of India's Constitution and to recommend the reallocation of powers between the central government and the states.¹⁸ The Rajamannar Commission called for the abolition of Articles 249, 356 and 357 of the Constitution, which gives Parliament the power to legislate with respect to a matter in the State List and also to determine and act on a failure of the constitutional machinery of a state due to emergencies. The Commission further suggested that a few Union entries should be transferred to the State List, including the power to levy some excise taxes (entry 84 of the Union List), and the detachment of most non-vital industries from Union control (entry 52 of the Union List).¹⁹

The pro-States argument received a further boost in 1977 when the Government of West Bengal released a Memorandum on Centre-State Relations. This Memorandum adopted the position that the Constitution itself had been altered, such as the 42nd Amendment to the Constitution, which allowed transfer of education from the State List to the Concurrent List to the exclusive benefit of the Centre. The West Bengal memorandum followed in the footsteps of the Rajamannar Commission by arguing that the advocacy for strong states “is not necessarily in contradiction to that of a strong Centre, once the respective spheres of authority are clearly marked out”.

In 1988, the Justice R. S. Sarkaria Commission submitted a 1,600 page report carrying 256 specific suggestions for improving Centre-State relations. A number of its recommendations were implemented. In 2002 again, The National Commission to Review the Working of the Constitution (NCRWC) set up by the BJP-led National Democratic Alliance government gave considerable attention to the issue of Union-State Relations. Chapter 8 of the Report was devoted to this subject. There were specific recommendations on important subjects like Finance, Commerce and Trade, Resolution of disputes and Executive.²⁰ The Commission felt that “there is no dichotomy between a strong Union and strong States. The relationship between the Union and States is a relationship between the whole body and its parts. For a healthy body, it is necessary that its parts are strong. It is felt that the real source of many of our problems is the tendency of centralisation of powers and misuse of authority”.²¹

Again, in April 2007, the UPA-I government constituted a Commission on Centre-State relations (CCSR) under the chairmanship of former Chief Justice M. M. Punchhi. The panel, which submitted its report on April 19, 2010 to Union Home Minister P Chidambaram, was constituted 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 be addressed 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?”²² 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.²³

In Volume I of its report, 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 subject”.²⁴ Barring Volume I of the report of the Commission, the other seven volumes are not available in the public domain resulting in almost negligible media coverage about its recommendations.

The issue however has again gained prominence with some recent complaints from the States on multiple policies proposed by the Centre.

For example, the recent proposal of the Central government to set up a National Counter-Terrorism Centre (NCTC)²⁵ has been vehemently opposed by non-Congress chief ministers of Bihar, Gujarat,

Himachal Pradesh, Karnataka, Madhya Pradesh, Odisha, Punjab, Tamil Nadu and West Bengal on the pretext that law and order is essentially a State List subject. They argue that the concept of NCTC militates against the federal spirit of the Constitution. The arguments of the Central government are based on Article 355 of the Constitution where it outlines-“It shall be duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried out in accordance with the provisions of the Constitution.”

The need for setting up such a centre arose in the light of several terrorist attacks, particularly the one in Mumbai on November 26, 2008 by Pakistani terrorists.²⁶ Clearly, the Constitution makers were not able to envisage threats to the country's security from international terrorism while deciding to place 'Law and Order' in the State List. Meeting the challenge of terrorism has to go beyond the limited interpretation of law and order.²⁷ It is therefore important to carefully articulate on sensitive issues like national security than just terming an action as an encroachment by the Centre on the rights of States or shielding behind “Law and Order” schedule of the State List.

