POLICY ISSUES IN FEDERALISM INTERNATIONAL PERSPECTIVES

UNITY IN DIVERSITY LEARNING FROM EACH OTHER

Volume 1: Building on and Accommodating Diversities

Volume 2: Emerging Issues in Fiscal Federalism

Volume 3: Interaction in Federal Systems

Volume 4: Local Government in Federal Systems

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VOLUME 5

Policy Issues in Federalism International Perspectives

Edited by

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Rupak Chattopadhyay





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Preface

Rupak Chattopadhyay Paul Morton

This volume is the last in a series of five books based on the proceedings of the 4th International Conference on Federalism, held in New Delhi between 5-7 November 2007. While the other volumes each represented one of the four conference themes, this one brings together a selection of papers from the Young Professionals Programme of the conference.

The 4th International Conference on Federalism was the most recent in a series of events organized in partnership between host governments and the Forum of Federations. Held, on an average, every three years, these conferences are an opportunity for experts and practitioners from around the world to discuss current themes in federal governance. The first was hosted by the Government of Canada in Mont Tremblant in 1999, and examined the role of federalism in an age of globalization. Thereafter, the federal and cantonal governments of Switzerland together held the second conference in August 2002. In 2005, the third conference was held in Brussels to coincide with the 175th anniversary of Belgium's independence and the 25th anniversary of federalism in the country. Developments in Sudan, Iraq, and elsewhere at the time led to a conference heavily focused on the role of federalism in post-conflict environments.

Common to each of these conferences was a programme for young professionals. However, the conference in New Delhi offered a unique opportunity to integrate contributions by young professionals into the work of the main conference. In past conferences,

parallel programmes were usually created for young professionals. Furthermore, the demography targeted by the Young Professional Programme at this conference embraced those in early stages of a promising career in federalism-related fields, rather than students. This allowed the group to be seamlessly integrated in the working sessions of the conference. The New Delhi conference brought together 50 Indian and international participants, from established (such as Germany and Brazil) and emerging federations (such as Iraq), as well as participants from countries with federal type arrangements (such as Italy and the UK).

In addition to participating in the conference sessions, they worked together on a series of co-authored papers in the lead-up to the conference. In contrast to the thematic papers prepared for the main conference sessions, the young professionals were asked to bring a new perspective on the themes by reflecting on future challenges in these areas.

The following policy questions, arranged by theme and subtheme, were considered during the working sessions of the conference.

Theme 1: Building on and Accommodating Diversity

- Subtheme: Nation Building and Diversity
 - Can Unity and Diversity be Reconciled?
 - Can Deep Differences be Accommodated?
- Subtheme: Autonomy and Diversity
 - How do Institutional Arrangements for Diversity Evolve over Time?
 - How do Devolved Systems Deal with Autonomy?
- Subtheme: Managing Conflicts of Diversity
 - How Important is Language Policy as a Tool of Conflict Resolution?
 - Is Federalism an Option for Managing Conflict?

Theme 2: Emerging Issues in Fiscal Federalism

Subtheme: Assignment Systems in Federations

- How Effective are Different Forms of Harmonizing VAT and Other Taxes?
- Does Fiscal Responsibility Legislation Undermine Federalism?
- Subtheme: Managing Fiscal Conflicts
 - How Far should Federations Accommodate Differences in Resource Endowments?
 - Are Federations Moving Towards More Rational Forms of Equalization?
- Subtheme: Fiscal Federalism and Regional Equity
 - How do Federations Reconcile Overall Economic Stability with State Autonomy?
 - To What Extent do Central Governments Erode State Jurisdiction using Fiscal Arrangements?

Theme 3: Interaction in Federal Systems

- Subtheme: Anticipating and Managing Tension and Conflict
 - How do Federations Deal with Water Disputes?
 - How do Federations Coordinate Policing and Deal with Public Security?
- Subtheme: Techniques, Structures, and Processes
 - What are Effective Approaches to Intergovernmental Relations?
 - How can Disasters and Emergencies be Effectively Managed?
- Subtheme: Accountability and Transparency
 - Can Accountability and Transparency be Achieved where Executive Branches Dominate Intergovernmental Relations?
 - Are Centralized Election Agencies Compatible with Federalism?

Theme 4: Local Government in Federal Systems

• Subtheme: Enhancement of Democracy through Empowerment of Disadvantaged Groups

- To What Extent should Local Governments Lead in the Empowerment of Disadvantaged Groups?
- Are Local Governments Really Enhancing Participatory Decision-Making?
- Subtheme: The Functioning of Local Governments in Federal Systems
 - Should Local Governments be Constitutionalized?
 - Do Direct Federal-Local Government Relations Undermine Federalism?
- Subtheme: Governance of Megacities in Federal Orders
 - How is Governance and Service Delivery Organized in Megacities?
 - What Forms has Governance of National Capital Regions Taken?

These questions formed the basis of young professional contributions to the conference and form the basis of the papers which have been reproduced in this volume. Topics such as the management of water, coordinated policing and public security, the governance of national capital regions and megacities, to list a few, find expression in the work the Forum of Federations undertakes with partner governments.

The issues discussed at this conference and in the papers are issues which occupy policy makers in federations all over the world. Where possible we have encouraged people from different countries to write collaboratively. The preparation of these papers in the runup to the main conference in New Delhi included a series of regional roundtables, held in Addis Ababa, Ottawa, New Delhi, and Salzburg. Here participants from the different regions were able to present draft papers, and provide feedback to each other. The young professionals were then in a position to contribute their perspectives in the conference work sessions.

The planning and organization of the Young Professionals Programme was done by a committee of four, themselves young professionals: Rekha Saxena, Andrea Iff, Assefa Fiseha, and Paul Morton, with each member being responsible for a geographic region. The committee first met in October of 2006 in Lilienberg

and presented its proposal for the Young Professionals Programme at the pre-conference in February 2007. From the beginning, the project was made possible—and enjoyable—by the support and enthusiasm of the Inter-State Council and the Forum of Federations.

The publication of the Young Professional papers in this volume and on the conference website represents the last stage of the 2007 Young Professional Programme. Hopefully, however, the programme will have formed a core group of engaged individuals who can help to develop and expand the young professionals' network for the future.

THEME 1 BUILDING ON AND ACCOMMODATING DIVERSITIES

Can Diversity be Accommodated?

The Case of Ethiopia

Leulseged Tadesse

1. Introduction

After the demise of the military regime in 1991, the new Ethiopian leaders of the Ethiopian Peoples Revolutionary Democratic Front (EPRDF) declared their commitment to a clean break with the past and the establishment of a new society based on equality, rule of law, and the right for self determination.

The recognition of Ethiopian ethnic diversity became the central principle of the new regime's policy. And this is immediately reflected in the Transitional Period Charter of 1991 and in subsequent proclamations. Once the Charter paved the way for decentralization, Ethiopia became a federal state in 1995. The Federal Constitution makes this quite explicit by establishing a multicultural federation with a democratic state structure, to accommodate the diversity of ethnic groups of the country.

Therefore, the objective of this paper is to describe the accommodation of diversity in the Ethiopian federal system and analyse its implication for the future. The first part briefly discusses the formation of the modern Ethiopian state and how this contributed to the historical evolvement of the federal system in Ethiopia. The salient features of the Ethiopian federal system will be discussed in the second part. After analysing the existing Ethiopian federal

system, I have tried to indicate some points that may be useful in consolidating the success of the Ethiopian federal experiment.

2. The Formation of Modern Ethiopian State and its Contradictory Interpretations

2.1 The Formation of Modern Ethiopian State

Every federation is the result of its own unique experience. It is indispensable for a federal system to reflect this historical and context if it is to be successful

Though Ethiopia has a long history of statehood, present-day Ethiopia is mainly the result of the incorporation process of Emperor Menelik, who ruled from 1889 to 1913. As Bahru notes "the creation of modern Ethiopia was started by Tewdoros, incorporated by Yohanis, consolidated by Menelik and completed by Haile Sellassie" (Bahru, 1991).

The "reunification", "expansion" or "colonization", depending on interpretation, of Menelik brought together different ethnic groups that had their own identity, culture, and language. With the creation of a modern empire, we see the domination of Amharic culture over the newly incorporated ethnic groups. In the eyes of Clapham, "the expansion was accompanied by an assumption of Amhara supremacy and a policy of Amharisation" (Clapham, 1974).

Emperor Haile Sellassie (1916-30 as regent and 1930-74 as emperor) subsequently centralized all power. The 1931 Constitution and the 1955 revised Constitution were important instruments to reduce the power of regional lords and consolidate his personal rule.

In the name of "Ethiopian Unity", there was an attempt to suppress all non-Amhara identities. Political domination was aggravated by cultural domination and economic exploitation. To be within the state structure, all non-Amhara people were expected to speak Amharic and adopt the culture and religion of the ruling class (Abebe, 1994). This discriminatory policy resulted in an uneven representation of various ethnic groups in central government. The condition for southern Ethiopians was worse. Therefore,

the formation of the modern Ethiopian empire is characterized by political exclusion, economic exploitation, and cultural domination. Because of the suppression of various ethnic groups, Ethiopia was called "the prison house of nations and nationalities."

2.2 Contending Views on Ethiopian History

The way the Ethiopian empire was created, and the way it evolved, made it easy for contending interpretations of Ethiopian history. According to Merara those who see little or no injustice in the actions of the empire builders consider the empire building process as reunification. The expansion thesis, on the other hand, recognizes the injustices done during the process of expansion and seeks a solution within a democratic and unified Ethiopia. Lastly, there are those who advocate a colonial thesis in interpreting the creation of empire, and argue for a separatist political agenda (Merara, 2006).

Having these contending views, different political movements, either regional or ethnic, started to violently resist the imperial and military regimes. They demanded the right to self-determination for nations and nationalities, along with other rights.

The military junta or Derg that seized power in 1974 ignored the principle of self-determination, and the various political movements continued their armed struggle until 1991.

In 1991, a new government led by the EPRDF replaced the Derg. In order to address the national questions of Ethiopia, a democratic federal system was set up in 1995. The attempt was to accommodate ethnic diversity within a new federal Ethiopia based on the principle of political, economic, and social equality. As it was seen, the view of the EPRDF government could be considered as a compromise between a unitary government, which cannot easily accommodate diversity, and disintegration of the country into its constituent ethnic regions.

2.3 Diversity as a Source of Sovereignty

There are more that eighty ethnic groups in Ethiopia. For a multicultural country like Ethiopia, therefore, where multiple ethnic 6

groups want to keep their language, culture, and identity, federalism is often the best available form of government. Federalism in Ethiopia is a power sharing arrangement that seeks to create stability by constitutionally dividing political power among various ethnic groups, allowing different ethnic groups to create a strong federal state without losing their identity or compromising their interests.

Looking to the past and analysing the current realities of Ethiopia, it can be argued that there is no alternative to a federal system of some sort for Ethiopia, if it is to have a future as a multiethnic state with democratic institutions. As the history of Ethiopia shows, the Ethiopian federal experience in many ways is the result of the quest of the people for self-determination.

3. The Salient Features of the Ethiopian Federal Arrangement

The Constitution of the Federal Democratic Republic of Ethiopia has been in place since August 1995, formally introducing a federal form of government. The Constitution declares the full and free exercise of self-determination. The aim of this, according to the preamble of the Constitution, is to show that "our destiny can be best served by rectifying historically unjust relationships".

From this one can understand that the Constitution has acknowledged past oppression and exploitation of ethnic groups. Now, the recognition of these groups forms the basis for building a federal and democratic state. The Constitution states that "all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia". It further assures that even the Constitution itself is "an expression of their sovereignty". Moreover, their sovereignty is expressed through their democratically elected representatives. Therefore, in the Ethiopian federal system, sovereignty lies with the constituent ethnic groups themselves.

Importantly, if the federal government abuses the rights of the various ethnic groups, they are entitled to reassert their powers of sovereignty in the form of "an unconditional right to self determination, including the right to secession" (Article 39). Consent of each nation, nationality, and people, therefore, lies at the heart of the Ethiopian federal system.

The other important feature of Ethiopian federalism is the prominent role given to the principle of multiculturalism. As federalism aims to accommodate diversity, Ethiopia, as a multiethnic society, requires a multicultural federation. The preamble of the Constitution clearly refers to the long history of living together and "with rich and proud cultural legacies in territories long inhabited". Within the federal structure, the different multicultural elements are reflected in the state members. The nine states are organized based on settlement patterns, language, identity, and consent. Accordingly, the nine states are Tigray, Afar, Amhara, Oromia, Somalia, Benshangul Gumuz, Gambella, Harari, and the SNNPR (Southern Nations, Nationalities, and Peoples Region).

Ethiopian federalism does not limit the number of the states. Every nation, nationality, and people has the right to establish, at any time, its own state. Therefore, the number of the federal units could be increased or decreased based on the consent of ethnic groups, making it a unique feature of Ethiopian federalism.

The preamble of the Constitution stipules that "We, the Nations, Nationalities and peoples of the Ethiopia strongly committed, to building a *political community* . . . and advancing our economic and social development . . . to live as *one economic community* is necessary in order to create sustainable and mutually supportive conditions for ensuring respect for our rights and freedoms and for the collective promotion of our interests" (italics added).

This shows the emphasis on creating a cooperative federalism in Ethiopia. A common vision is indispensable for a multiethnic country. It is impossible to build a common political and economic community without cooperation. Though federalism values autonomy, it cannot function without solidarity. Indeed, while each order of government is autonomous, it is not so that they may ignore each other. Rather, it is so that each, with its own characteristics and capitalizing fully on its potential, can better help others. All the governments of federation are interdependent and must work together for their citizens, over and above their political,

regional or other differences. The ideal of federalism is the very opposite of internal separatism; it is genuine solidarity.

In a federal system power is divided or shared between the centre and states, each possessing powers circumscribed by the Constitution. In this regard, the Ethiopian Constitution guarantees that the federal government and the states shall have legislative, executive, and judicial powers (Article 50(2)). It furthers makes it clear that their powers are constitutionally defined and that they shall respect their powers (Article 50(2)). However, if necessary, delegation of power is possible from the centre to the regions. In this connection the Federal Government formulates and implements overall economic, social, and developmental policies. In national matters that concern the whole country, powers are given to the Federal Government. The regional states have "all powers not given expressly to the Federal Government alone, or concurrently to the Federal Government and the states" (Article 52(1)). All states have executive, legislative, and judiciary powers in all matters that concern their local affairs.

Another feature to be mentioned is the principle of linguistic-pluralism. The Constitution makes Amharic the working language of the federal government (Article 5(2)), but also gives the member states the right to determine their respective working languages. Moreover, "every nation, nationality and people has the right to speak, to write and to develop its own language" (Article 39(2)).

3.1 Unity in Diversity

The features of Ethiopian federalism mentioned earlier have as their primary objective to promote unity in diversity. According to Assefa, the Ethiopian federal system, because of the fragile situation the country was in, threatened by various national liberation movements, the commitment to right of self-determination and the establishment of regional governments based on mainly on ethnolinguistic line is a bold measure that ensured the survival of the Ethiopian state (Assefa, 2006). In general, accommodating the diverse interests and identity of ethnic groups by providing the right for self-determination is the overriding principle and the most remarkable feature of the Ethiopian federal system.

4. Points to be Considered in the Ethiopian Federal System

The Ethiopian federal system, as any other federation, is an ongoing experiment. In the process of building a federal and democratic state, which is a complete break from the two previous dictatorial regimes, there are some challenges encountered by the system. These may be explained as "institutional efficiency gap". In other words, there is a need for efficient federal and democratic institutions to effectively and continually consolidate the success of the federal system in a complex society such as that of Ethiopia. This institutional efficiency gap manifests itself in the following ways: lack of good governance and strong democratic institutions; lack of institutions that deal with intergovernmental relations; and lack of civil society organizations to produce ongoing research on the federal system. Each will be discussed in turn.

4.1 Lack of Good Governance and Strong Democratic Institutions

When one discusses the development of democratic institutions, it is important to keep in mind the government's effort to establish new democratic institutions for the first time in Ethiopia's history. The resulting lack of efficiency in the existing institutions, or even absence of strong democratic institutions, has negatively affected the performance of the federal system in its struggle to accommodate diversity.

Without democracy, genuine federalism is impossible. Federalism, like democracy, promotes and accommodates pluralism. The Ethiopian Constitution establishes a parliamentary democratic state with other democratic institutions. In Ethiopia, because of the inefficiency of democratic institutions, there have been conflicts, mainly from a lack of good governance. Even though conflicts among ethnic groups are preventable using peaceful mechanisms, we have seen conflicts, particularly in Gambella. This is because "the political actors have failed to strike a political bargain and articulate legitimate regional interests. Instead, they have soughed to capture fragments of the regional state and its institutions" (Derje, 2006).

Assefa raises a further limitation which he describes as "local tyranny" (Assefa, 2006). Assefa argues that "local tyranny" exists when minority ethnic groups are marginalized economically and politically. Democracy, as well known, is the rule of the majority by respecting the rights of the minority. Hence, a higher prevalence of good governance and consolidation of democratic institutions could be solutions to this local tyranny. The conflicts that we have witnessed in this regard are related to the lack of good governance and democratic culture and personality which could jeopardize the gains of the Ethiopian federal system. Though this is unfortunate, it is also fortunate to know that the Ethiopian government has recognized the existence of this governance shortfall as a major political problem to be addressed immediately.

4.2 Lack of Conflict Managing Institutions

Conflicts are preventable and manageable; if they happen, they can also be resolved and transformed. But this requires an efficient set of institutions to prevent, manage, and transform conflicts into mutually beneficial experiences. In the last decade, the large number of conflicts coincided with a lack of institutions to prevent, manage, and transform those conflicts. Even in the SNNPR where many conflicts arise, there was no successful mechanism to use the existing traditional mediation systems. Therefore, establishing effective conflict resolution institutions is indispensable for the success and further strengthening of the federal system of Ethiopia. In this way, federalism can be used as a learning process of negotiation and conflict resolution.

