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Current Issues in Indian Federalism

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The federal system in India, described variously as “quasi-federal”, “federation without federalism” and “a Union of Unequal States”, particularly the way it has evolved over the years, has often evoked a lively academic debate. To some, India is an evolving federation and the country has definitely shed the straitjacket of a unitary colonial regime that it inherited. It is further argued by this school of thought that a “strong centre” does not necessarily presuppose weak states. A quasi federalism is the only available viable means for maintaining unity and integrity of a diffused society like India. To others, Indian Constitution contains un-federal and anti-federal features, which is the antithesis of true federal constitutionalism. A centralised Constitution or a quasi-federal Constitution or even a tendency towards a unitary system, it is argued, is dangerous and detrimental to the very survival of the nation. The arguments advanced by both schools of thought are indeed compelling. Indian federalism bristles with many paradoxes. And the paradoxes are no less grim for being familiar. Indian federalism is still imperfect. Often it has looked perilously fragile. And yet, after having undergone a major transformation, the federal system in India looks more stable than ever before.

Post-independence India’s most remarkable achievement has been the entrenchment of democracy. According to Bernard Levin, eminent British columnist, the single most important achievement of India has been “to keep the flame of democracy alight despite the darkness in the surrounding world.” He goes to the extent of saying that “if the democracy of India falls, the end of democracy itself will be in sight.” The same is of course not true of Indian federalism. And yet, federalism is the bedrock of India’s democratic edifice. If Indian democracy has survived, proving numerous prophets of doom wrong, it is thanks to the federal system and the spirit in which the Indian state has sought to accommodate the aspirations of its diverse people. If India has avoided the fates of states like the former Soviet Union and Yugoslavia, it is because of federalism.

Political scientists and party ideologues continue to debate whether India is a multinational state or a multi-nationality state. There are also differences on whether India is a nascent nation or nation-in-the-making or whether it is already a nation-state. Professor Alfred Stepan of Budapest’s Central European University says that India is a “state-nation.” In more sophisticated accounts there is recognition of the existence of a dual consciousness in the form of a pan-Indian

identity as well as of regional, linguistic based nationalisms. The Indian national movement is said to have fostered and promoted both types of identity, and the Indian federal system has further strengthened it.

Indian federalism has become strong and coherent as well as durable. Even the Sarkaria Commission, set up by the Union Government in 1983 to review the working of arrangements between the Union and the States, concluded in its report that the basic provisions of the Indian Constitution had served “reasonably well” the functions of a “heterogeneous society towards its development goals.” That the same has been possible despite a strong unitary bias in the Constitution makes it all the more impressive. The multiple diversities, glaring socio-economic inequalities and hierarchical social structure make India somewhat unique. That explains why there was skepticism all round about post-colonial India making a success of its democracy and its republican Constitution. The success of Indian democracy and the evolution of Indian federalism into a “developmental federalism” are due largely to India’s many dualisms. India is a young state but an old civilization. Institutions have suffered erosion but India has learnt to live with chaos and decay. India is a traditional state but its democratic institutions have adapted well to modern and post-modern realities.

The development of the Indian political system during the past five decades or so has given it a measure of strength and stability. Unlike most post-colonial states, India’s basic constitutional and political framework became operative soon after independence and has been functional ever since, the infrastructure of democratic institutions has taken root and a continuing federal process has neutralised or kept in control extra-constitutional forces and fissiparous demands often bordering on secessionism. The era of one-party dominance is over which had more than its share of unhealthy influence on the federal body politic, the worst being the Centre’s tendency to concentrate all powers in its hands. The transformation of India from a dominant party system to a multi-party system has strengthened federalism. Though the Congress Party remains a major party and is ruling in 14 of the 28 states, India now operates within a multi-party system, which includes the Bharatiya Janata Party (BJP), now in power at the Centre, and a host of state-based parties. The regional parties today control important levers of power at the Centre. Since 1996, more than a dozen state parties have emerged as major players in the formation of three coalition governments at the Centre. With their commitment to grant greater autonomies to states and to transfer the bulk of centrally-sponsored schemes to the state governments, the regional parties have advanced the cause of federalism.

