Federalism and Local Self-government in India

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1. The Indian Constitution declares that India shall be a Union of States. However, India is not a true federal state with States coming together to form the Union. The Parliament may by law establish new States on such terms and conditions as it thinks fit (Art.2). Also Parliament may by law increase or diminish the area of any State, or alter the boundaries or the name of any State, or separate or unite two or more States or parts of States or unite any territory to a part of any State (Art.3). The only check on this absolute power of Parliament is that any Bill for altering a State must be referred to the legislature of the State(s) affected, for expressing its views within a specified period (Art.3). The views of the State legislature are not binding on the Parliament. In effect, the States are administrative territories to be altered at the will of the Parliament, and theoretically all States could be united into a single State.

2. However, in reality, the Parliament has acted with great restraint and circumspection when it came to formation of new States or altering existing States. In India's vast, complex and plural polity with enormous linguistic diversity, formation of states is an intensely political, and often a highly contentious issue. Most of today's States have been formed as part of the linguistic reorganization of States between 1953 and 1956. In addition, the North-Eastern region saw the formation of six new States. The merger of Sikkim and conversion of some Union territories into States accounted for the other new States. Altogether, there are now 25 States in India, each State having its own political executive, Legislature and permanent bureaucracy. In addition, there are 7 Union territories directly governed by the Union government. There have been demands from time to time for a fresh reorganization of States, but on account of the complexity and contentious nature of the effort, no government or political party seriously pursued it. Recently, there are efforts to carve out three new States from the three large States of Uttar Pradesh, Bihar and Madhya Pradesh. There is also a proposal to confer statehood on the Union territory of Delhi, the national capital.

Impact of Partition

3. During freedom struggle, the nationalist leaders envisioned a truly federal India with effective decentralization. However, partition of India accompanying the end of colonial rule, and the large scale violence and bloodshed resulting from it,

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Note: ***In this paper, the term "State" is used to denote sub-national level government, and "state" is used in its juridical sense. "Constitution" refers to the Indian Constitution, and "Union" is used to denote the federal government. "Bill" is used to denote a legislative proposal before it becomes law. "Legislature" of a State denotes the Governor, the Legislative Assembly, and where it exists, the Legislative Council. "Parliament" denotes the President, Lok Sabha and Rajya Sabha.***

leading to the death of a million people, and permanent migration of over 10 million people across the newly created borders, radically altered the situation. The framers of the Constitution quickly came to the conclusion that unity and integrity of the remaining India were paramount, and peace and order must be maintained at any cost. As a result, they opted for a highly centralized, quasi-federal state with strong unitary features. The cataclysmic events surrounding partition had also compelled them to err on the side of caution, and they preferred to continue with the time-tested colonial instruments of governance. Many scholars have pointed out that there is about 80 percent congruence between the Government of India Act of 1935, an Act of British Parliament that shaped the governance structure of India during the colonial era, and the Indian Constitution of 1950.

Legislative Powers

4. The written constitution clearly defines the legislative jurisdiction of the Union and States. The Seventh Schedule under Article 246 of the constitution lists 97 subjects in the Union's jurisdiction, and 66 subjects (subsequently reduced to 61) in the States' jurisdiction. 47 subjects are in the Concurrent List, and both the Parliament and State Legislatures can make laws in respect of these subjects. However, where there is inconsistency between the Union law and a State law, then the Union law shall prevail (Art. 254). Parliament also has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State list (Art. 248). Parliament also has the power to pass legislation on any subject in State list, if the Council of States (Rajya Sabha), which is the Upper House of Parliament, resolves by a special majority that such a law is necessary (Art. 249). Similarly, if a proclamation of emergency is in operation, the Parliament shall have the power to make laws on any subject in State list (Art. 250). In all such cases, the law made by Parliament shall prevail over State laws. If Legislatures of two or more States seek enactment of a Union law on State subjects, then Parliament may make such laws, which shall apply to those States (Art. 252).

5. These constitutional provisions clearly demonstrate the pronounced bias in favour of the Union on legislative matters. In addition, the Governor, who is the constitutional head of a State appointed by the Union government, can withhold assent to any Bill passed by the State Legislature, or reserve any Bill for the consideration of the President (Art. 200). In case a Bill is reserved for the consideration of the President, the Union government will be its final arbiter, and no time frame is fixed for its approval or rejection. The Governor himself can withhold a Bill for an indefinite period of time. This power has been exercised often to delay the legislative measures initiated by States governed by parties opposed to the party in power at the Union level.