4.3 Intergovernmental Relations

Though the Ethiopian federal system has the feature of cooperative federalism, there is an institutional lacuna for intergovernmental cooperation between the centre and the states (Assefa, 2006). Formal mechanisms of intergovernmental relations are important means of cooperation and solidarity between the centre and the federal units. Recently the government has established Department

of Intergovernmental Relations in the Ministry of Federal Affairs, a positive and timely decision.

Moreover, cooperation, not just between the centre and the federating units, but among constituent units, is crucial for building a common political and economic community. Once again, the Ethiopian Constitution is silent about formal mechanisms for horizontal relations among the states. Despite this, the House of Federation, the Upper House of Parliament, organizes regional consultations annually in which all the nine states share their experiences. This consultation, however, still requires an institutional framework.

4.4 Lack of Research Institutions

Elazar reminds us that federalism is not accepted without opposition (Elazar, 1987). Some hail Ethiopian federalism as the answer to the national question and the key to accommodating diversity. Others, however, argue that it is escalating inter-ethnic conflict and may lead to disintegration, and so reject ethnic federalism. In response, the country needs an institution to promote a healthy and informed debate and dialogue on the advantages and disadvantages of the federal system. Unfortunately, such institutions do not exist at the moment. As a country developing a new system of federalism, it needs independent research institutions that generate scientific ideas for policy makers and creates awareness within the country. As a young federal system requiring consolidation, it is of great importance that these institutions transcend partisan politics.

5. Conclusion

The Ethiopian federal system is the result of the struggle of oppressed ethnic groups for the right to self-determination. The federal system allows the accommodation of diversity within a democratic system. For a multiethnic country like Ethiopia, the existing federal system is a source of peace and stability, ensuring political and economic participation of all ethnic groups. Moreover, by valuing autonomy and solidarity, such a system will help to build a common political and economic community.

However, the Ethiopian federal experience is far from perfect, like any federal system in the world. It must be improved, but also consolidated. Since the main objective of the Ethiopian federal arrangement is to bring peace and development by preventing conflicts, it is important to strengthen democratic institution at all levels of government. In addition, governance structures that ensure the participation of the public are the appropriate instrument to create a democratic culture that promotes pluralism and tolerance. It is also crucial to establish and strengthen conflict prevention management and resolution institutions at the federal, regional, and local levels.

A strong institution that deals with relations among states and between the centre and states is another indispensable mechanism to promote genuine solidarity. In this regard, the Intergovernmental Relations Department of the Ministry of Federal Affairs needs to build its capacity to play a significant role.

At such a stage of constant flux, Ethiopia requires an equally dynamic federal system to address the various challenges it faces. This in turn requires an informed and healthy dialogue among all stakeholders on how to consolidate the federal system to enable it to accommodate diversity in such a complex country.

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Policy as Instrument for Reconciling Diversity

Experience of the Indian Federal System

Himanshu Jha

1. Situating the Problem

Unity and diversity have often been discussed in terms of religious, ethnic, linguistic, and caste diversities and their reconciliation. While this approach is important and interesting, the perspective that I would like to bring in is to examine this question (can unity and diversity be reconciled?¹) in the public policy framework with special focus on ongoing development policies. To make the discussion more realistic and contemporary, the question that seems more relevant is not whether the diversities can be reconciled, but what initiatives need to be taken for its satisfactory reconciliation.

Achieving "reconciliation" is not a final point of either achieving it or not but striking a balance between competing elements, with the pendulum moving towards one side at one time and the other at other times. Properly formulated policies attempt to keep the pendulum at a comfortable point of the continuum where diversities do not pose a problem and unity does not try to overrun diversity. In situations where diversities exist not only in sociopolitical and economic terms but also geographically, the policy framework has

¹ This is the Conference poser.

to be geared towards, and firmly rooted in, such existing diversities. Policy initiatives aimed towards achieving a macro-level unity especially in the presence of such diversities might create aberrations at different levels in different forms.

A UNESCO meeting of the Management of Social Transformations group pointed at "diversity as a turn of the century . . . characteristic that would come to replace the trend towards homogeneity . . . since the end of World War II" (Diego 1995). Over the nineteenth and twentieth centuries several factors have contributed to the multiplicity of populations in the countries along several dimensions—ethnic, linguistic, cultural, religious, etc., resulting into a situation where "almost no country is entirely homogeneous. Nearly 200 countries in the world contain some 5000 ethnic groups in total, two-thirds having at least one substantial minority—an ethnic or religious group that makes at least 10 per cent of the population" (Human Development Report 2004: 2).

The conception of unity and diversity should be replaced by the concept of "unity within diversity". The first formulation belongs to the older generation of theorization where nation-building was the expressed policy framework, especially in new countries. This formulation proved to be flawed theoretically, conceptually and in practice. Diversities emerged in different contexts with different intensities, putting the nation-building efforts at peril. It has now been recognized that diversities and nation-building do not present alternatives, but exist together. It is important for the policymakers to recognize diversities and to mould policies in such a manner that satisfactory and favourable reconciliation of the two are conducive to the processes of socioeconomic development.

Power Sharing as a Mechanism of Reconciliation

Power sharing has been adopted by many countries facing the problems of diversity and federal arrangements have become an important approach to power sharing. A "territorial solution" has been supplemented in many states by adopting "national cultural

autonomy". The federal framework is an accepted scheme of territorial power sharing, though the details of power sharing differ from country to country. The second scheme called a "federacy" by Daniel Elazar "grants national minorities . . . special status within a unitary state or a regional federation whose internal borders otherwise do not reflect ethno-national cleavages" (Boubock 2004). This non-territorial arrangement refers to "special territorial status to Indian Tribal reservations in the US and Canada or island politics like the US Commonwealths of Puerto Rico and Northern Mariana Islands, the British Isles of Man and Channel Islands, the Finish Aland Islands, and the Portuguese islands of Madeira and the Azores" (Elazar 1987: 55-8 quoted in Boubock 2004: 2). We find both kinds of power sharing arrangements in India illustrated by the federal arrangement and the reservation policy.

The federal solution is worked out in different ways in different situations where units have defined powers and functions. It seems, however, more important to proceed further and look inside the "black box" and see how decisions are made, who makes these decisions, who initiates the policies and programmes, especially with regard to development, and where do the finances come from? And more importantly, what are the policy outcomes, especially with regard to the minorities, cultural, and ethnic groups? The real test of power sharing lies in the answer to the question of details. It may well be the case that the power sharing arrangement does not actually exist with regard to the actual operational aspects and their impact on development. The analysis of the policy framework is important in this perspective where a policy, however wellconceived, may be thwarted by faulty implementation and accountability. It does not, however, mean that the policy itself cannot be faulty. The policy framework will have to be analysed at every level of implementation. With the increasing consciousness and assertiveness among diverse groups and identities, often supported by viable movements, the *reality of power sharing* is what is really important.

In most of the diversity-multiculturalism discourse the emphasis has largely been on the ethnic, linguistic, cultural, and economic

factors, so far as they cut across the identities. This is understandable because they are not only more complex and more problematic in terms of finding solutions but also because many countries are facing problems of reconciling these identities. They are perhaps the most salient of the diverse identities which effect national and pannational processes.

In carving regions from the point of view of power sharing, all these considerations are equally important. It is, therefore, necessary to keep in view this aspect of diversity also for working out an arrangement because besides political power sharing, the concept of empowerment includes not only sharing of political and representational power, but also the right to development. I intend to argue that development policies in India have not been able to achieve this broader objective.

Power sharing has mostly been referred to in terms of "sharing of political power" in the form of representation. It must be acknowledged that while this is important, efforts towards reconciling diversities also include empowerment, providing different social groups, especially the poor and other excluded groups, sufficient opportunity for asserting their right to development and enjoying the fruits of development. The making and implementation of development policies, however, has been dominated by the four-decade-old Central Planning Model. This is visible in many of the decisions on schemes of development that have been in operation even after the liberalization phase of development planning. The Centrally Sponsored Schemes (CSS) still constitute 49.44 per cent of the Central Plan allocations. Most of the flagship programmes of development such as National Rural Employment Guarantee Scheme (NREGS), National Rural Health Mission (NRHM), Sampoorna Gramin Rozgar Yojna (SGRY), and Sarva Shiksha Abhiyan (SSA) are centrally financed and administered. Sometimes the arrangements for these programmes have attempted to reflect power sharing or federal arrangements, but the institutions at the state and the local levels have actually not been participants in the process. Those programmes implemented through genuine power sharing have generally fared better. This paper will illustrate this point through some field cases.

In India different types of overlapping diversities—social, ethnic, economic, regional, linguistic, cultural, and agro-climatic are well known. There are 106 dominant languages belonging to five linguistic groups. The unique phenomenon of 2000-3000 castes and subcastes make it more complex. The 461 tribal communities include 174 subgroups. The number of religious groups is eight with seven in the minority category. Writers have located "about sixty socio-cultural sub-regions marked for their distinct internal homogeneity and sub-national identity within the seven natural geographical regions" (Khan 1992: 108-22). The "overlapping and reinforcing character of cultural and symbolic inequalities" makes the situation more complex. The Planning Commission has demarcated 15 agro-climatic regions in the country. These are further divided into more homogeneous 72 subzones. The Indian federal system has to negotiate all these complexities. The constitutional, political, and institutional elements of the federal arrangement have suffered from a degree of ambivalence between unity and diversity. Many policy trends, such as the liberalization of the 1990s onward, have resulted in further decentralization and a power shift from the centre to the states (Jha 2001: Chapter II). But the persistence of centralized planning and the policy making has created a disjunction between the sociopolitical processes on the one hand, and policy making for development on the other. While the first has tended to pull the process towards emphasizing diversity, the latter leaves most of the development initiatives and policy making in the hands of the centre.

3. Patterns of Power Sharing

Along with federalism, there have been other attempts at political, administrative, and financial decentralization. But these attempts have been constantly plagued by ambivalence when powers and resources transferred to the next level of government are made reluctantly. Each level is parsimonious in relinquishing powers and resources which are meant to be passed further down to other levels. Each level works like a layer of "blotting paper" where powers and resources are absorbed. There has also been some reluctance on the

part of different levels of the decentralized structure to take decisions which they are meant to take and they look upwards for directions and, more importantly, funds. These tendencies further hamper the proper functioning of policies, which ideally should be working at these levels, effectively accommodating the diversities existing at each level and at the same time ensuring the proper implementation and functioning of programmes and policies. This seriously reduces the utility of decentralization as an effective instrument for managing diversity.

The centralized mode of operation is best illustrated in the growing scope of Centrally Sponsored Schemes (CSS). The number of such schemes stood at 190 during 2005-6 with a budgeted outlay of almost Rs. 55 trillion which comes to 38 per cent of the Gross Budgetary Support (GBS) of the Ministry of Finance grants and 49.44 per cent of the Central Plan. Out of these, 63 per cent were meant to go directly to various implementing agencies, bypassing the state budget (Bagchi 2006). Most of such agencies are central meant to manage the implementation of the CSS. The flagship schemes of the government, such NREGS and NRHM, come in this category. This situation also creates a parallel network of administering schemes which in fact are supposed to be done by lower levels of the chain of decentralized institutions like the Panchayati Raj Institutions (PRI) and the state administrative structure. This top down approach is again a reflection of a skewed policy framework which is unable to encapsulate the diversities existing in different parts of the country. The very fact that most of these development policies are in the form of CSS, with central budgetary support, means that the actual implementers look upwards for the support, rather than downward as decentralization would dictate. This ambiguity is also reflected in many of the post-liberalization initiatives. The central government's invitation to private players in the electricity sector, for instance, illustrates this tendency. From the policy formulation, through the negotiations and till the signing up of the MOU, the central government was the main party, with minimal involvement of the state governments. The well-known Enron project in Maharashtra is an example of this tendency (Jha 2003).

4. Power Sharing and Federalism: Towards Reconciliation

Federalism is a widely prevalent system of power sharing that aims at "reconciliation" of different identities in a multicultural society. A key element in achieving this is institutional flexibility, or the ability to adjust to newly emergent forces and identities. The Indian federal system has faced such challenges and has made adjustments from time to time, with varying degrees of success.

Immediately after Independence there was the problem of dividing the diverse country into viable political units of the federation. The reorganization of the states in 1956 adopted a linguistic basis for devising the states as homogenous language-based territories. In later years new states were created, and then again new states were carved out from within the boundaries of the existing ones. A major addition of new units was made in 1971 when a reorganization of the state of Assam and the north-eastern states of Manipur, Meghalaya, Mizoram, Arunachal Pradesh were created. The process has continued with the three states of Uttarakhand, Jharkhand, and Chattishgarh carved out in the year 2000 from the existing states of Uttar Pradesh, Bihar, and Madhya Pradesh, respectively. This was mainly to cater to the demands around tribal identities because the "six states (Madhya Pradesh, Bihar, Maharashtra, Orissa, Gujarat, and Rajasthan) together account for 71 per cent of India's tribal population . . ." (Jayal 2006: 69). There has been continuous demand for the creation of new states, for instance Telengana in Andhra Pradesh and Vidarbha in Maharashtra (Saxena 2006). This exercise of creating new states has mainly been in response to linguistic groups but also to accommodate the demands by other identity-based groups such as the tribal groups, often backed by tribal movements. Besides creating new states, Indian federalism has also "experimented with sub-state regional development councils to satisfy regional, ethnic and tribal aspirations, such as Gorkhas in West Bengal, Bodos in Assam and Ladhakis in Jammu and Kashmir" (Saxena 2006: 111).

Another mechanism to accommodate linguistic aspirations and demands has been to include languages in the Eighth Schedule of the Constitution which now recognizes eighteen languages as official. While inclusion of the languages in the Eighth Schedule is mainly symbolic, it allows "the privilege of simultaneous translation facilities in Parliamentary proceedings; the possibility of taking the Civil Services Examinations in the language; the allocation of Central Government Funding for developing the language and its literature; the eligibility to compete for literary and film awards; the right to submit a representation for a redressal of a grievance; and so forth" (Jayal 2006: 19). The latest addition in 2003 to this list was of Maithili, Dogri, Bodo, and Santhali. *The Hindu* quoted the Deputy Prime Minister that in the year 2003 demands from 35 more languages were pending for inclusion in the Eighth Schedule, including Rajasthani, Bhojpuri, and Brajbhasha (Jayal 2006: 19). These efforts of reconciliation of linguistic identities are also an effective policy tool to include the periphery in the mainstream. A perceptive analyst has concluded that "the management of linguistic diversity has indeed been among the more successful experiments of institutional engineering . . . " (Jayal 2006: 47).

The Constitution also makes special provisions for protection of languages claimed by the minorities: ". . . to preserve their distinct language, script or culture" (Article 29); to establish and administer educational institutions of their choice (Article 30); to make representations for the redressal of their grievances to state or Central government in any language (Article 350); to receive instructions in their mother tongue (Article 350A) (Jayal 2006: 20). The Commissioner for Linguistic Minorities acts as a "watchdog" for protecting the rights of the minorities.

As mentioned earlier, the linguistic challenge was taken up by India not long after Independence. The relatively prompt response to address the issue has allowed the country to reconcile linguistic demands with more success than in other countries. This reinforces the suggestion made by the World Development Report that "power sharing arrangements . . . introduced early enough, when tensions are mounting . . . can forestall violent conflict" (Human Development Report 2004: 8).

4.1 Accommodating Emerging Identities

Being the predominant and unique phenomena of the Indian society, caste and tribal identities pose unique challenges to the policy makers. As the political process has evolved and democracy has taken root, a struggle has emerged for the sharing of political space. This has led to the emergence of new identities and demands on an ongoing basis. This has indeed resulted into new forms of diversity, and the consequent demand for reconciliation in the form of "mainstreaming".

Besides the mandatory reservations, the tribal population has been granted a special status with respect to protection of their forest rights and special consideration for their customs, traditions, and traditional institutions in the PRIs under the Panchayats (Extension to the Scheduled Areas) Act 1996. Reservation for Scheduled Castes (SC) and Scheduled Tribes (ST) has been an effective way of accommodating the most deprived caste and ethnic groups and its continued existence has subsumed many of the demands from these groups. Such reservations have also been extended in the distribution of benefits from different development programmes like the Public Distributions Systems (PDS), housing, and so on, where these groups are included in greater proportion.

With regard to the population below the poverty line (BPL), SCs and STs are also overrepresented. But this is also plagued by problems when the lists of BPL, supposedly monitored by the population through the self-governing gram sabhas, suffer from the usual problems of partiality and discrimination. The status and strengthening of "watchdog" institutions like the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission for Minorities, and the National Commission for Backward Classes have made these protective and other measures more potent (Jayal 2006: Chapter 4; Jayal and Mohapatra 2004). It must be added that there has been a continuous demand from newer castes and other identity groups to be recognized as "deprived" social groups, claiming reservations. The Other Backward Castes (OBCs) are the newest categories that have gained reservation in different spheres. The race for being included in the lists eligible for reservation has been ever increasing, the Gujjars in Rajasthan

being the latest example of agitation for inclusion in the list of Scheduled Tribes in the state. The reservation policy is perhaps the most contentious and emotive point of policy debate at the present juncture. Another interesting aspect which has to be taken into account is the resilience of the policy framework where it is subjected to various pressures. At the moment, it seems that the policy framework is operating in an ad-hoc fashion with little or no long-term perspective or solution to accommodate the emerging demands and identities.

The religious cleavage has been perhaps the most complex from the point of view of management. With 80.5 per cent of Hindus, and 13.4 per cent of Muslims in the population, the remaining percentage is accounted for by Christians, Sikhs, Buddhists, Jains, Jews, and Zoroastrians. Here again, it has been a challenge to provide space to the minorities in the scheme of reconciliation policies of the state.