Gone are the days of the one-party rule. Coalition governments have now come to stay and India is learning to live with it. India, a continent-size country, is itself a coalition. In a way, coalition governments better reflect India's multi-layered diversities and its diverse aspirations. What is even more significant is the rise of the peasantry, the intermediary castes and Dalits in Indian politics. India has experienced a silent, and perhaps not so silent, revolution. V.P. Singh, former Prime Minister, calls it “a change in the very grammar of Indian politics.” Today, as Susanne

Hoerber Rudolf and Lloyd I. Rudolf maintain, “the states are making themselves heard and felt politically and economically more than they ever have in the half-century since India gained its independence from Britain.”

For all practical purposes, the “licence-permit-quota-raj” has ceased to exist. Even though the state leaders need to get Centre’s clearance for bringing in direct investments, even for visits abroad, world leaders from West and East like Bill Clinton, Tony Blair, Zhu Rongji, Junichiro Kolzumi have made it a point to spend a day or two in Bangalore, Hyderabad and Mumbai during their visits to India. The states’ increased clout with the Centre, the diminishing role of public investment and the progressive weakening of the Planning Commission in the age of market economy have strengthened the foundations of Indian federalism.

The Centre's tendency to play truant with the spirit of federalism has created a lot of tension between the Union and the States. There have been several attempts by the Centre to move against the principle of federalism. For instance, the Centre has attempted to usurp powers and jurisdiction of the state by parliamentary legislation. Under Article 249 of the Indian Constitution, if the Rajya Sabha (the upper house of Parliament) declares, by a resolution supported by two-thirds of the members present and voting, for the sake of expediency and national interest, that Parliament should make laws with respect to any matter enumerated in the State List, it could do so. Such a resolution remains valid for one year and it can be extended for another year by a subsequent resolution. Similarly, under Article 250, Parliament is empowered to make laws on any item included in the State List, for the whole or for any part of India, while proclamation of an Emergency is in operation. Making use of these provisions of the Constitution, the Parliament has taken away five items from the State List, added five to the Concurrent list and added three to the Union List.

Another instance of Centre's violation of the federal principle has been the arbitrary use of Article 352 and 356. Using and misusing Article 356 by imposing "President's Rule" (the Union government directly taking over the government of a state) over states has been common since 1951. From 1951 to 1998 “President’s Rule” has been imposed more than 112 times. The increasing frequency has given rise to severe criticism as it violated the federal character of India. In 1994, the Supreme Court in the S R Bommai vs Union of India case held that the power of the Central Government, under article 356, to remove a state government from office, was not an absolute but a conditional power. Thus the use of Article 356 is now subject to judicial review.

Since the 1996 Supreme Court decision, the imposition of President’s rule in the states has become rare. A few years ago, the present National Democratic Alliance (NDA) government used the pliant governor to impose President's Rule in Bihar twice. It failed once due to the President's intervention and the second time the Rajya Sabha (Upper House) refused to endorse it.

Being representative of the President of India, the Governor's office in a state is meant to safeguard the Constitution. But whenever, though rarely, the Governor attempted to interfere in the state politics it has brought considerable public criticism. The manner in which the power of appointing and dismissing the council of ministers, summoning and dissolving the assembly and also of recommending the imposition of President's Rule has been under public scrutiny. Today, in some cases the appointment of the Governor and his role has become an area of conflict between the Centre and States.

The deployment of the Central forces in the state has also led to tensions. Under the Constitution, it is the duty of the State Government to maintain public order and to protect Central Government property in the states. When law and order fail in a state, central forces are deployed. There have been instances of the Centre misusing this provision for the interest of the Government at the Centre. This has affected the spirit of cooperative federalism.

Due to increasing identity aspirations and the states' speedy development, the frequency of inter-state conflict has increased. There are two major types of inter state disputes today: one is the inter-state water dispute and the second is the interstate boundary dispute. Normally, an inter state conflict increases the bargaining power of the Centre.

Demands for greater state autonomy and the restructuring of the federal polity continue to be an important issue in Indian federalism. The eighties and early nineties brought new challenges to the Indian state, which also fashioned a part of present day India's identity. The succession of three autonomy movements, firstly in Punjab, then in Assam (North-East) and finally in Kashmir, raised a number of issues mixing the uneven impact of development with local sub-nationalisms. In each case one can easily lay the blame on the Union Government for the mess. While the country has more or less contained the divisive forces in Punjab and Assam, Kashmir is still bleeding. The Kashmir problem is far more complex and intractable than Punjab and the North-East.