6. The Seventh Schedule listing the legislative jurisdiction of the Union and the States can be amended only by a special majority of Parliament, and consent of

Legislatures of half of the States. Several constitutional amendments have been made to curb the powers of States and to add to the Union powers or to convert State jurisdiction into concurrent jurisdiction. To date, there has been no instance of a subject in the Union list or Concurrent List being transferred to the State list, or any addition to the State list. Once again, the legislative bias in favour of the Union is clearly evident.

7. The distribution of powers listed in the Seventh Schedule has given excess weightage to the Union at the expense of the States. The Concurrent List, while serving little useful public purpose, has stifled States' initiative. At the same time, in critical areas affecting the unity and integrity of India, the Union has little effective power short of dismissal of a State government; while in matters which ought to be dealt with close to the people, there is needless central intervention. As a result, the Union is a helpless bystander until too late in matters like terrorism and abductions employed as tactical weapons by insurgent groups, and there is no mechanism for a united national response. Similarly in respect of inter-state natural resources development (river waters), inter-state trade (Octroi), protection of the rights of linguistic minorities and immigrants from one state to another (restrictions on employment and educational opportunities), the Union has little effective role. The measure of balance required between more autonomy to States and the imperatives of national unity and harmony is missing in India's federal structure.

Emergency Powers - Abuse

8. By far the most obnoxious provision of the constitution adversely affecting federalism is the emergency power vested in the Union under Article 356. According to this provision, the Union government can assume direct control of any State, if it is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the Constitution. Usually such central rule is imposed on the basis of a report by the Governor, who is a nominee of the Union government. Central rule under this provision has been imposed on more than 100 occassions in India over the past 48 years. In almost all such cases of central rule, the government dismissed in the State belonged to a party opposed to that in power at the Union level. The persistent abuse of this power by almost every party and government in office at the Union level has struck at the roots of federalism and democracy. Only recently has the exercise of this power by the Union become a subject matter of judicial view by Supreme Court and High Courts.

Governors as Crude Political Tools

9. Even when the legislative or executive power of States is not eroded directly by the Union, the institution of nominated Governors as constitutional heads of States has played havoc with the principles of federalism and democracy. The

Governor is appointed by the President (Union government), and he holds office during the pleasure of the President. A Governor can be appointed or removed at will. There is no transparent mechanism for any such appointment or removal. Predictably, the ruling party controlling the Union government tended to appoint its partymen to this high office. These puppet Governors, owing their appointments and survival to the rulers in Delhi, have played a blatatly partisan and political role severly eroding the autonomy of States. The Governor has powers of appointment of the Chief Minister as head of Government in the State. This Constitutional power derived from the British practices was blatantly misused by many pliant Governors who were willing to function as crude political tools of the Union government. Many Governors indulged in partisan politics, converted legislative minorities into majorities and vice versa, engineered splits and defections in parties and in general misused their constitutional office at the behest of the ruling party at the centre.

10. The Governor of a State has the power of dismissal of a government, which in his opinion, has lost the support of the majority in the State Legislature. All legislation has to be approved by him to become law, and he can withhold assent, or refer a Bill to the President at will. More often, he can delay any Bill after legislative approval. He has the power to dissolve the Legislative Assembly and order fresh elections. He can recommend dismissal of an elected Government on specious grounds under Article 356, and assume direct control of the executive power of the State in the name of the President. The role of partisan Governors is the most shameful chapter in the history of Indian Republic. The best that can be said in favour of the institution of nominated Governors is that several of them are harmless, even if they are irrelevant, while most have been blatantly partisan, violating the spirit of the Constitution and undermining our nascent democracy and negating people's mandates.

All - India Services

11. Another contentious issue relating to federalism is the creation of All-India Services. The union has the power to create such Services, and to regulate their recruitment, and the conditions of service of persons appointed to any such Service (Art 312). Another provision (Art 311) says that no member of an All-India Service shall be dismissed or removed by an authority subordinate to that by which he was appointed. There are at present three such All-India Services viz., Indian Administrative Service (IAS), Indian Police Service (IPS), and Indian Forest Service. All the members of these Services are recruited and appointment by the Union, and they man all the important positions in the States and the Union. Though they are permanently alloted to States after recruitment, their service conditions, and disciplinary action against them are controlled by the Union. In effect, the States' administrative authority over their own employees is severely undermined by the All-India Services. With authority not matching accountability, elected Governments often feel frustated.