The Indian federal scheme of sharing power has taken many policy steps to reconcile diverse socio-political-economic diversities, some of which have had a considerable impact. The policy outcomes and their effectiveness in terms of improving disparities, however, remains a potent point of analysis. The question of the reconciliation of unity and diversity has to be looked at from a fresh perspective where the diversities are an existing reality and an evolving phenomenon. The policies have to be geared towards "reconciliation" rather than towards achieving the ideal form of "unity", striking a balance between the two. In an ever-evolving diverse society such as India's, policies have to be rooted in these diversities in order to strike an effective balance.

Policy Framework and Diversity Gap: The Case of National Rural Employment Guarantee Scheme (NREGS)

NREGS and its implementation:² Unity and diversity and whether they can be reconciled have to be looked at within the existing policy

² The author draws primarily from two studies for the case studies quoted in and illustrations in this section:

context. In this light let us look at the operation and implementation of NREGS and how far it has been able to root itself in the existing diversities at the grass roots level.

Largely based on the "Employment Guarantee Scheme" introduced in Maharashtra in 1972 and in operation since then (Sujata Patel 2006), the NREGS was introduced by the central government in 2005. It was meant to provide 100 days of employment to rural households, especially during the lean season. The programme is unique in terms of the fact that it is the first time that a development programme has been formulated and implemented as an Act of Parliament, making it legally enforceable. The scheme was launched in February 2006 and was initiated in the 200 most backward districts in India. Recently the programme has been extended to all the districts of the country.

The implementation of the legislation is the responsibility of the Ministry of Rural Development (MORD) and Ministry of Panchayati Raj, jointly with the state governments.³ If we examine the programme in various states closely we notice certain hurdles that the programme is facing are due to its inability to fine tune itself at the implementation level. Problems arise due to anomalies inherent in the programme and also because of its failure to address local-level diversities.

As the panchayat⁴ is the level at which most of the works sanctioned under NREGS has to be completed, it is imperative that

Study on the Status of NREGA Implementation: 2nd Monitoring Report (forthcoming) by Samarthan-Centre for Development Support, Bhopal and Poorest Area Civil Society (PACS) Programme-DFID, Delhi, March 2007.

^{2.} Role of Panchayati Raj Institutions: National Study Phase II, by Participatory Research in Asia (PRIA) September 2007.

³ For detailed information on the administrative and implementation arrangement of the scheme please visit http://nrega.nic.in/

⁴ Panchayats are units of rural-local government established under 73rd Amendment of the Constitution and are at work across the country. The structure of this rural-local government is constituted of gram panchayats at the lowest level, zila parishads at the district level and panchayat samitis representing the intermediate level.

panchayats are involved in the decision making. In the Samarthan-PACS study it was observed that when the panchayats were involved in the decision making and were given complete authority to implement it, the programme was running successfully and the panchayats were able to complete the majority of the works assigned to them under the stipulated time frame. In the state of Jharkhand only 38 per cent of the total work was completed under NREGS, perhaps the lowest in 2006-7 period. The main reason for this seems to be the absence of panchayat institutions in the state. Development policies are generally more successful in their implementation when they are rooted in the micro-processes and local institutions. In a health-related programme in Kerala, for instance, an analyst found that the control of panchayats over the programme resulted in "better health services outreach" (Baru and Gopal 2006: 157).

NREGS stipulates a five-year period to enable effective bottomup planning, and for all the work to be undertaken at the panchayat level. But at the implementation level these plans are in most cases either subcontracted to local NGOs or are prepared in little or no consultation with the gram sabha. In some cases, these are prepared in consultation with the village leader (sarpanch) and the secretary without any popular involvement. As a result, plans fail to capture the needs of the region and citizen's perspective is missing. In the case of Jharkhand, for instance, most of these perspective plans were prepared at the district level.

A recent national study conducted by Participatory Research in India (PRIA) found that:

- Most of the planning was being done at the district or the block level, which are administrative units of the government outside the panchayat structure.
- There was a lack of popular participation, and that the gram sabha meetings were not being held their true spirit.
- The planning process and implementation approach was top-down and dominated by the bureaucracy.
- Most the works in the panchayat area to be implemented by them were not identified by them but were "allotted" to them, making the panchayats mere implementers of the programme.

At the implementation level the focus has shifted from the gram panchayats to the individuals in the panchayats or the Block Development Officers (BDOs). "And since BDOs and other district-level functionaries possess a great deal of power they find it convenient to sideline the individual Sarpanch completely, thereby stopping any kind of effective community intervention" (InfochangeIndia.org 2006).

The bulk of the planning follows a top-down approach, failing to keep into account the local knowledge or wisdom prevailing in the region, which is time-tested and can prove to be more cost effective often more successful (see Box 1).

BOX 1: Lack of Local Wisdom in the Perspective Planning

Bundelkhand region in Madhya Pradesh, and Uttar Pradesh, now a very dry region, had a rich history of water harvesting. Tikamgarh has been irrigating fields through water tanks built by Chandela rulers between 900 and 1200. The famous Chandela tanks over the years supported relatively low-cost irrigation in the region. Several studies conducted on the traditional water bodies of the region have argued that the judicious rain water harvesting and rejuvenation of tanks can substantially reduce the water shortages of the region. A large number of open wells are irrigating more than 50 per cent of its farms. Even a government report estimates that Chandela tanks in the district can irrigate more than 24,000 hectares of land at less than half the cost of other irrigation projects. However, tank renovation was not taken up under NREGS as a special initiative. Many wells in the region are unserviceable and ponds have dried up. However, in the name of drought-proofing and water conservation, NREGS is either digging new ponds or wells or promoting plantation on a large scale. Meanwhile, a study conducted in 10 panchayats of Bundelkhand of Uttar Pradesh showed that about half of the wells and ponds are not in service and demand repairs.

A successful case of a planning done closely with the panchayat and gram sabha can be seen in Doongargaon in Chhattisgarh where local wisdom was visible in the planning (see Box 2).

BOX 2: Panchayat's Involvement in the Planning: A Success Story

The Gram Panchayat Tappa started the planning process with the gram sabha. The community identified a fifty-year-old pond on the outskirts of the village for renovation. The pond was constructed but it was lying unused and in dire need of some repair and restoration work. The pond was not de-silted for a few decades and was covered with weeds. The estimated cost of renovation of this pond was only 290,000 Rupees. It already had channels for irrigation. The work on the pond is half-completed and will eventually irrigate land for 11 villages. Not only this, it will allow a second crop on 550 acres of land, which is quite uncommon in Chhattisgarh.

The technical aspect of the works undertaken at the panchayat level has got another ramification, where the panchayats have to depend on the district officials who finally issue the completion certificate. There are numerous cases where the panchayats have completed the work and the local people are satisfied with it, yet the completion certificate has not been issued by the concerned authorities.

The Samarthan-PACS study found that underdevelopment had a direct effect on the implementation of the programme, especially in the states of Uttar Pradesh, Bihar, Jharkhand, West Bengal, and Assam. This is again a case of a centrally conceived programme being implemented mechanically at the state level with little or no mechanism or effort for adjustment or correction by way of "fine tuning". A development programme of this magnitude and potential needs a careful attention, especially from the point of view of regions which are already backward and are most likely to perform poorly in the implementation of the programmes.

The need for the responsiveness and ability of the policy framework to "fine tune" itself in terms of such diversities cannot be more evident than in the case of Bundelkhand and Vidarbha regions of Uttar Pradesh (UP) and Maharashtra respectively. Bundelkhand has been reeling under severe drought conditions for the last four years and Vidarbha is facing an enormous agrarian crisis illustrated

by a spate of suicides among farmers. An employment support programme like NREGS should have provided some relief in the region; instead these regions have performed poorly when compared with the national average. Table 1 shows the poor performance of the scheme in the selected districts in the region. The mechanical implementation of the programme with little scope and effort to correct at the implementation stage is illustrated by these poorly performing regions in UP and Maharashtra.

Table 1: Performance of Selected Districts of the Most Backward Regions under NREGA

Districts/ Regions	Employment Generation (person days)	% of Families Completed 100 100 days agaist	Available fund for Per Job Card	Expenditure Incurred on Per		
	Per Job Card	Employment Provided	Holder	Job Card		
Bundelkhand-UP						
Banda	12.36	0.2	2126	1297		
Chitrakoot	14.85	4.0	1243	1168		
Jalaun	19.53	4.0	3359	1907		
Vidarbha						
Chandrapur	4.63	0.0	2282	379		
Gadchiroli	6.09	0.0	2002	600		
Yavatmal	4.93	0.5	1741	1388		
National	23.91	10.28	3189.5	2328.3		

Source: Study on the Status of NREGA Implementation: 2nd Monitoring Report (forthcoming) by Samarthan-Centre for Development Support, Bhopal and Poorest Area Civil Society (PACS) Programme-DFID, Delhi, March 2007.

6. Conclusion

The Indian system of power sharing has made several efforts at reconciling and accommodating complex diversities through policy initiatives, such as granting territorial and cultural autonomy and incorporating them into the federal system, granting reservations in the elective institutions and government services at different levels, and granting special quotas in the availability of different developmental allocations. While a few of these initiatives have been successful, in most of the cases the impact of these policies and initiatives has not had the desired results. While steps like reservations have given visibility to the existing and emerging identities, they have remained at the bottom of the developmental chain. In terms of almost all the human development indicators these groups remain in the deprived category (Shariff 1999), as well as in terms of capabilities (Majumdar and Subramanian 2001). Much of this has to do with policy failures, rather than a failure of institutional design. This has affected the reconciliation process, while the diversities and demands for equity and a prominent place in the political agenda have become more intense. The public policy framework, especially at the operational level, has not been able to adapt to these diversities, leading to the emergence of aberrations, as in the early phase of the operation of NREGS. The spirit of the federal system which envisages an enhanced participatory role for the local institutions is intended to root the policies in the grass roots realities. But there is a gap between the "rhetoric" and the "reality" where at the operational level it fails to adjust to local needs and priorities.

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How Important is Language Policy as a Conflict-Resolution Tool?

The Cases of India and Serbia

Anshu Srivastava Miodrag A. Jovanoviæ

Normative Grounding of Language Politics as a Conflict-Resolution Tool

Let us proceed with the possible categorization of conflicts that should be mitigated by state and legal instruments. Offe distinguishes between three forms of such conflicts. Traditional ones are *ideology*-based and *interest*-based conflicts over rights and resources, and the means for coping with them are various constitutionally guaranteed political and social rights. However, besides these conflicts, the contemporary state has also to manage far more intractable *identity*-based conflicts over group recognition and respect (Offe, 1998: 121). Offe says that "the antidote that constitutional democracies have available in order to cope with this type of conflict is group rights" (Offe, 1998: 123).

It is a well-established normative claim of classical liberalism that public and private spheres should be separated as strictly as possible, and that only in the former sphere may the state legitimately act, while leaving the latter one to be regulated by individuals themselves. According to this proposition, one's own cultural identity 'markers'—including the linguistic one—fall into the private sphere and as such do not constitute legitimate objectives of a liberal state's policies. On the traditional account, then, the state is not there to mitigate potential conflicts based on identity 'markers.' This stance is best exemplified in the United States' policy of not recognizing an official language at the level of the federal state. In other cases, such as that of France, where the official language is regulated by the Constitution, it is still held that the state complies with the liberal principle of neutrality as long as particular linguistic preferences of individuals and groups are treated in a difference-blind fashion, that is, as their private affairs.

The problem with the first strategy, which is "akin to what many liberals think of as the best response to religious pluralism—namely, disestablishment or public disengagement", is that it cannot be the best response of public institutions to different linguistic preferences and identities "because disengagement from language is impossible." Simply enough, "[p]ublic services must be offered, and public business transacted, in some language(s) or other." Therefore, even when no particular language is proclaimed as "official", as in the United States, "decisions still need to be made about the de facto language(s) of public communication" (Patten, 2001: 693).

The problem with the second strategy lies in the fact that once the language of the majority of the state is defined as the official one, it is barely possible to speak of the "neutrality" of that state. This still might be possible under the assumption that the most convenient tool for the daily efficient functioning of the state institutions and public services happens to be the designated language of majority. The underlying logic of this argument goes as follows: "Since people's interest in language is simply that it enables one to communicate with others, people will only value any particular language insofar as it improves their communicative reach" (Kymlicka and Grin, 2003: 9). However, this assumption is hardly sustainable, because "languages are not merely innocent means of communication. They stand for or symbolize peoples, i.e. ethnocultures" (Fishman, 1994: 51).

Consequently, every decision on the official language of state, be it in the form of the formal or *de facto* rule, significantly affects

not only the overall status of individual members of the society not belonging to the majority linguistic group, but also the nature of the nation-building process in that state. In that respect, it is primarily political theorists of multiculturalism that should be credited for exposing this "myth of ethnocultural neutrality" of the liberal state (Kymlicka, 1995). They have successfully redefined the terms of public debate, inasmuch as it is now widely accepted that, contrary to the classical liberal wisdom, difference-blind rules and institutions can cause disadvantages for particular groups. Furthermore, it "no longer falls solely on defenders of multiculturalism to show that their proposed reforms would not create injustices". Instead, defenders of supposedly difference-blind institutions have to prove on their part "that the status quo does not create injustices for minority groups" (Kymlicka, 1999: 113). It seems, in this regard, that the old policy of promoting the dominant majority language at the expense of all minority ones in the complex setting of a multilingual society can neither be normatively defended, nor grounded even in the recognized traditional liberal and democratic values of freedom and equality (Kymlicka and Grin, 2003: 9). Moreover, this old policy has in contemporary societies every potential of generating language conflicts; and these "are inextricably related to nationalist conflicts, and so addressing issues of linguistic diversity is central to the larger political project of 'containing nationalism" (Patten and Kymlicka, 2003: 6).

What might be, then, a normative grounding for linguistic politics in a multilingual setting? One might argue, on a very general level, that various strands of normative multiculturalism are essentially embedded in "the politics of recognition", in Taylor's famous postulate that "[j]ust as all must have equal civil rights, and equal voting rights, regardless of race or culture, so all should enjoy the presumption that their traditional culture has value" (Taylor, 1994: 68). In multilingual settings, this normative precept would amount if not to the establishment of the full *ethnolinguistic equality*, which is at times hardly reachable ideal, than to some form of *ethnolinguistic democracy*, that is, to the substantial recogni-

¹ The illustrative case in point is obviously the European Union with its 23 officially recognized languages (Nic Shuibhne, 2002).

tion of linguistic diversity. Therefore, the real question is not "whether deviations from official monolingualism are justified", but rather "under what terms linguistic minorities would voluntarily consent to the constitution of the larger society" (Kymlicka and Grin, 2003: 14).

An answer to this question is completely dependent on context, and therefore not suitable for any further generalization. However, what is still generalizable at this level of discussion about linguistic politics in multilingual settings concerns the distinction between certain *domains* in which language is used according to the rules adopted by public institutions. Depending on the procedure of their creation and their content, these rules can both generate and subdue linguistic conflicts in a multilingual society. They regulate the following domains: public services (in their internal functioning, as well as in the external communication with citizens and third parties), courts and legislatures, as well as educational facilities. To a certain extent, these rules can also be applied in the sphere of the private language usage (e.g. on public sites, in private corporations and businesses).

In addition to the aforementioned domains of the regulation of language usage, it is further possible to organize various language policy/rights options according to four different criteria:

- (a) tolerance versus promotion-oriented rights;
- (b) norm-and-accommodation versus official-languages rights regimes;
- (c) personality versus territoriality rights regimes; and
- (d) individual versus collective rights. (Patten and Kymlicka, 2003: 26)

As for the first distinction, tolerance-oriented language rights concern "rights that permit individuals to speak whatever languages they like—free from government interference—in their homes, in the associations and institutions of civil society, in the work place". On the other hand, promotion-oriented language rights "involve the use of particular language by public institutions", like courts, legislatures, public schools, local authorities, etc. (Patten and

Kymlicka, 2003: 26-7). A norm-and-accommodation approach implies the existence of one predominant majority language, which is used in all the aforesaid domains. Special and context-dependent accommodations are made, then, for all those who lack sufficient proficiency in the "main" language. On the opposite pole stands the policy of granting the status of "official" to more than one language, and their simultaneous usage in all the domains, which puts respective communities in a more equal position.² Personality language rights regime means, "that citizens should enjoy the same set of (official) language rights no matter where they are in the country", whereas the territoriality regime implies "that language rights should vary from region to region according to local conditions" (Patten and Kymlicka, 2003: 29). Finally, the issue of language rights might be treated from the perspective of the right-holder, namely whether they are held by individuals, or by certain designated linguistic groups. Even though the individual-rights approach still dominates the existing legal discourse, most minority language rights can be more plausibly framed as collective, insofar as they protect the vital collective interest in maintaining language as a good that is fundamental for the preservation of the distinctive collective identity of the said minority (Jovanoviæ, 2005: 627-51).

2. Language Politics in India

In India under the British Rule, the government of India asked George Grierson to come up with some answers on languages but his survey simply raised more questions than it answered. Disentangling a language from a dialect, finding clear-cut dialect and language boundaries to correspond with political boundaries, etc., has been a problem in India ever since.