The North-Eastern region of the country has perpetually witnessed ethnic stirrings and sub-national uprisings. The region has also become a symbol of the crisis-ridden Indian polity. These upsurges reflect not only a breakdown of the political powers but also a radical confusion and uncertainty about the nature of the Indian state. Different sections of people feel that they have been left out in the cold by the process of development and have now declared their loss of faith in the present dispensation through militancy movements. There is a revolt against age-old bondage, impatience with stagnation and a thirst for rapid development on the basis of their perceived new sense of identity.

Regional movements and identity aspirations have become some sort of anathema to the Indian state. The void in the polity has been sought to be filled by a variety of 'causes' like independence in Kashmir and upper Assam, self-determination and the glory of the *Panth* in

Punjab, autonomy in Gorkhaland (West Bengal), Jharkhand (Bihar) and Uttarkhand (Uttar Pradesh), social justice and Telugu pride in Andhra Pradesh and Swayattata in Maharashtra. Young people, degraded by unemployment, go out actively to embrace them because belonging to a movement, whether chauvinist or parochial, gives them what society has failed to provide – a sense of pride and self-esteem.

The advent of the Dravida Munnetra Kazhagam (DMK) government in the Southern State of Tamil Nadu in 1967 marked a new phase in Centre-State relations. The DMK Government led by M. Karunanidhi appointed a committee of experts to go into the question of Centre-State relations. The Rajmannar Committee submitted its report in 1971. It was the first time that a state government had obtained comprehensive and scientific inquiry on the subject of Centre-State relations. This report is considered a benchmark in the study of the working of the federal constitution of India.

The Rajmannar Committee said: Articles 256, 257, 339(2) and 344(6) empowering the Central Government to issue direction to the state governments should be omitted. It further said that the inter-state council should be constituted, consisting of all the Chief Ministers or their nominees, with equal representation for all the states, and the Prime Minister as its chairman. The Inter-State Council should be consulted with respect to any action to be taken in any matter relating to defence, foreign affairs, inter-state communications and currency in so far as it affects the Centre-State relations or state or states. According to the committee's recommendation the Council should also have the opportunity to discuss all economic, fiscal, monetary and financial measures undertaken by the Federal Government.

The 1971 DMK manifesto also raised the autonomy demand in forceful terms. It said: "Though the Constitution of India is described as a federal one, the balance is more tilted towards the Centre and hence the states are not able to function freely in the administrative and financial spheres. Only such powers as are necessary for the Centre to preserve the strength of India should be assigned to the Centre and all the other powers should be left to the states; and for this purpose, the Constitution should be amended."

The Shiromani Akali Dal in Punjab also made a demand for state autonomy. Even though the Akali Dal did not put forward any specific demand of a secessionist nature, its ambiguity on the concept of Sikh separatism and its keenness to play a second fiddle to the militants at the height of militancy provided a cover for subversive forces. The Anandpur Sahib Resolution was another benchmark in the Centre-State relations.

On March 24, 1983, Indira Gandhi, responding to the growing demand for greater devolution of powers to the states, announced in Parliament the proposal to appoint a Commission under the chairmanship of R.S. Sarkaria to "review the existing arrangements between the Centre and the States while keeping in view the social and economic developments that have taken place over

the years.” While the Sarkaria Commission maintained that Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify the breakdown of a constitutional machinery”, it felt that “it is neither advisable nor necessary to make any drastic changes in the basic character of the Constitution.” The Commission also rejected the demand of various states to abolish the concurrent list as a “retrograde step.” The Commission also rejected the demand of certain state governments and political parties to dilute the supremacy clause. It said: “If the principles of Union supremacy are excluded from Articles 246 and 254, it is not difficult to imagine the deleterious results. There will be every possibility of our two-tier political system being stultified by interference, strife, legal chaos and confusion.”

The rise of regional parties and the growing demand for state autonomy underline the general dissatisfaction over the progressive centralization of authority. If the country is weak, inchoate and drifting today, it is not the result of regional demands for autonomy. A bogey has been raised over the years that strong states entail a weak Centre and vice-versa. As Professor Rajni Kothari maintains, “this bogey is based on a theory about the nature of power relations that is not just phony; it is downright fraudulent. For it refuses to face up to the central issue in any democratic setup: distribution of power.”