Another issue which became a bone of contention between the Centre and States was the proposal of the Ministry of Railways to amend the Railway Protection Force Act, 1957. The amendment is primarily aimed at strengthening the Railway Protection Force (RPF) by entrusting more policing powers to the RPF and doing away with Government Railway Police, part of the police force of the respective states. The move is important to resolve the differences between the two forces on areas of respective jurisdiction and other related matters. The Ministry of Railways asked states for their views on the proposed amendment of the Act. A number of states ruled by non-UPA parties immediately raised objections with the argument that it was “an attack on the federal structure”.²⁸ Similarly, the move to amend the Border Security Force Amendment Bill, 2011, which seeks to extend the policing powers of the para-military outfit beyond the currently prescribed radius of 8 km from the border to the entire border district where it is posted, is being termed as anti-federal.²⁹

Apart from external threats, consensus is also needed on internal threats, a bigger challenge for both the Centre as well as the States.³⁰ These threats are no more restricted to any one region or any single state; they have an all-India presence. Whether it is the civil unrest in J&K or the threat of Maoism, it is no more a concern merely of the Centre or a State. At present, 203 of India's 600-odd districts in 18 states are under the sway of left-wing radical forces.³¹

The Union Home Ministry, in its annual report of 2011-12, states that there were 1,755 incidents of left wing extremist violence in nine states.³² The left wing insurgency is spreading its wings in southern states of Kerala, Karnataka and Tamil Nadu also. “The CPI (Maoist) is making forays into Karnataka, Kerala and Tamil Nadu under the supervision of its South West Regional Bureau and is planning to link the Western Ghats to the Eastern Ghats through these states”.³³

Emerging Discourses

At present, three parallel discourses on Centre-State dynamics exist in the public domain. The first one talks about retaining the present federal structure with some amendments to the Constitution to make it more relevant to present day requirements. They justify this with the argument that the nation-building process is not yet complete and serious challenges continue to confront the nation. This view receives support from the Congress, and some other sections that see country and society as one and not as an aggregate of regional identities. In the past, the BJP was also a strong votary of this viewpoint.

The second discourse stresses that the principle of federalism needs to be redefined. States need to be empowered more in the backdrop of the changing nature of polity, economy and society. The Centre's role as defined in the Constitution needs to be curtailed and restricted. This view is supported largely by regional parties, regional leaders and the Left parties. Lately, the BJP has also been supporting this view. This was highlighted in the debate in the two houses of Parliament on the Lokpal and Lokayukta Bill 2011 wherein the principle of federalism featured prominently.

During the debate, different regional parties including those belonging to the ruling coalition at the Centre, joined hands with the main opposition party-the Bharatiya Janata Party-in opposing the proposed Central legislation with the argument that making Lokayuktas mandatory for states violated the Constitution's federal structure and that it impinged on the autonomy of states. These voices made a litany of complaints against the Centre. Similarly, even though foreign policy is the prerogative of the Central government and the Constitution does not allow the states to take initiatives in these matters, the West Bengal government challenged the Central foreign policy on sharing the waters of river Teesta by stalling the bilateral treaty with Bangladesh and causing a major embarrassment to the Manmohan Singh Government.

While Mamata Banerjee emerged as a recent interventionist in the field of foreign policy, there have been other voices in the last few years that have been arguing in favour of the role of states; particularly, states with an international border are vocal on issues which directly or indirectly impact them. Similarly, when the issue of border trade with China came up for discussion, Sikkim's views were sought. In the ongoing negotiations in the WTO on agriculture related issues, the views of states have been incorporated in India's stand. Tamil Nadu has on a number of occasions demanded the Centre's intervention in Sri Lanka and created serious problems for foreign policy makers in the Central Government.

It is important that these demands should be seen in a larger perspective. For example, when West Bengal demands that the Central government cannot conclude an agreement on the issue of waters of a river that flows through the state to Bangladesh, it also needs to consider the implications on other

states and related security issues. The North Eastern States could have benefitted with more river water transport from the north eastern region of India to Bangladesh, opening the gates for more commerce. Bangladesh has proactively cooperated in controlling militant activities in North East, particularly Assam, which now gets compromised over the rift on Teesta waters.