Since India is a developing multinational state or a state containing number of dualized nationalities without a dominant nationality, the central leadership seeks to accommodate political demands of diverse languages, religious, and cultural groups to

² This latter policy is applied, for instance, in Switzerland, Belgium, South Africa, and Canada (Patten and Kymlicka, 2003: 28).

maintain unity. Initially, the approach of the government of India had been one of reluctance in accepting demands for linguistic reorganization. Gradually, regional demands came to be recognized, which meant not only that Hindi was not to be imposed in non–Hindi areas, but also that the regional languages were to be recognized. There have been four informal rules to deal with regional demands:

- Since 1963 the rule has been that regional demands should fall short of secession (the Indian state was ready to grant statehood to Nagaland, but did not encourage secession).
- Demands based on language and culture will be accommodated, but demands based on explicit religious differences will not be accepted (as in the case of Punjab).
- Regional demands will not be conceded capriciously. Broad popular support has to be there behind the movement (in 1954, for instance, 97 members out of 100 members of western districts of Uttar Pradesh and some parts of Punjab and Haryana demanded a separate state couched in terms of linguistic and cultural affinities, historical precedent and administrative convenience. However, since it did not have popular support, the demand was not conceded).
- The division of multilingual states must have some support from different linguistic groups. This rule actually operates in such a way as to promote regional identifications. For instance, the division of the old Bombay state into Marathispeaking and Gujarati-speaking states was first demanded by the Marathi-speaking population of the state, which considered this move necessary in order to ensure adequate accommodation of linguistic minorities. Finally, Article 350B of the Indian Constitution established a "special officer for linguistic minorities" but was opposed by Gujarati businessmen who had a stake in an undivided Bombay and therefore the States Reorganization Commission rejected the demand for the division of Bombay state on the grounds that the Gujarati-speaking population was content with composite state of Bombay.

Studies on the language problem have tended to concentrate their attention on non-Hindi speaking states. Since a large percentage of the population stays in this belt, it is important to look at this area. Politics in the states of Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh (BIMARU) region in India have largely revolved around the issue of Hindi and other dialects, and Hindi and Urdu.

Language policies in India have evolved through a series of resolutions, memoranda and statements published by the government of India, or by meetings of central or state ministers. But the biggest source of guidance has been provided by the Constitution of India itself. Article 345 of the Constitution gives the states the power to adopt whatever language or languages they choose for the internal official purposes. The Constitution guarantees certain rights to minorities, which the states are obliged to provide. Article 20 guarantees the right of citizens in any part of India to preserve their "distinct language, script or culture". Article 30 guarantees minorities "whether based on religion or language . . . the right to establish and administer educational institutions of their choice" and to receive state aid for such institutions without discrimination. Article 350 gives every citizen of India the right to submit representations for the address of grievances to any central or state authority in any language "used in the Union or in the state". Article 350A obliges every state and local authority "to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups". Article 350A also empowers the President of India to issue such directions to any minorities to be appointed by the President and to report to him all matters relating to safeguards provided for linguistic minorities under the Constitution. These reports have to be placed before the Parliament and sent to state governments.

In various meetings of state and central ministers the enforcement of policies for linguistic minorities has to be laid down to ensure enforcement of the constitutional rights of minorities. The Commissioner for Linguistic Minorities maintains a careful compilation of both constitutional safeguards and all-India policy guidelines, which he uses in his annual reports to assess the progress of their implementation in each state of the Union. The Commissioner

for Linguistic Minorities is the key to the whole system of safeguards. He not only reports but also receives complaints regarding non-implementation of policies.

In opposition to Hindi being declared as the official language, a compromise formula known as the "three-language formula" was worked out by chief ministers. According to this proposal, three languages would be taught at the secondary school level: English, the local language, and Hindi; in Hindi areas, another Indian or European language would be taught.

2.1 Case Study of Hindi and Maithili

The demand for recognition of Maithili presents a very slow and steady success in terms of accommodation by the Indian state, which was ultimately achieved in the eighth schedule in 2003. However, the history goes back to 1954 when a memorandum was presented to the States Reorganization Commission with the demand for Mithila state, which was rejected. Mithila state was of greater theoretical than practical significance. There were three rationales behind these demands:

- 1. the artificiality of the existing administrative boundaries of the state of Bihar;
- 2. the distinctive characteristics which distinguish Mithila from the rest of Bihar and the rest of India; and
- 3. the charge of discriminatory allocation of political power and economic resources among regions of Bihar.

The case of Maithili is unique in the sense that there have been no conflict situations with regard to the movement for demand for recognition of the Maithili language. The reason attributed to this was the relative absence of subjective regional consciousness:

- Symbols of all-Indian national identification were given priority by elites over symbols of regional identity;
- Failure on part of elites to extend cultural symbols of Maithili and Mithila to non-Brahmin castes of the region;

- Differential social mobilization has been evident in Bihar, where south Bihar was rapidly mobilized over the last century; and
- The political elites were integrated effectively in Bihar-wide movements and state governments on the basis of nationalist, ideological, and caste symbols, rather than on regional linguistic and cultural symbols.

However, the issue of the Maithili language, in particular, is much more complex. In 1880 and 1881, A.F.R. Hoernle and G.A. Grierson published grammars which established the grammatical distinctness of Maithili from other dialects of both Hindi and Bengali. Rarely before that moment had Maithili been considered anything other than a form of either Hindi or Bengali. Grierson found sufficient similarity between three major mother tongues (Maithili, Magahi, Bhojpuri), but he found also sufficient difference between these three mother tongues, which he collectively called Bihari and Hindi and Bengali. However in 1881, J.H. Budden argued against the view that Maithili or any other dialect of the northern India should be treated as anything other than provincial forms of Hindi. Kellogg, who published an influential Hindi grammar study in 1875, classified Maithili as a "colloquial dialect" of the eastern branch of Hindi. It should be stressed that Grierson's distinctions were grammatical ones and that he did not raise the sociolinguistic question of how far the grammatical differences between Maithili constituted barriers to effective communication among the people of Bihar.

While there has been an arbitrary and open dispute about the linguistic definition of Maithili and the Maithili-speaking region, there were reasonably clear and objective characteristics of Maithili which can be pointed to and which have influenced the demand for its recognition. There was consensus among linguistic scholars of India that Maithili is a grammatically distinct dialect, with a distinct literature.

Bihar was the most linguistically diverse state of India, with constant demands for the official recognition of Urdu and Maithili. But for decades the Bihar government failed to address the language issue seriously. The policy was based on simplification, misinformation on the extent of linguistic diversity and a symbolic adherence to all-India policies for the protection of linguistic minorities combined with the actual non-implementation of policies. The basic simplification upon which the policy of Bihar Government is based is that it represents overwhelmingly a Hindi-speaking state. As per the Census of 1961, only 44.3 per cent of the population declared their mother tongue as Hindi. However, until the 1970s, the Bihar government relied on the Census of 1951, which showed that 81 per cent of the population was Hindi-speaking.

The real reason for adopting Hindi as a mother tongue was because Magahi and Bhojpuri mother tongues owe their origin to both Maithili and Hindi. But the standardization and spread of Hindi influenced the educated and socially mobilized Magahi and Bhojpuri population, who accepted the view that their mother tongues were dialects of Hindi. The Maithili movement did not exercise the same level of influence, leading to the acceptance of Hindi as a dominant language. Amongst minority languages, only tribal languages and languages recognized by the Eighth Schedule are given official status, with Maithili being gradually recognized.

There are two areas of government policy-making with respect to the use of minority languages in an Indian state, namely, the primary and secondary education system, and the state administration. In both areas, the Bihar government maintained that Hindi is the predominant language of Bihar and Maithili is a minority mother tongue with a small and indeterminate number of speakers. The government has theoretically granted full rights to Maithilispeakers at the primary stage, resisted demands at secondary stage, and refused to grant the official recognition to Maithili for the purposes of administration.

Equally important was the attitude of the Maithili-speaking population, which had been lukewarm and slow, and therefore the struggle to get Maithili recognized was a prolonged one. The Government of India finally recognized Maithili as an official language to be included in the Eighth Schedule of the Indian Constitution only in 2003. Inclusion in the list enables the linguistic group to take all-India examinations in its own language. Similarly, the recognition as an official language of a state enables a people to compete for positions in the state services without having to take

examinations in another language. The official recognition, linguistic minorities argue, reduces the pressure for linguistic assimilation and enables the group to strengthen its identity and solidarity (Weiner, 1997).

2.2 Case Study of Urdu and Hindi

The issue of Urdu speakers in India is more complicated than any other language issue because it lies at the intersection of language, geography and religion. Independent India inherited the bloody legacy of partition on religious grounds. In this context, it is important to note that the demand for recognition of Urdu is most cogent only in northern India. In post-independent India the nature of Muslim demands underwent a profound change. The condition of Muslims changed radically in both politics and political leadership and in their objective circumstances as a minority community. The leadership amongst Muslims of the northern India had migrated to Pakistan leading to a vacuum within the Muslim League in India. Congress was quick to fill its place and pledged secularism and protection of minority rights. But gradually, along with the loss of economic influence and the decline in their political opportunities, their language and culture were in danger of being absorbed by the dominant Hindi and Hindu culture of the north. Recurring riots in the cities and towns of the northern India threatened the lives and property of the urban Muslim middle and lower classes. The Muslim minority became a minority nearly in every state except Jammu and Kashmir. They could have made linguistic demands, but for the informal rules prohibited the linkage between religion and language. Thus, in post-independent India the Muslim demand changed from a political one to a cultural one, i.e. to the demand for the protection and preservation of Urdu.

W.C. Smith in 1956 observed that "the Muslim community is in danger of being deprived of its language. Nine years of gradual adjustment in other fields have brought no improvement". Smith's observation echoes the fears of Muslim leaders in the northern India, who have charged that Urdu, once the dominant language of the northern India, is being displaced and eliminated in Uttar Pradesh and Bihar as a language of education and administration.

The issue of Urdu and Hindi is complicated in a sense vis-à-vis any other language, like Punjabi, fighting for distinction because while at the spoken level, and in terms of the grammatical structure, both are similar, they diverge at the literary, vocabulary and script levels. Though there is some ambivalence among leaders of the Urdu movement about the approach to preserve and develop the Urdu language, it is important to stress its uniqueness. At its extreme, it is argued that Urdu is the predominant language of northern India.

The similarity between Hindi and Urdu has been overshadowed by the attachment of Hindus to Hindi and Muslims to Urdu. Thus, politics surrounding the two languages is essentially the politics of a Hindu majority and a Muslim minority. In the eyes of those who support Hindi as the official language of India, and particularly the northern states, the attachment of Muslims to Urdu and its "foreign" script seems to them a case of uncertain loyalty. Urdu supporters, on the other hand, deny this charge and defend its indigenous origins. Moreover, they argue that Urdu is not only the language of Muslims, but of Hindus as well.

The official position of state governments falls between these two views. During 1950s and 1960s, the official view of Congress was that Urdu was not a foreign language and that associating Urdu with Muslims was self-defeating. It is important to understand that while Urdu is spoken by millions of non-Muslims, it is a special heritage of the Indian Muslims. In other words, it is not Hindu-Muslim unity which is threatened by the decline of Urdu, but cultural vitality and a sense of Muslim identity which Muslims of northern India wish to preserve.

As in the case of Maithili, the leaders of the Urdu movement charge that the census figures do not accurately reflect the number of Urdu speakers. The problem of maintaining an appropriate status for Urdu is fundamentally different from Maithili, which struggled against complete absorption by Hindi. Urdu had been the dominant language of the north and the lingua franca of the subcontinent, until it was challenged by the Hindi movement. In the early twentieth century, it was Hindi which challenged the domination of Urdu not the other way around. The struggle for the protection of Urdu was meant to prevent the downfall of Urdu

and to preserve the rights provided for all the major modern Indian languages.

Difficulties in implementing all-India policies on language have been particularly evident in the case of Urdu. Deputations of Urdu supporters have from time to time in the past asked the government to invoke Article 347 of the Constitution to protect the rights of Urdu speakers, especially in Uttar Pradesh and Bihar, where serious charges of discrimination have been confirmed by reports of the Commissioner of Linguistic Minorities. In 1958, the Government of India itself acknowledged that there was justification for complaints that the government policies on linguistic minorities had not been fully implemented, especially in the case of Urdu. The central government had consistently refused to invoke Article 347 and to provide facilities listed in the Constitution for Urdu speakers. Along with this five points were emphasized:

- 1. Facilities for instruction and examination in the Urdu language at the primary stage should be provided to all children whose mother tongue is Urdu;
- 2. Arrangements should be made for the training of Urdu teachers and the supply of textbooks in Urdu;
- 3. Facilities for instruction at the secondary stage of education should be provided;
- Documents in Urdu should be accepted by all courts and offices without the need for translation into other language. Petitions and representations should also be accepted in Urdu; and
- 5. Important laws, rules, regulations and notifications should be issued in the Urdu language.

According to the Gujral Commission (1975), despite several half-hearted attempts to increase the use of Urdu in school, existing state policies have made such an adoption impossible. While censuses are rigged to register Hindi as a mother tongue, schemes such as the three-language policy allocate Urdu a place where it is unlikely to be selected by students. There are also hardly any Urdu

medium schools in Uttar Pradesh or even in Andhra Pradesh, and in Bihar, Urdu is prevalent only within *madrasas* (Islamic schools).

3. Language Politics in Serbia

Even as a federal unit of the former Socialist Federal Republic of Yugoslavia (SFRY), the Republic of Serbia, with its two autonomous provinces—Vojvodina and Kosovo and Metohija, represented linguistically the most heterogeneous part of the country. As a member of the socialist block of countries, the SFRY led an ideologically motivated politics of nurturing minority identities, which also included the regulation of linguistic minority rights. For instance, Várady refers to the respected status of linguistic minorities in pre-1990 Vojvodina. The 1974 provincial Constitution guaranteed preschool education, as well as ten years of basic education, in the languages of four established minorities: Hungarian, Slovak, Romanian, and Ruthenian. Furthermore, prior to the end of the 1980s, all federal and Serbian laws were not only published in the majority language, Serbo-Croatian,3 but in Albanian and Hungarian as well. According to the Special Act on the Ways of Securing the Equality of Languages and Alphabets of Nations and Nationalities within Given Authorities, Organizations and Communities, enacted in 1973 and amended in 1977, the Hungarian language was given equal status to that of Serbo-Croatian in 34 out of 44 municipalities in Vojvodina, while the Slovak language was given equal status in

³ Before the break-up of the SFRY, Serbian and Croatian were considered, according to the linguistic criteria, as one single language. Depending on the place of its use, two versions of the language title were equally valid. In Croatia, it was called Croato-Serbian and in Serbia, vice versa, Serbo-Croatian. However, after the split, the newly independent states adopted the constitutional policy of "pure" and separate national languages. At the linguistic-communicational level and from the point of view of the internal structure, it is still possible to speak about one language, with its different dialects and standards. However, when one employs the sociolinguistic dimension and the level of political symbolism, it becomes obvious that "new", distinct languages go hand in hand with the newly born independent states (Bugarski, 1997: 67-73).

15, Romanian in 10, and Ruthenian in 6. Respective authorities were under an obligation to provide for the equal standing of one or more minority languages in official proceedings, oral and written communication, publishing of their acts and other official records, and preparing materials for meetings of provincial or local assemblies (Várady, 1997: 25-8).

The subsequent democratic transition and consolidation was, and still is, a troubling process in all countries of the former socialist block, and that particularly applies to the new states founded on the ruins of the SFRY. In that respect, linguistic minority rights politics was often one of the victims of this process. A familiar joke in the region says that under communist rule, you could talk in whatever language so long as you praised the party and the regime, while under the new regime, you can express any political opinion you like so long as it is expressed in the majority language.

At first glance, this joke would not seem to be completely applicable to the Serbian case, since the 1990 Constitution provided in Article 8(2), that "[i]n the regions of the Republic of Serbia inhabited by national minorities, their own languages and alphabets shall be officially used as well (along the majority language and alphabet, M.J.), in the manner established by law". However, the subsequent 1991 Law on the Official Usage of Languages and Alphabets does not go too far in determining criteria according to which minority languages could acquire the status of official ones. In fact, quite to the contrary, Article 11 leaves this decision to be arbitrarily taken by multilingual municipalities themselves and regulated by local statutes. Consequently, a general constitutional guarantee of multilingualism is in effect reduced to a subject of by-law regulation.

In the post-SFRY period of the common state of Serbia and Montenegro,⁴ the most important piece of legislation—the 2002 *Law on the Protection of Rights and Freedoms of National Minorities*—

⁴ At first, this polity was organized as the Federal Republic of Yugoslavia (FRY) (1992-2003), and afterwards as the loose State Union of Serbia and Montenegro (SCG) (2003-6). On 21 May 2006, Montenegro held a successful referendum on independence. The State Union effectively came to an end after

was issued at the federal level. Though it was drafted as a necessary precondition of the full membership of the then FRY in the Council of Europe, its solutions go far beyond the soft-law standards of the aforementioned Framework Convention. As for the respective provisions of linguistic rights of national minorities, Article 9, for instance, regulates the choice and use of personal names, according to linguistic standards of the minority native language, while Article 10 provides for the freedom to use one's native language in public and in private. Article 11 extensively regulates the official use of minority languages and alphabets. The referential territories for this policy are "the units of local self-government", that is, municipalities. They are obliged to provide official status for a minority language or alphabet "if the percentage of that national minority in the total population on their territory reaches 15 per cent according to the latest census". Irrespective of this, "[i]n the unit of local self-government where the language of a national minority is in official use at the moment of the enactment of this Law, it shall remain in official use." Paragraph 4 clarifies that the official use shall in particular cover: "the use of the minority language in administrative and court procedure; conducting administrative and court procedure in the language of the national minority; the use of the language of national minority in the communication of the authorities with citizens; issuance of public documents, and keeping official registers and registers of personal data also in the language of national minorities, and the acceptance of those public documents as legally valid; the use of the language of national minorities on ballot papers and electoral materials; the use of the language of the national minority in the work of representative bodies." The next paragraph states that in the respective municipalities "names of public authorities, names of units of local self-government, of settlements, squares and streets and other toponyms shall also be displayed in the language of the respective national minority according to respective orthography and grammar rules and tradition."

Montenegro's formal declaration of independence on 3 June 2006 and Serbia's formal declaration of independence on 5 June.