12. Single- party rule in the Union and most States was the dominant feature of Indian political life for the first two decades after independence, with the Congress Party which spearheaded the freedom struggle controlling all political levers. However, with the decline of the Congress, and the rise of competing political forces, the role of nominated Governors, control over All India Services, dismissal of State governments under Art 356, and other issues became highly contentious. There is ample evidence to show that all these powers have been abused by the Union government consistently for partisan political purposes.

Fiscal Devolution

13. Fiscal devolution is one area where there is significant improvement in recent years. The Constitution prescribes that once in five years, the Union government shall constitute a Finance Commission to recommend the transfer of resources from the Union to the States, and other matters relating to the distribution and allocation of revenues. With the acceptance of the recommendation of the 10th Finance Commission, all revenues of the Union government are now made divisible, and 29 percent of the tax revenues are transferred to the States. This is a long-overdue and welcome shift. In addition, another 13 percent of central revenues are transferred to the States through plan assistance and centrally - sponsored schemes. While the States are seeking transfer of 50 percent of revenues, 42 percent is a satisfactory figure, provided it is progressively raised to 50 percent over the next decade. However, central planning and centrally sponsored schemes in a vast country of nearly a billion population are an anachronism. All transfer of resources must be by devolution, and the States must be free within reasonable parameters to evolve their own priorities.

14. The complexity of India gave our constitution a federal appearance, though with a pronounced unitary character. Federalism has to be examined from various angles. The political role of the constituent States in shaping their own governing structure is important in a truly federal polity. In India, given the stultifying uniformity prescribed by the Constitution, various laws and executive orders, the rich diversity of the Indian Union is not reflected in the design of the political structure of the constituent States. Over the years, however, the States' role in shaping the policies of the Union has been increasing. The decline of the dominant national party, the rise of regional parties, increasing resort to coalition governments at the federal level, and the recent efforts to deregulate several sectors of the economy made such a change possible. While the States are reasonably free to frame their own policies, the mechanism of the Planning Commission and the centrally-sponsored schemes made sure that the room for manoevring is very limited. Most of all, true federalism should encompass genuine local self-governance. In this area, the failure of the Indian state has been extremely disappointing and debilitating to our democracy. Recent half-hearted attempts to bring about constitutional changes facilitating local self-government amount to too little and too late.

Neglected Local Self-Governance

15. In all our debate on federalism over the past 50 years, the most neglected aspect is local self-governance. There cannot be true federalism without the local people having near-complete control over their destinies through their elected governments or empowered stake-holders' groups over all matters of day-to-day concern to them. The locally elected governments at all levels, viz., village, town, city, sub-district or district must be completely autonomous and must be recognized as tiers of self-governance on par with the Union and the States. They must have their own local legislatures to deal with subjects under their jurisdiction and their own elected executives. The local bureaucracy must be totally responsible to the local elected governments alone. Just as the Union-State relations are highly skewed, local self-governance has been either non-existent, or where it exists, has been severely eroded by States.

16. The much-talked-about 73rd and 74th Amendments to the Constitution of India are but very hesitant initial steps in the direction of true democratization of our polity. These amendments, with the new 11 and 12 Schedules in the Constitution, now make constitution and periodic election of local governments mandatory. They also prevent dismissal of local governments en masse on political grounds whenever a new party ascends to power in the States. The Constitution also provides for appointment of a State Election Commission in each State as an independent institution to conduct and monitor elections to local governments. A State Finance Commission is appointed in every state to recommend to the State government the distribution of resources between the State and local governments.