Fiscal autonomy is another important dimension of federalism. Political autonomy is meaningless in the absence of adequate fiscal autonomy. The States often complain about paucity of funds. They depend largely on the Central government for financial resources. While a clear-cut division of powers exists between the Centre and the States, fiscal transfers made through the States' clout and bargaining powers tend to erode fiscal autonomy. Healthy relations between the Centre and the States can only be ensured if the latter enjoy a fair degree of fiscal autonomy.

The Finance Commission was envisaged as the balance wheel of the federal system. However, it has not been able to mitigate the rising grievances of the states, nor has it been able to encourage them towards better performance in the financial sector. Apart from taxes only 40 per cent of the funds given to the States are decided by the Finance Commission, a statutory body, while the larger share is decided by the Planning Commission, an executive body. The Planning Commission, which was created originally to look after the formulation and evaluation of Five Year Plans, has now come to occupy a position far more important than the Finance Commission. The overwhelming influence of the Planning Commission in the sphere of Centre-State financial relations has downgraded the Finance Commission's role in the process of fiscal adjustment. Demands are now being made that a large part of the revenue resources should be distributed from the Centre through the Finance Commission rather than through the Planning Commission.

With the 73rd and 74th Constitution Amendments in full force, a third tier of governance with a wide democratic base has come into existence. This has given a new meaning to Indian federalism. Over three million people's representatives are elected every five years of which one million are women. A large number of excluded groups and communities now form part of the decision-making bodies. Each state has in a way become a federating unit with three layers below it — district, block and village. This is a unique federal feature and Indian federal polity is currently witnessing a relentless struggle to find a proper balance and to create an organic link between the various levels of power right from the Gram Sabha (village assembly) to Lok Sabha (Parliament). India is definitely moving away from administrative federalism towards a multi-level federalism.

The emergence of the coalition Governments at the Centre marks a new phase in Indian politics. When the State Government is of the same party as that of the Central Government they share the same goals and accept the directives unquestioned. Another situation emerging after the Coalition era in the Central Government is that parties in power in the States are supporting the Central Coalition from outside, without joining the government. In this case also Centre State conflicts do happen, however it is minimal and resolvable. A third situation is that the regional parties having a critical role in the respective state head the State Governments without joining the central coalition, tensions and conflicts are frequent.

Those parties that raised the demand for state autonomy hold the levers of power today. The United Front Government's (1989-90, 1996-98) emphasis on the devolution of greater economic and administrative autonomy to the states set the tone for change in the federal polity, but the present Bharatiya Janata Party (BJP) led Coalition has remained largely ambivalent. It is known for its centralist views. Today if the BJP has come to depend on regional parties for survival, regional parties have themselves undergone a metamorphosis. India is too large and complex a country to function as a unitary state.

Common sense and the need for national survival demand a course that should lead the country towards a polity which permits the emergence of strong states with a strong Centre. That is to say, a Union of States in which both the Central and State Governments are meaningful entities, rather than being a mere appendage of the other. Ironically, even political parties that clamour for real and cooperative federalism are themselves quite unitary in their organisation and functioning. Regional parties and pro-autonomy political forces are equally divided. Most State governments eagerly cultivate the federal government for extracting maximum resources from the national pool. Ironically such is the perception among district and local level institutions about the state governments that the state leaders in power look as evil as they often accused the Centre to be.

Articles of the Constitution mentioned in the paper

Article 246.

Subject-matter of laws made by Parliament and by the Legislatures of States: - Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. (Union List)

Article 249

Power of Parliament to legislate with respect to matter in the State List in the national interest: - Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

Article 250

Power of Parliament to legislate with respect to any matter in the State List if a proclamation of Emergency is in Operation. Notwithstanding anything in this chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State list.

Article 254

Inconsistency between laws made by Parliament and laws made by Legislatures of States – If any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Article 256

Obligation of States and the Union: - The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may, appear to the Government of India to be necessary for that purpose.

Article 257

Control of the Union over States in certain cases: - The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and

the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Article 339 (2)

Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes: The executive power of the Union shall extend to the giving of directions to ³(a State) as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

Article 344

Commission and Committee of Parliament on official languages: The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule at the President may appoint, and the order shall define the procedure to be followed by the Commission.

Article 352

Proclamation of Emergency: If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or ¹(armed rebellion), he may, by Proclamation, make a declaration to that effect ²(in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation).

Article 356

Provisions in the case of failure of constitutional machinery in States: If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation:

- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State.