Finally, Articles 13-15 regulate the education in native languages, by providing a general right of minorities "to instruction in their own language in pre-school, elementary school and secondary school education" (Article 13(1)). Where no such instruction exists, "the state is obliged to create conditions for the organization of instruction in the native language of the national minority, and until then to guarantee the bilingual instruction or the instruction of the minority language with the elements of national history and culture for the persons belonging to the respective national minority" (Article 13(2)). For the effective exercise of the right to education in a minority language, "the law may prescribe a specific minimum number of pupils necessary for the realization of these rights", but this number can be smaller than the general minimum that is required for organizing classes and education (Article 13(3)). This Article also stipulates that instruction in the language of national minorities does not exclude the obligatory learning of the Serbian language, but it also states the "the curricula in educational institutions and schools in the Serbian language, in order to foster tolerance with regard to national minorities, have to include a subject containing knowledge of the history, culture and position of national minorities, and other contents fostering mutual tolerance and co-habitation." Moreover, in municipalities "where the language of the national minority is in official use, the curricula in educational institutions and schools with instruction in Serbian language should also contain the possibility of learning the language of the national minorities" (Article 13 (7)). Article 14 establishes the duty of the state to organize university education in the minority language so as to enable the teaching personnel—from kindergarten nurses to university teachers—to instruct in the native language. Article 15 guarantees the right of persons belonging to national minorities to establish private schools and universities with instruction in the minority language, while Article 17 provides for the same right in the sphere of the media. In addition, the state has to allocate a certain number of public television and radio hours for programmes in the minority language.⁵

⁵ A similar set of provisions was afterwards enacted at the federal constitutional level, thus becoming a part of the short-lived *Charter of the Human*

The last 2002 census demonstrates the multilingual nature of Serbia,⁶ especially in its province of Vojvodina, where the largest linguistic minorities are Hungarian (14.28 per cent at the provincial level), Slovakian (2.79 per cent), Croatian (2.78 per cent), Romanian (1.5 per cent) and Roma (1.43 per cent).⁷ No wonder, then, that here the provincial government and local municipalities foster more robust policies of multilingualism, which resulted in the fact that in the workings of the provincial organs, Hungarian, Slovakian, Romanian, and Ruthenian are in official use, while in 38 out of 45 municipalities, and in the city of Novi Sad, at least one of the minority languages is in official use along with Serbian.

The aforementioned facts should be kept in mind when interpreting provisions of the new 2006 Constitution of the Republic of Serbia. In Article 10, it states that the "Serbian language and Cyrillic script shall be in official use in the Republic of Serbia", while "[o]fficial use of other languages and scripts shall be regulated by the law based on the Constitution". However, probably the most important constitutional provision for minorities, including the linguistic ones, concerns Article 20(2) which stipulates that an "[a]ttained level of human and minority rights may not be lowered". Furthermore, Article 18(1) states that "[h]uman and minority rights guaranteed by the Constitution shall be implemented directly." All this implies that the already acquired level of multicultural measures in the language politics of Serbia shall be maintained, if not further expanded.

4. Conclusion

The case of language policies in India needs to be discussed in the context of developing countries where there is slow and tardy

and Minority Rights and Civil Liberties (see, Art. 47-57), which was integral part of the constitutional law of the State Union of Serbia and Montenegro. The English version is available at http://www.mfa.gov.yu/Facts/charter_min.pdf

⁶The census was not conducted on the territory of Kosovo and Metohija, which is according to the UN SC Resolution 1244 under the UN administration.

⁷ English version available at www.statserb.sr.gov.yu/zip/esn31.pdf

implementation of constitutional provisions. This problem gets further aggravated in a multilingual country as huge as India. The three-language formula in India needs to be evaluated carefully. As the case study of Urdu indicated, there is a serious lack of schools, teachers and even typists in court so as to successfully accommodate multilingualism in the states of Uttar Pradesh and Bihar, which recognize Urdu as an official language. Thus, simply laying down a policy may not be sufficient. Furthermore, the Indian government's policy on educational and vocational use of language needs to be revised, keeping in mind the impact of globalization in which English seems to be the most dominant language for communication.

As for Serbia, the evidence indicates an emphasis on normative ideals of promotion-oriented minority language rights and a status of official multilingualism at the territorial level of province and municipality. More needs to be done, however. First of all, various dispersed provisions on minority language rights in Serbian law have to be made into a logically consistent and non-contradicting normative order. Second, guaranteed ethnolinguistic democracy requires, above all, a developed infrastructure for its full implementation. The state's insufficient financial support for its proclaimed policies and the lack of competent and skilled personnel in the administration and judiciary were, so far, the most frequent reasons for the partial implementation of these policies. In addition, when discussing language policy in Serbia, one should keep in mind that for the Serbs the preservation of language and the Cyrillic script were vital for the nation-building process, especially in the periods under Ottoman and Austro-Hungarian rule (Jovanoviæ, 2005: 319-39). Hence, even today, all measures regarding minority language protection have to be counterweighted with the legitimate policies for the promotion of the majority language and alphabet.8 Thus, the stated goal of "tolerance and intercultural dialogue", stipulated in Article 81 of the Constitution, can only be met if,

⁸ If one takes into account what Patten and Kymlicka call "threatened language vs. world language' dynamic", this is particularly true for the Cyrillic alphabet, which is endangered by the overall dominance of the Latin alphabet in all public spheres (Jovanoviæ, 2006: 1-11).

beyond the implementation of the policies themselves, they are fully accepted by people in their everyday lives.

A final remark should be made. Though very different in nature, these two cases, we believe, carry one important and common message. In the aforementioned domains of linguistic policies, the accommodation of linguistic identities and the quest for the recognition of separate minority languages imply an *enduring effort* of multilingual states to successfully manage this form of diversity. Consequently, it seems more realistic to discuss language politics as a conflict-*management* tool rather than as a conflict-*resolution* tool.

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THEME 2 EMERGING ISSUES IN FISCAL FEDERALISM

Differences in Resource Endowments and the Impact on the Argentine Education System

Luciana Díaz Frers

1. Introduction

Several years ago, economist and sociologist Paul Samuelson proposed dividing the world into four categories: the rich countries, the poor countries, Japan and Argentina. Everyone knows the state of rich countries and poor countries. However, no one understands why Japan is doing so well and Argentina so badly.

- Explaining the Argentine Enigma by Marcos Aguinis

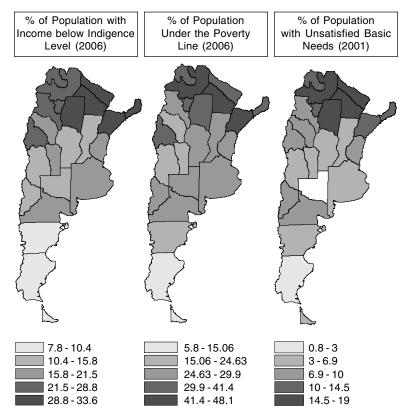
Argentina is a country well-known for an abundant and diversified endowment of natural and human resources. Natural resources include a generous stock of renewable as well as non-renewable resources. Vast fertile lands are dedicated to the production of agroindustrial exports. The country also has an extensive sea platform and forests. It is well endowed with oil and gas, and is a net exporter of fuels. And finally, it has a large, educated middle class. Despite all this, its growth has been dismal in comparison to the rest of the world and has suffered a huge crisis every ten years or so that has taken the country back to its starting point. Hence, it is argued that the endowment is not the only important factor: the

distribution of these resources is also crucial when explaining the Argentine reality. An uneven distribution of resources, coupled with an absence of a distributive mechanism in a federal country with decentralized social services, will deepen the regional disparities and prevent a sustainable and equitable development path.

2. The Provincial Inequalities

2.1 The Socio-Economic Differences

Argentina is a country marked by strong regional inequalities. Economic production is geographically concentrated in the centre-



Source: CIPPEC, based on data provided by INDEC.

Figure 1: Map of Unsatisfied Basic Needs

east of the country: the capital city of Buenos Aires together with the province of Buenos Aires is responsible for producing 58 per cent of GDP. Adding the province of Santa Fe and Córdoba, 74 per cent of GDP can be accounted for. The other 20 provinces are unevenly responsible for the remaining 26 per cent of GDP. In per capita terms, the richest district (the Autonomous City of Buenos Aires) produces eight times the amount generated in the poorest district.

When observing other social indicators such as poverty, indigence levels or population with unsatisfied basic needs, huge disparities appear too, with the south of the country exhibiting the most positive picture, while the north-east is the worst hit by poverty (as can be seen in Figure 1).

2.2 The Consequent Inequality in Their Fiscal Capacity

These differences in their economic and social situation are reflected in their abilities to collect taxes. In 2005, six provinces were able to collect less than 200 Argentine pesos per capita, while three collected more than 1000 pesos per capita. The difference between the lowest and the highest was almost 13 times as much.

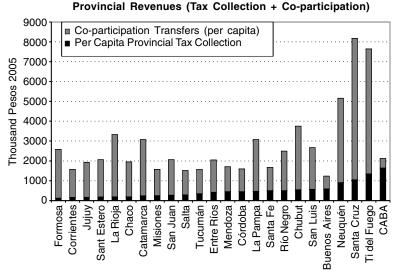
Fiscal capacities are also dependent on the productive structure. For example, the current tax system allows provinces to collect taxes on fuels and minerals. This has given a huge advantage to the provinces of the south, rich in oil and gas. Instead, several agricultural provinces complain about taxes on exports (particularly relevant for the agro-industrial provinces), which are collected by the national government and are not co-participated. The tax system hence does not take into consideration the differences in resource endowments among the provinces.

2.3 The Absence of a Distributive Mechanism

What is worse, the fiscal federal arrangement in Argentina, known as "the tax co-participation system" does not compensate for these inequalities. The secondary distribution coefficients among the provinces were determined in Law 23548 of 1988 based on the

average negotiated bilaterally by each province during the period 1985-8, a period marked by hyperinflation and a lack of an institutional arrangement. These coefficients do not respond to fiscal needs or the socio-economic situation, but rather the negotiating and political capacities during the period previous to the implementation of the law. The dependence on this distribution system varies among the provinces, going from almost 90 per cent in the case of Formosa to less than 15 per cent in the City of Buenos Aires.¹

Figure 2 shows quite clearly the absence of a distributive mechanism. Ranking the provinces according to their fiscal capacities, as measured by their per-capita tax collection in their territory, and then adding what the co-participation system grants to each of them, it becomes clear that the system does not prioritize equaliza-



Source: CIPPEC, based on data provided by MECON.

Figure 2: Co-participation is not a Distributive Mechanism

¹ Admittedly, the capital city is a special case and is sometimes left out of the analysis for comparative purposes: one explanation behind its low dependence on co-participated funds lies in the fact that several services are still administered by the National Government in this federal district, as is the case with the justice system and the police, in contrast with the rest of the provinces.

tion. On the contrary, the current distribution system seems to somehow favour the provinces of the south, which have the highest fiscal capacities and a few other provinces scattered in the territory. Another way of seeing this is by observing the wide differences in transfers between provinces with relatively similar fiscal capacities.

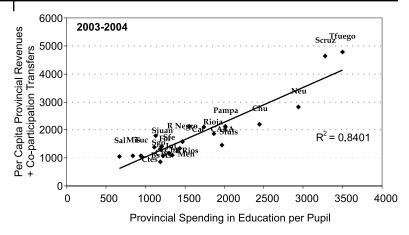
2.4 The Differences in Investment in Education

Historically, responsibility for education was shared by the national and provincial governments. However, a decentralization process started back in the 1960s and culminated in 1992 with the final bestowal of the last remaining national schools to the provincial administrations. Hence, provinces are currently responsible for administering the pre-primary, primary and secondary education system. Wide differences appear when observing how much money each province puts in its education system. Three variables expose this reality: teachers' wages, spending in education per pupil, and spending in education as a percentage of provincial spending.

Comparing a teacher's wage, with 10 years of experience in teaching, working one shift in standard education, the best paying province pays 2.5 times the amount paid by the province that pays the least. Spending in education per pupil shows an even wider difference, as Tierra del Fuego invests 5 times what Salta does. An analysis of provincial budgets shows that there is a notable divergence between the highly populated province of Buenos Aires, which dedicates 34.6 per cent of its budget to education, and the much less populated province of Santa Cruz which invests 12.7 per cent.

2.5 The Relationship between Provincial Resources and Spending in Education

As can be seen in Figure 3, there is a strong and positive correlation between provincial resources and spending in education per pupil. Naturally, provinces with more fiscal capacity and transfers may well dedicate more resources to the education system. But if there is no distributive mechanism that ensures that the poorest provinces



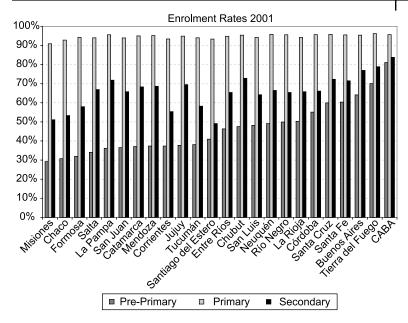
Source: CIPPEC, based on data provided by MECON.

Figure 3: Strong Correlation between Provincial Resources and Spending per Pupil

have enough resources, it is difficult for them to maintain similar levels of investment in education. Hence, education, once seen as an equalizing platform, is now preserving disparities in development within the country.

3. The Consequences on the Education System

The quality of education also varies a great deal across Argentina's provinces. This becomes obvious by analysing even the most simple quality indicators. For example, Argentine provinces display different capacities to maintain high enrolment rates. The most significant differences appear at the pre-primary and secondary schooling, while in primary education the levels are quite similar, going from a minimum of more than 90 per cent to as high as 96 per cent, with an average of 94.6 per cent. This is due to the fact that primary education has been compulsory for many years now. Instead, the gap grows in pre-primary education, where enrolment rates go from as low as 29.2 per cent to a maximum of 81.1 per cent, and an average of 46.2 per cent. Wide differences are also evident in secondary enrolment rates, which go from 49.1 to 83.8 per cent, and



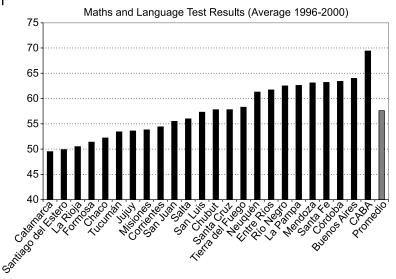
Source: CIPPEC, based on data provided by INDEC, National Census 2001.

Figure 4: Provincial Different Enrolment Rates in Initial, Primary and Secondary Education

an average 66.1 per cent. Figure 4 shows the provincial enrolment rates.

Another indicator, the frequency of teacher's strikes (causing loss of schooling days) goes up in provinces where teachers' wages are lower (Mezzadra and Rivas 2005). Probably as a consequence of this, wide disparities can be observed in test results. In national exams in mathematics and language, results go from less than 50 out of 100 points to almost 70 and an average of 57.6, showing 20 points difference even in provincial averages, as can be seen in Figure 5.

Of course these averages hide even deeper inequalities within the provinces. Very recent studies analyse the distribution of teachers inside each province. The main conclusion is that teachers with less experience go to the poorest schools, where there is higher rotation of teachers (Mezzadra 2007). Most micro-data studies conclude that poor students go to poor schools and rich students



Source: CIPPEC, based on data provided by Ministry of Education.

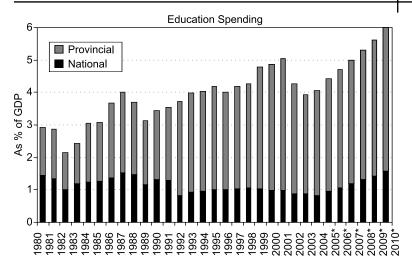
Figure 5: Provincial Results in Evaluation Tests

go to well-endowed schools, thus magnifying the differences that exist among provinces (Llach, Montoya, and Roldán 2001).

4. The Solution Proposed by the Government

Despite the fact that schools are administered by the provinces, many expect the solution to the education challenges to come from the national government. In reply to this demand, the Law of Education Financing (Law 26075) of 2005 and the recently approved Law of National Education (Law 26206) of 2006 have been passed. The main goal of these laws is to increase public investment in education from an estimated 4.3 per cent of GDP in 2005 to 6 per cent in 2010.

As can be seen in Figure 6, the effort will be shared by the national government and the provinces, respectively responsible for 40 per cent and 60 per cent of the increase. This will imply that the national government will increase its share in education spending from 21 per cent in 2004 to 26 per cent in 2010 while



Source: Prepared by CIPPEC, based on Dirección de Análisis de Gasto Público y Programas Sociales. MECON.

Note: *Projected based on the fulfilment of Law of Education Financing.

Figure 6: Spending in Education as a percentage of GDP by Level of Government (1980-2010)

the provinces will supplement the remaining 79 per cent in 2004 and go towards 74 per cent in 2010.

The previously sanctioned Law of Federal Education (Law 24195) of 1993 also established the goal of increasing investment in education to 6 per cent of GDP but did not ensure how this increase would be financed and who would be responsible for it. The main difference is now that the source of financing is clear. There are three sources: the national budget, the increase in coparticipated taxes that go to the provinces, and the provincial budgets. The law now explicitly determines the coefficients that the provinces must use to assign the increase in co-participated taxes to their education systems.

The priorities of this new spending follow the historical distribution of responsibilities:

(i) The national government will invest mainly in building schools, providing scholarships, enabling more inclusion

- mechanisms, distributing textbooks and investing in 'science and technology' areas as well as universities. Also, the national government created a programme targeted at diminishing wage gaps among teachers in different provinces (Programa de Compensación Salarial, Article 9 of the Law).
- (ii) The provinces will dedicate the new funds to finance the expansion of education, for example including all children aged five in initial education and providing extended day education to more children. The provinces are also responsible for improving teachers' wages and working conditions.

However, no significant change has been made other than the promise to commit more resources to education. This is a promise that may not be met, however, particularly by the provinces that face fiscal and financial trouble ahead. Moreover, these added resources are targeted at too many objectives. The structural problems, those that arise from the fiscal federal arrangements and its entrenched inequalities, still remain.

Conclusion

Argentine provinces show huge economic disparities and a very uneven distribution of resources, with an important concentration of production in the centre-east of the country and some provinces enjoying the windfall gains of oil, gas and other non-renewable resources. These disparities affect the fiscal capacities of the provinces. Furthermore, the current tax structure benefits provinces rich in minerals and fuels while it is relatively detrimental to agricultural provinces.