17. These provisions, incorporated in 1992, are long overdue and salutary. However, several States have shown little inclination to implement these provisions in true democratic spirit. Elections have not been held for local bodies for years despite the constitutional prescription. Their reluctance to constitute local governments is predictable, given the culture of centralisation in the country, and unwillingness to share power with local tiers of government. Eventually, all States have to fall in line and conform to the constitutional directives. However, the real lacunae in local self-governance stem from the inadequate and feeble provisions even in the 73rd and 74th Amendments. The 11th Schedule lists 29 subjects that may be entrusted to the Panchayats (rural local governments) by the State Legislature, at its absolute discretion. Similarly, 12th schedule lists 18 subjects for urban local governments. As we have seen, the 7th Schedule which contains List II pertaining to States guarantees that the State has full legislative and executive powers except in respect of emergency powers etc. However, the extent of powers of local governments even in respect of subjects listed in the 11th and 12th Schedules is entirely dependent on the State Legislature, and they have no independent powers. Again, predictably few States are willing to part with real control of these subjects. In effect, the local governments have titular role in governance, and all effective power vests in States.

18. As of now, the State Finance Commissions, even where appointed, could not make much headway. Except in one or two States, there is no serious effort to devolve adequate resources to the local governments. Most crucially, the local bureaucracy is appointed and controlled by the State governments. Thus, neither authority nor resources are available at the local level.

Inverted Pyramid - Marginal Role of Stake-holders

19. In the ultimate analysis, all power in democracy is vested in the people, who are the true sovereigns. This presupposes that any power transferred to any representative government should be only to the extent that people cannot directly manage on a day- to day- basis for reasons of convenience. In any case, such power should be exercised as close to the people as possible. Only such powers a local government cannot, for reasons of convenience and coordination, exercise locally should be transferred to a larger tier of local government or a State, and only those that cannot be exercised by the State must be transferred to the Union. This principle of subsidiarity has been completely subverted in our constitutional scheme of things, and an inverted pyramidal structure has been created. This has undermined our freedom, self-governance, empowerment of people and efficiency of public services. The accountability of government and its bureaucracy to the people has become virtually non-existent. Rule of law has been undermined in a centralised, unaccountable polity. Over-centralization also meant that institutional self-correction is extremely difficult. Such a situation often leads to eruption of violence, volatile voting behaviour, and severe assaults on the unity and integrity of the nation. All these are witnessed in contemporary India.

20. One major corrective that needs to be implemented is the direct empowerment of citizens as stake-holders. Wherever such groups of stake-holders are clearly identifiable, they must be formally and legally entrusted with the power and responsibility to manage the institutions which serve them. For instance, parents of children attending a school, consumers of a ration shop, or farmers using water from an irrigation source are all identifiable groups of stake-holders. In all such cases the stake-holders must fully control the institution or utility or service they require. Only then can authority and accountability be fused together, and democracy will become meaningful. Unless citizens clearly perceive a nexus between their vote and the quality of a service, and a link between their taxes and benefits accruing to them, all democracy becomes rule of centralised coteries, and will degenerate into a kleptocracy. Unless power is really transferred to people, Indian democracy will continue to be illusory, and people will have no role or participation in governance. Only when power is vested in stake-holders and local government can people understand the true meaning of vote, and use it as a precision tool to judge their representatives. Only then will sensitive, sensible and effective leadership emerge from the grassroots to build a truly democratic, strong India capable of fulfilling its potential in a substantial measure.

Conclusion

21. All successful plural democracies followed this route of true federalism and local self-governance. The examples of the United States, Germany, and Australia, among others, demonstrate the need for people's empowerment and decentralised governance. From the foregoing, major reforms are critical for the future of Indian democracy.

22. A review of Union-State relations and far-reaching governance reforms leading to transfer of more subjects to the States, vesting the Union with certain special powers for preserving the unity and integrity of the nation; the institution of elected Governors in States with a fixed tenure of office; repeal of Art 356 with suitable alternative powers to the Union to defend the Constitution; transfer of effective control of All-India Services to States; and elimination of discretion in all matters of fiscal devolution are critical for successful federalism and effective governance. Equally importantly genuine local governments with an inviolable and clearly defined legislative and executive jurisdiction, effective control of local bureaucracy and adequate and non-discretionary fiscal devolution, and direct empowerment of stake-holders over local institutions and public services – these are among the major initiatives needed to correct the serious distortions and imbalances in our plural democracy. Our state structure today has become an obstacle to such empowerment of people, and creation of a true democracy in which freedom is enlarged, self-governance is real and meaningful, empowerment is genuine, rule of law is possible, and above all self-correcting mechanisms for governance are available.

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