In the light of this second discourse, is it indicative that the time has come to review the constitutional arrangement with the objective of creating enough room for economic development of states without compromising the overall national interest? The North Eastern states of the country have borders with various countries like Myanmar, Bangladesh, China, Bhutan and Nepal and their proximity to countries east of India demands that their economies should benefit more from cooperation with the economies across their borders. In this manner, states could play a role in regional diplomacy. State leaders have been suggesting that New Delhi should take them on board while conducting economic diplomacy, particularly with the neighbouring countries.

Federalism is also seen in the context of decentralisation of powers. Economic liberalisation after 1991, undoubtedly, put India on a fast-track growth trajectory; however, inequity and regional imbalance also increased. The states, therefore, started demanding more flexibility in their policies and growth strategies and the regional parties intensified their stir on devolving of powers to the third tier of government like the local self governments and Panchayats.³⁴ The third discourse suggests a relook at the Constitution which means redefining federalism and also changing the form of government at the Centre. The demand was made in '70s and '80s when political parties and a cross section of civil society were arguing in favour of a presidential form of government in place of the present parliamentary form of government.

Taking Stock

The deepening of democracy and assumption of power by different regional parties in various states has generated an intense debate on giving States more fiscal and other powers. The discourse on the issue also talks of devolution and decentralization of powers to local self governments and Panchayats.

The recent victory of the Samajwadi Party in the biggest state of Uttar Pradesh and the return to power of the Shiromani Akali Dal in Punjab only confirm the trend of the rise of the regional parties that began in 1967 when a number of non-Congress governments assumed power in different states.³⁵ Punjab Chief Minister Parkash Singh Badal has even demanded the setting of a new constituent assembly to rewrite the Constitution along “general federal lines”.³⁶

“There is no single ideal federal form. Many variations are possible in the application to the federal idea. Examples are the variations among federations in the degree of cultural or national diversity

which they attempt to reconcile, in the number and size of their constituent units, in the distribution of legislative and administrative responsibilities and financial resources among the levels of government, in their degree of centralization and degree of economic integration, in the character and composition of their central institutions, in the processes for intergovernmental relations, and in the roles of federal and constituent governments in the conduct of international relations”, says Professor Ronald L. Watts.³⁷

The question that needs to be asked is whether the principle of federalism in India is being used as a mere ruse to oppose the Centre because of political compulsions or is there more substance in the argument for a review of the federal structure? Has the time come to have a fresh look at the entire issue of States versus Centre? Are these demands being raised because of fracturing and fragmentation of polity or because of growing political ambitions of some regional leaders who are using the principle of federalism to assert themselves with the desire to project their leadership? Are regionalism and regional parties temporary phenomena or have they come to stay permanently? Is the national polity going to move on two parallel tracks of regionalism and nationalism which would mean different electoral verdict in states and national elections?

Undoubtedly, the time has come to take stock of the prevailing situation. Should India remain a Union of States as at present, or should we have a United States of India? It is therefore important to look at the Constitution with an approach of pragmatic evolution rather than treat it as a sanctified static document. Federalism too will need to expand beyond its rigid boundaries lest the prevailing tensions between Centre and States exacerbate to a point beyond constitutional sanction.

If national consensus to redefine the powers of the States and the Centre does emerge, then in our considered opinion there would be a need for considering a change in the form of government also. In other words, the country might need to decide whether a switch to the presidential form of government would be desirable to arrive at a proper balance of power between the Centre and States for the sake of national unity and many challenges to it.

The ruling establishment, of whatever ideology, background or hue, would have to learn the art of steering the ship of the nation with adequate flexibility, striking constructive compromises in the spirit of give and take. It would have to learn to stoop to conquer and whichever party learns the art of managing the rising federal aspirations would in the long run emerge as a force to reckon with. It is here that the model of “cooperative federalism” that has been discussed and debated could be one of the guiding principles in the evolution of redistribution of powers and responsibilities between the Union and States.

In this context, constructive use of the institutions like the National Development Council and Inter-State Council³⁸ (set up as recommended by the Sarkaria Commission) could play a useful role in resolving some of contentious issues between the Centre and States.³⁹

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