The existing federal co-participation system of tax-sharing does not properly address these inequalities. Neither has it rationally defined how much money corresponds to each level of government according to the responsibilities assigned to it, nor has it designed a system that can accomplish equality of opportunities as set out in the national constitution.

The consequences of this system can be seen in many social services. As was seen in this study, these consequences heavily affect

the education system, which also shows enormous disparities. Education in Argentina has suffered the negative impact of the macroeconomic crises and the ensuing high poverty and inequality rates. The decentralization of the education system with insufficient transfer of funds has deepened the regional chasms. Also, growing enrolment rates and the real depreciation of teachers' wages have negatively affected the education system.

In the face of these problems, the new Laws of Education Financing and National Education have been passed with the intention of investing more public money into the system. However, the structural problems, those that arise from the fiscal federal arrangements, still remain. To be more in line with principles established by theories on federalism, Argentina should, in the first place, convert its current co-participation system into a more redistributive one, with the aim of complementing fiscal capacities with fiscal needs and better accommodating the differences in resource endowments.

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Are Federations Moving Towards More Rational Forms of Equalization?

The Cases of India and Russia

Shefali Dhingra Vladimir Nazarov

1. Introduction

The subject of fiscal federal relations has gained considerable importance in both India and Russia in the twenty-first century. It has thrown up several debatable issues with regard to resource generation and distribution as well as allocation of expenditure responsibilities. The goal of governments of both countries is to achieve the objective of equity by narrowing down the horizontal and vertical imbalances. The aim of this paper is to analyse the cases of India and Russia and find out whether or not these countries are moving towards more rational forms of equalization.

The case of India is used to describe the various provisions for narrowing down horizontal and vertical imbalances. It captures important issues on fiscal federalism and highlights various challenges the country faces with regard to the achievement of the equity objective.

In the case of Russia the discussion concentrates only on the federal equalization transfers because it is the impact of this financial instrument that is the most doubtful.

2. The Case of India

India is a union of states having all characteristics of a federation with 28 diverse and distinct states besides 7 Union Territories. The Indian Constitution assigns separate subjects to the states (in the state list) and centre (in the Union list) to legislate upon. The subjects listed in the concurrent list fall under the jurisdiction of both the centre and the state.

The distribution of revenue powers and the allocation of expenditure responsibilities at different governmental units results in two built-in imbalances: vertical and horizontal. In order to correct these imbalances, Article 280 of the Indian Constitution provides for a Finance Commission every five years to make recommendations on the transfer of resources from the centre to the state, in the form of tax-sharing, grants-in-aid and loans.

It is the objective of this part of the paper to examine the equalizing effect of these transfers and the impact they have on the autonomy of the states.

2.1 Powers of Taxation and the Tax Sharing Arrangement

According to the Constitution, the centre has powers to tax income (other than agricultural income), production and manufacture of goods and services and all international transactions. The states, on the other hand, have the authority to tax sale of goods, agricultural income, holding and sale of property and certain specified services like the sale of electricity. The centre has an advantage in levying taxes but the states have a share in the central taxes which is determined by the Finance Commissions.

In the 1950s, personal income tax was to be compulsorily shared and the sharing of Union excise duties was optional. Since then successive Finance Commissions have raised the share of states in income tax from 50 per cent to about 85 per cent and excise duties from 20 per cent to 45 per cent. The Tenth Finance Commission brought about more equalization when it recommended that states share all the Union taxes. The Eleventh Finance Commission

determined states' share in central taxes at 29.5 per cent. The Twelfth Finance Commission raised it to 30.3 per cent.

Over the past three decades, horizontal equalization has increased. Relatively better-off states like Maharashtra, Punjab, Tamil Nadu, Kerala and Gujarat, have lost out materially as their shares have come down by over 20 per cent during the period between the Fifth and Twelfth Finance Commissions. The share of the north-eastern states as well as that of Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh states (BIMARU) has gone up, the latter on account of weights attached to poverty. The weight of population has also been raised by the Eleventh Finance Commission from 10 per cent to 25 per cent. The Finance Commissions over the years have tried to meet the equity objective by assigning weights to factors which will take more resources to the poorer states.

The successful introduction of value added tax (VAT) by 30 states and Union Territories and the fiscal responsibility and budget management legislation enacted in 2003, appear to have made further inroads into state-level fiscal reforms, making them less dependent on the centre for their fiscal needs. The decision to implement state-level VAT was taken after sustained intergovernmental considerations by the Empowered Committee (EC) of State Finance Ministers in June 2004, during which a broad consensus was reached on the introduction of VAT from 1 April 2005. By April 2007, all states except Uttar Pradesh have implemented VAT in lieu of a sales tax. The initial tax collections through VAT have been encouraging, recording 13 per cent and 23 per cent growth rates, respectively, during 2005-6 and 2006-7. Further equalization is sought by the central government's announcement of a compensation package under which the states are compensated for revenue loss on account of VAT introduction at the rate of 100 per cent of revenue loss during 2005-6; 70 per cent during 2006-7 and 50 per cent during 2007-8.

2.2 Grants from the Centre

Equalization grants from the centre to the states include the following:

2.2.1 Grants in Aid of Finance Commission Recommendations

Under Article 275(1) of the Constitution, different sums may be determined for different states and would be charged to the Consolidated Fund of India. Over the years, after the Seventh Finance Commission, there has been increasing evidence of equalization, as can be seen from the fact that the share of the grants out of total transfers to the states has steadily gone up. It was 7.72 per cent during the Seventh Finance Commission. The Twelfth Finance Commission has raised the same to 18.87 per cent. The share of grants, though small for all states put together, is significant for smaller states.

The grants in aid can be classified as follows:

Revenue gap grants. These are equalizing transfers that are used to correct the vertical imbalance. Finance Commissions make assessment of the revenues and expenditures of the states on the basis of their historical expenditure and some norms. These grants play a very significant role in the finances of certain states. Some of them get more than 75 per cent of their revenue from the central transfers. This gap filling approach, however, encourages the states to overproject their revenue gaps expecting the Finance Commission grants to fill the same.

Specific purpose grants. These are factored in while assessing the revenue gap and are thus over and above the vertical gap. They are also known as conditional grants. The states often complain that these grants lead to a reduction in their autonomy. The Twelfth Finance Commission has taken note of the matter and has recommended that the Ministry of Finance generally refrain from attaching any additional conditions with these grants.

Under this category, the Twelfth Finance Commission has also sought to correct horizontal imbalances by recommending equalization grants for two specific expenditure sectors, education and health. A part (15 per cent in the case of education and 30 per cent in the case of health and family welfare) of the distance of the

state's expenditure from the average group expenditure is sought to be equalized.

2.2.2 Plan Grants

The centre has exerted its influence on the expenditure pattern of the states through the Planning Commission. The Planning Commission, which is the apex body set up by the central government, provides funds to the states under Article 282 of the Constitution. Plan grants and loans to the states for financing their development programmes under the Five-Year Plan and Annual Plans were initially project-based, but were eventually based according to an agreed formula known as the Gadgil Formula. Central Plan Assistance to States Plan can be broadly classified into two categories: Central Assistance (Domestic) and Additional Central Assistance for Externally Aided Projects (EAPs). Central Assistance (Domestic) includes not only the Normal Central Assistance (NCA), but also other additional central assistance to states for other Programmes, in particular Basic Minimum Services (BMS), Slum Development, Area Programmes, and Accelerated Irrigation Benefit. These grants are normally referred to as discretionary grants. Discretionary assistance is purely at the discretion of the Planning Commission and the Ministry of Finance. They may include State Plan Grants and Centrally Sponsored Schemes (CSS).

In 1969, the National Development Council decided that the central assistance to the states for schemes on subjects under their jurisdiction would be given in block form and not be linked to any scheme or project and that scheme-based assistance (CSS) would be continued for a limited time, and would not exceed one seventh of the block assistance. Post-1969, the block assistance to states included 70 per cent loan and 30 per cent grants (the loan-to-grant ratio for certain categories of states was 10:90). This, however, led to problems of accumulation of debt among states. The Twelfth Finance Commission provided relief in the matter and from 2005-6, the assistance to state plans in block grants began to be given in grant form only. This, however, does not apply to the CSS which has a small loan component; and that too has gone down over the years. The following table shows the classification

of state plan grants by component (only the grant portion). It can be observed that normal central assistance, which is only true block form of non-discretionary assistance, is now less than 50 per cent of central assistance to state plans.

Classification of State Plan Grants in its Components (grant portion only)

(Rupees in tens of millions)

	,	1
Name of the Scheme	Grant Outlays 2004-5 (RE)	Share of Assistance 2004-5
Normal Central Assistance	11702.84	42.72
Area Programmes	2182.50	7.97
Additional Central Assistance for Externally Aided Projects	3106.00	11.34
Special Programmes	8014.53	29.25
Discretionary	2390.63	8.73
Total	27396.50	100.00

Source: Garg 2005.

2.2.3 Non-Plan Grants

These schemes are in addition to the grants transferred to the states under the Finance Commission recommendations. Examples of such programmes are schemes for police modernization and jail modernization. There are also indirect transfers to the states. For example, the procurement of food grains at higher-than-market prices. However, a study of these transfers is beyond the scope of this paper.

So far the discussion points to increasing equalization over the years. However, attention must be drawn to the following issues to get an insight into the future challenges that India faces with respect to the equalization process and whether or not the same is rational.

Lower levels of equilibrium. The freight equalization policy in India that ensures that the railways charge a uniform freight on coal and steel transportation throughout the country has enjoyed strong support in the past. Admittedly, it was intended to help resource

poor states, but it came at a cost. The first cost was pulling down better-off states rather than pulling up poorer states. This is because on account of this policy, the administered price of basic inputs is equalized all over India. This deprived the mineral rich states the small advantage they had in the industrialization process on account of their resource endowments. While the policy may have narrowed the horizontal imbalances between states, it has done so by bringing the well-off states down to the level of the poorer states rather than the other way around. Thus, a lower rather than higher level of equilibrium is achieved. A second, and perhaps higher, cost is the inefficiency it introduced at the aggregate level. Instead of producing power at the pit-head, for example, coal was transported across the country to set up a power plant in a remote area. Hence, it can be seen that though there is equalization, it does not necessarily produce rational outcomes.

Competition among states. There is competition among states to attract investment. The investment of the private sector, especially industry, would go to a state that has the best business infrastructure. Since the resources of states are limited, there is a possibility that federal transfers meant for welfare activities like rural development may be diverted towards development of business infrastructure, such as roads. To enhance the quality of living in a state, both business and social infrastructure development is important but the difficult task is to seek a balance between the two and ensure that one does not suffer at the cost of the other. At this point it may be noted that it is unrealistic to expect industry alone to bear the brunt of backward area development. Wherever there is no economic rationale to set up a manufacturing unit, it is better not to do so. Instead, the primary sector or the services sector could be developed in these pockets depending on the competitive advantages that the area has. The role of the government should be to identify the potential of each district and to develop infrastructure, on the one hand, and human capital on the other, through investment in health and education. It is widely agreed that governments must focus on what they and they alone can do-produce public goods and merit goods. But the nature of public goods and merit goods is changing. Infrastructure, which was once considered a pure public good, has now acquired the attributes of a private good because of newer technology and financial engineering products.

Special category states. The ten special category states (Hill States) are heavily dependent on the centre because they have unorganized economies and small industrial sectors. On account of geographical factors their unit cost of providing public services is very high and their revenue raising capacity is lower than other states. Furthermore, most of them are located in border areas and frequently experience bouts of social and economic destabilization. Providing reasonable levels of public service at reasonable cost in these states is one of the major challenges before the policy makers.

Royalty payments. Central policies on royalty payments have affected the autonomy of states. The centre has a right to extract minerals from the states, but has to pay royalties on the material extracted. Yet the royalty payments are fixed by the centre and are very low compared to the price of the minerals. Revision of payments in terms of inflation is taken only after long intervals. The states have no say in the matter. The centre is thus accused of not giving the states their due share in the rising prices of minerals extracted.

The above discussion has given us evidence to both support and question the progress of equalization in India. However, there is increasing evidence of the narrowing-down of vertical and horizontal imbalances over the years. The determined efforts made by successive Finance Commissions as manifest in their recommendations and a conscious effort made by the central government to accept and act on them substantiates this point. This only leads us to conclude that the Indian Union is moving towards more rational forms of equalization.

3. The Case of Russia

— What is the worst defeat? — It's the victory!
This quotation from the great Indian epic Mahabharata is used as an epigraph for this part of the paper because it reflects quite well

the paradox of equalization formula evolution in Russia. The "victory" in terms of equalization process means making the allocation of transfers more formula-driven (instead of policy driven), more transparent, accurate and predictable to the regional governments. Recently, in order to engage this victory the Ministry of Finance made a series of changes in the equalization formula. These amendments took place in 2005, 2007 and now the newest equalization formula for three-year budget period 2008-10 has already been approved by the Government of the Russian Federation. The purpose of these amendments was to rationalize the equalization system:

- to ensure a consistent level of service delivery across all the regions;
- to ensure that all regions obtain a certain fiscal capacity to meet the needs of population;
- to encourage regional governments to improve their financial discipline;
- to smooth the rapid fluctuations in provincial revenues and equalization transfers, and ensure long-term predictability;
- to promote economic growth; and
- to promote amalgamations.

All the amendments were aimed at worthy goals but the result is quit controversial: the formula becomes more complicated, and its influence on regional government behaviour, and regional fiscal autonomy and equity is unpredicted. So the aim of this part of the paper is to answer the question of why achieving these goals in developing rational forms of equalization may lead to the controversial results.

First of all it is necessary to describe briefly the evolution of equalization system in Russia, the current formula, its basic problems, and the newest amendments. Russia is a federative state with high geographic and ethnic diversity which consists of 83 subjects of the Russian Federation (regions). The current disparities among the regions in economic development and fiscal capacity are enormous. The gap between the richest and the poorest regions is

more than 45-fold in terms of gross regional product per capita and 280-fold in terms of taxes collected per capita. Many regions heavily rely on federal financial aid. For example, in 2006 the share of federal transfers (excluding compensation to regional governments for implementing federal mandates) in regional budgets revenues exceeds 20 per cent for 45 regions and surpasses 60 per cent for nine regions. So the role of equalization grants in smoothing fiscal disparities among the regions cannot be overestimated.

The Federal Fund of Financial Support to Regions (FFSR), created in 1994, is the main source of equalization allowance for the low-income regions. The formula for distributing the FFSR among the regions has been significantly changed many times since 1994. The most important changes are described below.

3.1 Estimation of a Region's Fiscal Capacity Evolution

In calculating FFSR distribution, the fiscal capacity is determined as a ratio between tax capacity and an expenditure needs index.

$$FC = \frac{TC}{ENI}$$
,

where FC is fiscal capacity; TC is tax capacity; and ENI is the expenditure needs index

Before 2000 both tax capacity and the expenditure needs index were calculated using data of actual regional revenues and expenditures. For example to figure out the tax capacity of the regions in 1999, the Ministry of Finance used the amount of taxes collected in 1997 together with certain indices (e.g. inflation, rate of growth). Using actual data about regional revenues and expenditures had a negative influence on the fiscal behaviour of the regional governments. They could raise their expenditures, do nothing to increase their revenues and be rewarded for such behaviour by an increase in equalization transfers. Since 2000, a shift towards more rational forms of equalization was made: the Ministry of Finance began to calculate tax capacity and the expenditure needs index by using an estimation of a region's fiscal capacity based on federal statistical data which could not be misrepresented by regional

governments. Estimation of a region's tax capacity was based on value-added by different economic sectors; estimation of expenditure needs became was based on the objective differences in salaries, prices, demographic and socio-economic factors, climate and other objective factors that influenced the per capita cost of providing the same service in different regions. This reform increased the regional governments' interest in raising their tax capacity and decreasing the costs of public services provision.

But while the 2000 reform solved many problems of making the equalization formula more rational, it created other problems. First of all the value added by different economic sectors appeared not to be an accurate indicator to reflect the regional tax capacity because of the tax immigration problem. Big corporations which have their business in many regions could use the transfer pricing to declare all their profits in one region if there were any incentives to do so. Some regional governments in turn did their best to create such incentives for businesses to pay taxes on their territory. According to the Tax Code the regional rate of enterprise profit tax may vary from 13.5 to 17.5 per cent. Another incentive was the subsidies for business from the regional budgets, allowing regional governments to entice big corporations to pay tax in their own region. Although such regions obtained additional tax revenues (at the cost of their neighbours) they did not lose in terms of equalization transfers because their value-added per capita was still below the national average. This problem received its partial solution only in 2007. According to the newest equalization formula for the three-year budget period 2008-10 the regional tax capacity is determined as a sum of separately calculated tax bases used by regional government (not value-added as a generic tax base for both federal and provincial governments).

The next problem which the 2000 reform created was the great complexity of measuring the expenditure needs index. This index was designed to estimate all the objective factors and conditions in many spheres of the public sector (education, health care, sport, public transport, etc.). The result was the measurement of the normative expenditures for providing different public goods and services in all regions. The expenditure needs index was so complex

mostly because of the problem of unfunded mandates. Federal laws created expenditure obligations for regional governments without providing appropriate funds to finance these obligations. The federal government tried to finance some part of these obligations in the poor regions by using different coefficients in calculating the expenditure needs index, but this was largely unsuccessful. The weights of different coefficients for estimating the costs of different public services and goods provision were chosen by the Ministry of Finance. There was always a great struggle between the regions to persuade the federal Ministry of Finance to choose such weights for these coefficients to maximize the entitlements for a particular region. When in 2005 the problem of unfunded mandates was mainly solved, the necessity for such complex measurement of regional needs was eliminated. In 2005 the expenditure needs index was simplified and now it reflects only the regional scale of prices depending on three factors: consumer prices, salaries and costs of communal services. This appears rational as one ruble in the regions of the Northern Caucasus (the southern part of Russia with warm climate, good transport infrastructure and low labour costs) is worth more than one ruble in Chukotka (the north-eastern region of Russia with cold climate, irregular transport facilities and high labour costs).

In the future this index may be simplified again. It may include only a coefficient of consumer prices in the region to the national average level. This could be done already, as the regional indexes of consumer prices, salaries and costs of communal services are highly correlated in Russia (the correlation ratio varies from 0.86 to 0.95). But the Ministry of Finance cannot do so because too many regions disagree on how the equalization formula should work. Each regional government complains that its special conditions are not taken into account Because of the complexity of the formulas, however, the federal government is able to give the appearance of accommodation without affecting the end result. Thus one of the reasons why it is very difficult for federations to move to more rational form of equalization lies in the fact that it's always more profitable for politicians to complicate the equalization formula than to simplify it. The federal government cannot impose

an ideal formula that all regions would support. But when the formula is simpler it is easier for the regional governments to speculate about their special conditions being ignored. When the formula is extremely complex it appears that the federal government is taking everything into account, while in reality, in terms of money transferred, there are still winners and losers among the regions.

3.2 The Rule of Equalization Evolution

Between 1994 and 1996 equalization grants were allocated in two parts. One part of the equalization grants was allocated among all poor regions, the other part to the poorest regions. The criteria of defining the regions as "poor" or "poorest" were not clear and since the period between 1997 and 1999 all grants were distributed among poor regions according to relatively universal formulas. But there remained the question of why there could not be one formula to allocate all FFSR. On the one hand, the federal government did not collect enough revenue to ensure that regional governments had sufficient funds to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. The federal government should spend 2.6 times more on transfers to the regions to bring their budget capacities up to the national average. On the other hand, the differences in budget capacity among regions were growing extremely fast and some regions were unacceptably poor. Thus in 2000 the Ministry of Finance came back to the idea of two parts to the FFSR, but this time on the basis of a formula. One part of equalization transfers (80 per cent of the total amount) was allocated to all regions whose per capita fiscal capacity before equalization was less than the national average, with equalization payments proportionate to the size of the difference between the national average and regional fiscal capacity. The remaining 20 per cent was allocated to the poorest regions to increase their budget capacity up to a certain uniform level.

The equalization rule presented in Figure 1 shows the negative influence on fiscal behaviour in the poorest regional governments. The regions with a budget capacity between points 1 and 2 had the same budget capacities after equalization, although they were

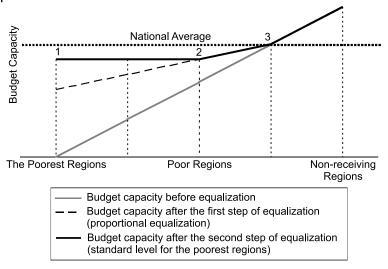


Figure 1: The Equalization Rule, 2000-4

different before equalization. In 2004, 34 regions in such a position were able to ignore economic growth promotion, as the federal government guaranteed them a certain level of budget capacity. In 2005 this anomaly of the equalization rule was eliminated.

The data in the Figure 2 demonstrates that in 2005-6 all the equalization payments were proportional: the greater the difference between the equalization criteria and the regional budget capacity, the greater the equalization payments. The Ministry of Finance used two equalization criteria. First, transfers were made to the poorest regions, whose budget capacity was lower than 60 per cent of the national average (the first equalization criterion). These transfers made up 85 per cent of the difference between the regional budget capacity and the first equalization criteria. In the second stage of equalization, the remaining part the FFSR was distributed among all regions whose budget capacity was lower than the national average. Using two equalization criteria permitted the federal government to reach a balance between strong financial aid to the poorest regions and providing a reasonable level of equalization to the all provinces. The first part of the equalization was kept low in order to avoid overspending in the poorest regions (in 2005-

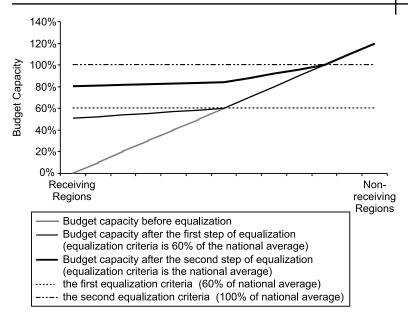


Figure 2: The Equalization Rule, 2005-6

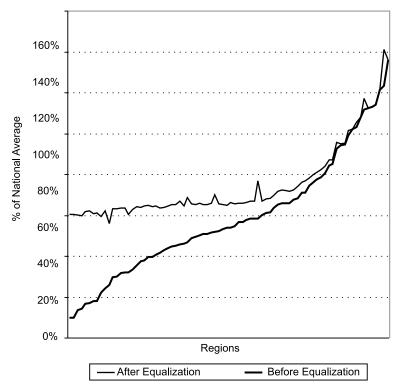
6, 44 per cent of the FFSR was spent on proportional equalization to the poorest regions). The golden rule in 2005 was that those regions with a higher fiscal capacity to begin with were able to preserve their advantage after equalization. This outcome was even fixed in legislation through the Budget Code. Accordingly, regions were interested in raising their fiscal capacity because they received more in tax revenue than they lost as a result of equalization.

Of course the equalization formula in 2005-6 had its own disadvantages. For example, fiscal capacities were calculated on a value-added basis, rather than by using data from different tax bases. But it was nonetheless more rational than the most recent equalization formula used for the 2008-10 budget period.

A friend of the great Russian author Fonvisin, upon reading his new play, wrote to the author "you should die because you won't be able to write better!" Unfortunately, the same may be true of the Ministry of Finance. Since 2005, instead of making the equalization formula more rational, it simply became more complicated and controversial. For example, by attempting to achieve goals

which had nothing to do with the objectives of equalization, the Ministry of Finance had to break its own golden rule of equalization. Figure 3 presents the budget capacity of regions before and after equalization in 2008.

The data in the Figure 3 above demonstrates the vibration of the curve reflected fiscal capacity after equalization. As can be seen from Figure 3, the regions with a higher budget capacity do not maintain their advantage after equalization and are therefore discouraged from increasing their fiscal capacity. In other words, their interest in economic growth has been diminished. This leads to the question of why the golden rule of 2005 was broken. Paradoxically the golden rule was broken to increase the interest of



Source: The RF Ministry of Finance, authors' calculations.

Figure 3: The Budget Capacity of Regions Before and After Equalization in 2008

regional governments in economic growth. Before 2007, regional governments always speculated that the equalization formula discouraged them from promoting economic growth because there was a negative correlation between growth of gross regional product and equalization payments. Even though such a correlation existed in many other federal countries, the issue became politicized. First of all, old data on gross regional product were used in the equalization formula. For example, the data on gross regional product in 2002, 2003 and 2004 were used to calculate the regional fiscal capacity in 2006. So there was (and still is) a time gap between the growth of gross regional product or tax bases and the corresponding decrease in equalization transfers. Surely, any rational regional government would prefer the big increase in tax revenues today over the relatively small reduction in equalization transfers in the future. Second, it was impossible for regional governments to predict how the decline of gross regional product would affect the growth of equalization payments (to do so they would have had to predict the change in gross regional product in all regions and then calculate their benefit or loss accordingly). So the formula for allocating the FFSR in 2005-6 did not discourage regional governments from promoting economic growth in their territories. Certainly the equalization formula did not imply a direct reward for the regions with high economic growth; but then economic growth promotion is not the basic task of an equalization programme. It is sufficient if the equalization programme does not discourage regional economic growth and does not negatively influence the fiscal behaviour of regional governments. In 2005-6 such an equalization programme was in place. But the political pressure for change was so high that the President in his address to the Russian Parliament mentioned that the equalization formula should be changed in order to promote economic growth. The Ministry of Finance had to oblige and in 2006 it changed the equalization formula for the fiscal year 2007. In 2007 the equalization included direct bonuses for the regions with high rates of economic growth. But as it was said before, this amendment broke the golden rule and the regions with higher budget capacity before equalization sometimes did not preserve their advantage after equalization. So

the question remains as to whether this amendment of the equalization formula encouraged or discouraged the regional governments to promote economic growth. The situation of economic growth promotion by the means of equalization transfers became worse than in 2007 when the decision was made to calculate the tax capacity by tax bases instead of on a value-added basis. As emphasized before, in Russia there were many cases of significant tax migration from one region to another. One of the reasons to use the tax base instead of value-added to determine regional tax capacity was to not pay excessive equalization transfers to the regions which drained away their neighbours' tax base. But in the case of tax immigration, when the regional corporate income tax base is growing much faster than in the entire Russian Federation, that this isn't reflected in the equalization formula. Thus the newest equalization formula paradoxically encourages not economic growth but tax migration.

3.3 The Newest Equalization Formula and its Conflicting of Goals

The most recent equalization formula approved by the federal government, and valid for the 2008-10 period, is presented as a rational solution that will achieve a variety of useful aims. As it has been described above, however, two of the goals—preventing excessive transfers to regions that undercut their neighbors' tax base, and promoting regional economic growth—are contradictory within a single equalization formula. As a result, neither of them will be accomplished.

The equalization payments to many regions will rapidly decline because of the new way to calculate tax capacity. The Ministry of Finance provides additional transfers to compensate some part of these losses, which seems reasonable at first glance. But at the same time, the Ministry of Finance tries to force regional governments to improve their financial discipline. There is a correlation between the share of compensation and some financial discipline indicators, such as debt levels and the rate at which of budget revenues grow. Thus the compensation effect is diminished. The attempt to encourage regional governments to improve their financial discipline by

means of equalization transfers leads to a paradox: that the richer regions receive more equalization transfers than the poorer regions because the richer regions have lower debt levels and a higher rate of revenue growth. So in 2008 a significant part of equalization transfers will be sent not to poor but rich regions. This is a strange way to reach the main goal of equalization—to ensure the potential of all regions to provide a similar level of service to citizens.

The Russian equalization formula also pursues the goal of promoting amalgamation of regions. It may be rational to merge a net-receiving region with non-receiving one into a single non-receiving region. But it isn't clear that this aim should be pursued through the equalization formula. For example, Arhagel'skaja oblast' (a receiving region) refused to amalgamate with Nenezkii okrug (a non-receiving region). But the federal government accounted the equalization payments for Arhagel'skaja oblast' as if it had amalgamated with Nenezkii okrug. As a result Arhagel'skaja oblast' lost nearly \$32 million of its equalization payments.

To ensure that all regions obtain a certain fiscal capacity to meet the needs of population the Ministry of Finance imposes an assured level of fiscal capacity. This also sounds quite reasonable and may help to determine the volume of equalization fund. But it is too difficult politically to maintain a very low assured level of fiscal capacity, and impossible or at least very dangerous for the federal government to impose a high assured level of fiscal capacity. So the Ministry Finance imposes the assured level of fiscal capacity at the medium level of regional fiscal capacity, with ten richest and ten poorest regions excluded. Though it may appear high, in the reality the assured level of fiscal capacity is reasonably low (near 60 per cent of the average fiscal capacity of all regions), but the way to determine it is unreasonably sophisticated. It is interesting that the Canadian Department of Finance once used the same trick to spend less money on equalization and at the same time to show that the fiscal capacity of receiving provinces was increased to the average level. In order to do it they used the data from five provinces instead of all of them. Now in Canada another method has been found to spend the limited amount of equalization transfers and create the illusion that all provincial governments have sufficient

revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. This is done by accounting for only half of natural resource revenues in the equalization formula. So the rich, oil-extracting province of Alberta has a lower fiscal capacity for the purposes of the equalization formula, and hence the national average fiscal capacity level is lower as a result. So it becomes possible to use a limited level of equalization transfers and nonetheless give the impression that all receiving provinces have post-equalization fiscal capacity equal or even higher than ten-province standard. It is also interesting that in the Canadian equalization formula the golden rule of equalization is also sacrificed in favour of a doubtful attempt to achieve other goals (in the Canadian case to encourage resource extraction in poor provinces).

Thus it is quite clear that Russia is not moving directly towards a more rational form of equalization. The main reason for this sad fact is that the equalization formula becomes captive to irrational political bargaining. Regional governments are interested in receiving more equalization transfers. They have opposing views on the issue of what the equalization formula should look like based on their own preferences, and pressure the federal government accordingly. The Ministry of Finance in turn is interested in two things. First of all, it prefers to spend less on equalization and to restrict the equalization obligations in the future. Secondly, it would like to avoid the political pressure from regional governments. So the result is not a rational form of the equalization but a mixture of political interests reflected in the equalization formula. From this, it is quite clear why three great ailments of equalization formulas exist:

- Equalization formulas pursue too many goals, which reflect the different demands of different regional interest groups.
- There are many exceptions from the straight logic of equalization (to provide reasonably comparable levels of public services at reasonably comparable levels of taxation) because the Federal Ministry of Finance tries to please all regional

- governments and to implement different federal policies and approaches into the equalization formula.
- The excessive complexity of equalization formulas reflects the fact that the Ministry of Finance tries to please all regional governments without committing additional money. Instead, they try to make an attractive picture of an equalization process that benefits all regions.

Thus the problem has only a political solution. The Federal Ministry of Finance should be strong and rational enough to fight for rational forms of equalization. It should explain to all stakeholders (voters, Parliament, regional governments, the press, the academic community) that the main goal of equalization is to equalize the differences in fiscal capacity between regions to provide reasonably comparable levels of public services at reasonably comparable levels of taxation. The Ministry of Finance should emphasize that the equalization formula is one-goal instrument. It is like a shovel which is made to dig, not to save you from the rain or to make coffee—only to dig. So every financial instrument should be used to achieve a certain useful purpose, and which would not prevent other useful purposes from being achieved.

So a strong and rational Ministry of Finance should say to regional governments that the equalization formula is made to equalize the differences in fiscal capacity among the regions; not to directly promote regional economic growth in the short-term; nor to promote oil extraction (for which regional governments may, for instance, improve the investment climate, or reduce taxes); and not to smooth the rapid fluctuations in provincial revenues (for which the regional stabilization funds, the debt market and other instruments are at hand). It won't even make coffee—besides, it's cheaper to use a coffee machine.

4. Conclusion

An examination of the case of India and Russia with regard to the equalization objective has thrown up interesting observations. Both

countries in the last ten years have endeavoured to achieve the equity objective.

In India's case, successive Finance Commissions have managed to bring about equity by reducing the horizontal and vertical imbalances. However, the reduction of these imbalances in some cases has not taken place in a rational manner. Policies like freight equalization have encouraged the achievement of lower rather than higher levels of equilibrium. They have penalized the better performing states in order to make them compete at the same level as the less well-off states. However, there is increasing evidence of the narrowing down of vertical and horizontal imbalances over the years. This only shows that the Indian Union is moving towards more rational forms of equalization. The Indian experience of appointing a Finance Commission every five years to make recommendations on the transfer of resources from the centre to the states might be useful for the Russian Federation, to make the system more stable and predictable to regional governments. In the case of Russia, we may make different conclusions in depending on the length of the observed period. If we compare the initial point of the equalization programme in 1994 with the recent formula, great progress apparent. But it is an illusion that there is constant progress in terms of the equalization programme's rationality. In developing its equalization programme, Russia has made some steps back and the main problem is in the fact that these steps are presented as victories for rationality.

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To What Extent do Central Governments Erode Subnational Jurisdiction using Fiscal Arrangements?

Perspectives from India and Italy

Sanjay Kumar Pandey Augusta Badriotti

1. Introduction

At present, nearly 40 per cent of the world's population lives in one or another form of federal system. Federation is not a static and rigid concept; it has evolved into different forms in different countries. These structures of government have evolved over time depending upon historical, political, cultural, geographical, and economic factors.

The aim of this paper is to describe the path toward federalism and its fiscal arrangements in two very different countries: one – India – a State whose Constitution introduces a federal system as the basic structure of government for the country, with more than a billion inhabitants and with huge territorial differences and disparities; the other – Italy – a bit older and with less than 60 million inhabitants and some territorial differences, and traditionally a strong unitary State only recently introducing some federal elements.

India became a federal State after its independence; however, its degree of federalism is a debatable issue due to certain unitary features of the Indian Constitution. The Indian Constitution, in its Seventh Schedule (Article 246), defines the powers and functions of the centre (national government) and the states (subnational government). The Schedule specifies the exclusive powers of the centre in the Union List; exclusive powers of the states in the State List; and those falling under the joint jurisdiction are placed in the Concurrent List. All residuary powers are assigned to the centre. The nature of the assignments is fairly typical of federal nations. The functions of the central government are those required to maintain macroeconomic stability, international relations, trade, and those having implications for more than one state. But in practice does this really happen? Or is there a need to rethink this question of assignment?

Italy since its unification has been a highly centralized State and has in the last decade undertaken several steps toward decentralization of political and fiscal powers. Title V of the Italian Constitution has been revised redefining the assignment of competences between all levels of governments, granting in particular new accrued power to regions that now enjoy powers comparable to those of a state in a federation. As a result, the role of subnational entities should have grown. But has it? Or is the subnational jurisdiction being gradually eroded by the central government?

The particular form of fiscal arrangements in a country are not a rigid scheme applicable to all federations, rather it reflects the peculiar and different forces of nation making. In this process, member jurisdictions may retain certain fiscal prerogatives while surrendering others, thus affecting the resulting fiscal structures. Apart from these political and historical factors, there are also good economic reasons why certain fiscal functions should be operated on a more centralized level, while others should be decentralized. Richard Musgrave in his classic, *The Theory of Public Finance*, formulated a three-branch division of the fiscal functions of a

¹ Richard A. Musgrave and Peggy B. Musgrave, *Public Finance in Theory and Practice*, McGraw-Hill International Editions, 1989.

government—resource allocation, redistribution, and stabilization. In federations, these fiscal functions are assigned to different levels of governments on the basis of comparative advantage.

2. Indian Fiscal Federalism

2.1 Constitutional Provisions

The Indian Constitution assigns the exclusive, concurrent, and residuary powers and functions of the centre and the states. The major subjects assigned to the states comprise public order, public health, agriculture, irrigation, land rights, fisheries, industries, and minor minerals. The states also assume a significant role for subjects in the Concurrent List like education and transportation, social security and social insurance. The assignment of functions and powers, particularly tax powers, has certain anomalies which gives more financial strength to central government in comparison to state governments. There are, however, constitutional and statutory provisions to neutralize or minimize these anomalies.

The assignment of tax powers in India is based on a principle of separation, i.e. tax categories are exclusively assigned either to the centre or to the states. Most broad-based taxes have been assigned to the centre, including taxes on income and wealth from non-agricultural sources, corporation tax, taxes on production (excluding those on alcoholic beverages), and customs duty. A long list of taxes is assigned to the states. However, only the tax on the sale and purchase of goods now in form of VAT has been significant for state revenues. The centre has also been assigned all residual powers, which implies that the taxes not mentioned in any of the lists automatically fall into its domain. This tax assignment system has some notable anomalies. The separation of income tax powers between the centre and states based on whether the source of income is agriculture or non-agriculture has opened up avenues for both avoidance and evasion of personal income tax. Second, even though from a legal perspective taxes on production (central manufacturing excises) and sale (state sales taxes/VAT) are separate, they tax the same base, causing an overlap and leaving less tax room to

the latter. Finally, the states are allowed to levy taxes on the sale and purchase of goods, but not services. This, besides providing avenues for tax evasion and avoidance, has also posed problems in the levy of a comprehensive value added tax. However, on the tax reform front, after VAT, the next logical step should be a unified Goods and Services Tax (GST), which combines the central and state VATs. One anomaly in this transition has been the status of taxes on services. The original Constitution implicitly assigned service taxes to the centre, through its residual powers over taxes. In 2004, the central government chose to add service taxes explicitly to the Union List, via a constitutional amendment.

2.2 Indian Fiscal Federalism in Practice

The result of the assignments of tax and expenditure authority, as well as their implementation in practice, has been a substantial vertical fiscal imbalance. In 2002-3, the states on average raised about 38 per cent of government revenues, but incurred about 58 per cent of expenditures (the figures focus on current expenditures and revenues). Transfers from the centre made up the balance. In fact, the ability of the states to finance their current expenditures from their own sources of revenue has seen a long-run decline, from 69 per cent in 1955-6 to 52 per cent in 2002-3. While the expenditure shares of central and state governments suggest a fairly high degree of decentralization, states' control over expenditure policies is less than the figures indicate since about 15 per cent of states' expenditures were part of centrally sponsored schemes involving specific purpose transfers administered by various central ministries.

On account of diverse socio-economic factors, there is an imbalance between revenue capacity and expenditure need of the states, and it varies across different states depending upon the size of their tax base, the size and composition of population, and other factors affecting the cost of providing public services. The richer states, due to their high capacity, can provide better standards of public services than their poorer counterparts.

As a mechanism to take care of vertical and horizontal imbalances, there are three channels of current transfers from the centre

to the states. First, the Finance Commission decides on tax shares and makes statutory grants. Second, the Planning Commission makes grants and loans for implementing development plans (which are discretionary transfers). Third, there are the central sector and centrally sponsored schemes, in which various ministries give grants to their counterparts in the states for specified projects either wholly funded by the centre (discretionary transfers through *central sector projects*) or requiring the states to share a proportion of the cost (discretionary transfers through *centrally sponsored schemes*).

2.2.1 Fiscal Transfers

The Finance Commission. The Finance Commission is constituted in accordance with Article 280 of the Constitution of India. The existence of an independent Finance Commission renewed every five years is a unique feature of the Indian fiscal federalism. The Finance Commission gives its recommendations on devolution of taxes to the states, prepares forecasts of the revenue receipts and expenditures of the state governments and recommends grants against financial gaps of those states which have a deficit even after devolution of central taxes.

The Commission also recommends grants for upgrading various facets of administration such as police, jail, education, road maintenance, as well as for specific problems like natural calamities and devolution to local bodies. The Finance Commission attempts to achieve the maximum possible balance between competing demands of the states and the requirements of the centre in discharging their respective duties and responsibilities. There are three major aspects of the Finance Commission recommendations so far:

- (i) The Finance Commission has steadily raised vertical transfers in the divisible pool of central taxes.
- (ii) All the Commissions until the Eighth Finance Commission (1984) followed what is known as the "gap-filling" approach, i.e. the gap between revenue receipts and expenditures, and recommending non-plan deficit grants to fill the financing gaps arrived at on this basis. This encouraged the states to increase their non-plan revenue

- expenditure, incurring deficits, as they anticipated the financing of such gaps by grants from the Finance Commission. The Ninth and Tenth Commissions, however, followed a normative approach in this regard.
- (iii) In the formula devised for redistribution of the divisible pool of central taxes among the states, the Finance Commissions have relied heavily on backwardness criteria, measured in terms of per capita income. The absence of any weight for a state's tax effort in the formula for redistribution of devolution until the Tenth Finance Commission has provided little incentive for the states to maximize their resource mobilization effort.

So far, twelve Finance Commissions have made recommendations and, barring a few exceptions, these have been accepted by the central government. However, the working of these Commissions, their design of the transfer system, and the approach and methodology adopted by them has come in for criticism. In particular, terms of reference of last two Finance Commissions (Eleventh and Twelfth) marked a greater divergence from the constitutional mandate and further pushed state governments along the path of economic reform.

Through the Presidential Order of 28 April 2000, an attempt was made to alter the constitutional mandate of the Eleventh Finance Commission, which was asked "to draw a monitorable fiscal reform programme aimed at reducing revenue deficit of the states and recommend the manner in which the grants to the states to cover the assessed deficit on their non-plan revenue account may be linked to progress in implementing the programme". This had two far reaching implications—one, that "fiscal reform" was constitutionally legitimate; and two, it sought for the centre the right to use assistance to cover non-plan revenue deficits as an instrument to enforce compliance.

The terms of reference of the Twelfth Finance Commission included suggesting "a plan by which the (state) governments, collectively and severally, may bring about a restructuring of the public finances, restoring budgetary balance, achieving macro-

economic stability and debt reduction along with equitable growth". The implications for states are clear: access to resources would depend on the states' compliance in raising user charges for its public services, privatization of state-owned public enterprises, and becoming more self-sufficient in resources.

The balance of power has perceptibly shifted in favour of the centre in the past decade. The acute fiscal crisis which states face, characterized by bankruptcy, rising debt, and debt servicing expenditure, is confirmed by the Reserve Bank of India (the central bank) in its Report on State Finances of the last few years. The increase in revenue and fiscal deficit has accompanied falling real government spending on development, and though the extent of this is higher in backward states, it is a far more generalized phenomenon across states.

Normally, states are blamed by the centre for this fiscal crisis on account of their fiscal profligacy, or no serious effort being made for revenue mobilization through tax effort and user charges, etc. But when looking at this aspect empirically, it is the centre rather than the states that has been derelict in resource mobilization and tax effort. Due to several fiscal measures, such as the reduction in tax rates and tax concessions, initiated by centre, there is a decline of tax-to-GDP ratio from 10-11 per cent in the early 1990s to 8-9 per cent after the late 1990s. One quarter of this was offloaded to state governments and mandatory transfers fell from 3 to between 2.5 and 2.75 per cent of GDP during the ten years beginning in 1993-4. As a consequence of the fall in the central tax-to-GDP ratio, the ratio of fiscal transfers from the centre to the states as proportion of GDP has declined from 5 per cent (Eighth Finance Commission), 4.9 per cent (Ninth Finance Commission) to 4 per cent (Tenth and Eleventh Finance Commissions). Non-Finance Commission transfers have also declined by 4 per cent of GDP. The Twelfth Finance Commission noted that an increase in the share of the states in central tax revenues from 29.5 to 30.5 per cent and the overall ceiling on transfers by 0.5 per cent to 38 are unlikely to offset the potential shortfall on account of the decline in the central tax-to-GDP ratio.

The centre has tried to keep more and more resources outside the divisible pool resulting in greater centralization. The share of those sources of revenues that are outside the divisible pool, from which states receive finances (such as special surcharges) has grown, with a negative impact on the states. Within the divisible pool, there is a tendency on part of the centre to make devolution conditional. The Twelfth Commission has deliberately created a framework to push fiscal restructuring, by banning increases in grants and tightening borrowings. Nine of the ten grants are tied—all of them except the non-plan revenue deficit grant. Norm-guided grants that cover the deficits of the states are only 40 per cent of all grants, while 60 per cent of these special-purpose grants are discretionary without a transparent criterion. The first two Finance Commissions, however, argued that statutory grants through the Finance Commissions should be "residuary and should be mostly automatic and unconditional", directed at best to particular purposes. The Twelfth Finance Commission has deviated from this and suggested minute implementational and institutional details.

Until the late seventies, most of the states had either no deficit on their revenue account or only a marginal one. For a number of reasons, states' debt burden increased during the 1980s and 1990s. In the name of stabilization during the 1990s, the interest rate on loans from the centre remained very high even if the rates of interest on market and other non-government loans declined. This resulted in larger interest payments, and states having to incur additional debt on this account, leading finally to them being caught in a vicious and self-perpetuating debt trap. Thus, a centrally-controlled high interest rate regime resulted in a spiraling debt burden for states. In response, the Twelfth Commission has introduced a package for debt reduction with two main components:

- (i) The consolidation of all state debt outstanding to the centre on 31 March 31 2004, at an interest rate of 7 per cent, to be repaid over 20 years.
- (ii) The second, and much more problematic, proposal is a new debt relief scheme linked to the reduction in the revenue deficits of states.

Under this scheme, the repayments due on central loans from the year 2004-5 to 2009-10 (after consolidation) will be eligible for write-off, but the amount of the write-off will be linked to the absolute amount by which the revenue deficit is reduced in each successive year over the entire period. A precondition for eligibility for this scheme is the enactment of the fiscal responsibility legislation.

Not content with requiring that states enact fiscal responsibility legislation as a precondition for obtaining the debt relief, the Twelfth Commission has also specified what such legislation should meet as a target.

This includes the following features:

- (i) Eliminating the revenue deficit by 2008-9;
- (ii) Reducing the fiscal deficit to 3 per cent of Gross State Domestic Product (GSDP) or its equivalent defined as a ratio of interest payments to revenue receipts; and
- (iii) Bringing out annual reduction targets for revenue and fiscal deficits.

In addition, the Commission recommends that "states should follow a recruitment and wage policy, in a manner such that the total salary bill relative to revenue expenditure net of interest payments and pensions does not exceed 35 per cent". The Commission even demands withdrawal or reduction of the public sector: "In the period of restructuring, that is 2005-10, state governments should draw up a programme that includes closure of almost all loss making State Level Public Enterprises (SLPEs)."

So, it can be seen that in recent years the Twelfth Finance Commission, which is a constitutional body meant for recommending fiscal transfers, is being used to undermine state fiscal jurisdiction.

Planning Commission. The Planning Commission, the apex body for approval of the Five Year and the Annual Plans of the states is another major source of resources from the centre to the states, in addition to the statutory tax-devolution and grants-in-aid recommended by the Finance Commission. Plan grants and loans to the states for financing their development programmes under the Five Year Plan and Annual Plans were initially project-based,

but later according to an agreed formula known as the Gadgil Formula.

Central Plan Assistance to state plans can be broadly classified into two categories: Central Assistance (Domestic) and Additional Central Assistance for Externally Aided Projects (EAPs). Central Assistance (Domestic) includes not only the Normal Central Assistance (NCA), but also other additional central assistance to states for other programmes, such as Basic Minimum Services (BMS), Slum Development Area Programmes (SDAP), Accelerated Irrigation Benefit Programmes (AIBP), and other central support for state plan.

Special vs. Non Special Category States. For the allocation of Plan Assistance, states are classified broadly into two groups, Special Category and Non-Special Category states. The Special Category states are those states which are in a strategic location on the border with neighbouring countries, hilly terrain, inadequate economic and social infrastructure, predominantly larger tribal population, or a limited resource base compared to development needs.

For Special Category states 90 per cent of the NCA is given as grants and 10 per cent as loans. In the case of Non-Special Category states, however, only 30 per cent of NCA is given as grants and 70 per cent as loans. Irrespective of the original terms and conditions of the external aid, when such aid is passed on to the state, it is provided on the same terms and conditions as NCA. In respect of other components of central assistance to states, as mentioned above, there are specific guidelines relating to each special and other programme.

For implementation of schemes approved by the National Development Council (NDC)² and monitored by the Planning Commission, the loan component of resources is important. Now, when the centre is forcing states to rely on the market for these loans, less developed states are going to suffer on the implementation of plan-projects.

² The highest economic decision-making body, comprising the Prime Minister, Deputy Chairman of Planning Commission, all Chief Ministers, and other key central ministers such as finance, commerce, etc.

Centrally Sponsored Schemes. There are also large numbers of development programmes known as Centrally Sponsored Schemes (CSS), which are initiated by the centre and implemented by the states in various sectors. These schemes are largely financed through assistance from the centre, with some share from the states, which may vary from scheme to scheme. They cover a variety of development-oriented schemes ranging from poverty alleviation, family planning, and employment programmes in the rural areas to a large number of small schemes in sectors like agriculture, education, and health – areas which fall squarely within the states' purview. Many of these schemes have a large staffing component with the posts in a number of cases continued across several planning periods, the cost either being met fully or partly by the centre.

This has become an important channel for fiscal transfer to states. The centre imposes its development objectives on the states through these schemes, which may not match with the developmental priorities of the states. But poorer states have no choice but to accept the terms and conditions imposed by the centre.

2.3 Some Future Challenges from the Indian Perspective

Looking at the structure and practice of Indian fiscal federalism, it can be said that it is well planned and designed for a country like India with diverse social, political, economic, and cultural dimensions. In practice, there still exist vertical and horizontal imbalances within the system. In recent years, particularly in the period after 1991,³ there have been efforts to push a reform agenda through the states using constitutional and statutory bodies such as the Finance Commission and Planning Commission, and other mechanisms like the Centrally Sponsored Schemes. Now, most of the recommendations for fiscal transfers include conditionality which

³ In 1991 India adopted New Economic Policy (NEP) under which its economic policies were liberalized and economy was opened-up. Economic reform under the broader framework of NEP is still going on.

undermines the fiscal authority of the states. Arbitrary limits to revenue and fiscal deficits can prevent important and socially necessary public expenditure, which is required to improve current welfare and future growth prospects. There is no reason to keep capital expenditure within some predetermined limit, since even debt sustainability depends upon the relation between the interest rate and anticipated return from public investment. Apart from this, there is the issue of social returns, which appear to be completely ignored by the recommending bodies.

Such conditionality will affect states in a number of ways. The revenue raising capacity of the states is limited, even more so since the centre has taken upon itself all powers to tax service sector incomes. In this situation, if revenue deficits are to be progressively reduced and brought down to zero, this necessarily means that revenue expenditures will have to be cut. In most of the states, by far the largest item of expenditure on the revenue account is salaries. It is false to see these as unnecessary or unproductive expenditures, since these are for those who are to provide the important public services that everyone acknowledges to be essential. Since state governments are responsible for almost all of the expenditures that affect the quality of life of ordinary citizens on the ground, from infrastructure and sanitation to health and education, preventing expenditure on wages and salaries for those who would perform these functions is an impossible proposition.

3. Italian Fiscal Federalism

3.1 The Origins of Decentralization in Italy

In Italy, a decentralization process from the central to regional and local governments is taking place. Yet this process only began in recent years: from the unification in 1861 until the 1970s, Italy was *de facto* organized as a centralized state. After the fascist dictatorship Italy became a republic with the new Constitution of 1948 which provided for some elements of federalism. Article 5, for instance, acknowledged local autonomies; Title V provided for the creation of Regions (Article 131) and defined their legislative powers

in some areas and recognized special autonomy to certain regions located in disadvantaged areas and because of cultural and linguistic differences.

Despite all that, the creation of regions was only implemented many years later; only the Special Statute Regions (Trentino-Alto Adige, Friuli-Venezia Giulia,⁴ Valle d'Aosta, Sicily, and Sardinia) were established immediately after the coming into force of the Basic Law, with extensive expenditure autonomy and central funding which cannot be changed by ordinary law.

The remaining 15 "ordinary" regions were only created in the 1970s as an intermediate level between local levels (provinces and communities). For many years the regions served mainly as administrative tool of the central government, betraying the original formulation of the Constitution.

According to the original formulation of Title V (especially of Article 117) of the Constitution, ordinary regions had the authority to formulate legislative initiatives complementary to or within the framework of national legislation. Therefore, they could not legislate independently from the state. Within these limits, they had legislative powers in many fields, including local police, health assistance, and also had the obligation to act as an administrative branch for the central government (Article 118).

In the 1990s, economic and political crisis pushed citizens to demand more accountability at the political level: it was exactly in those years that new steps towards decentralization began. With Act 142 of June 1990, municipalities and provinces were given the right to adopt their own status and define their organization while Law 158/1990 changed the mechanisms of financing regions. In the following years many laws were passed in order to reform local (and regional) finances, instituting new taxes like ICI (property tax) and IRAP (professional tax) and changing the grants mechanisms and the system of transfers from the centre to the subnational entities. Another important step was Act 59/97 and 127/97, the so-called Bassanini Laws, which started a deep administrative reform of the state that is still under way. In the same

⁴ Friuli-Venezia Giulia's status was only approved in 1962.

year another important law was passed, Law 281/97, introducing an intergovernmental forum. Furthermore, during the 1990s a series of other acts were approved, always with the aim of modernizing the inefficient public administration and to fulfil the requirements on public finances established by the Maastricht Treaty. In order to harden the budget constraint of subnational entities, by 1998 an Internal Stability Pact was passed, Law 448/98, defining a system of punishments to control aggregated public finance.

These legislative initiatives, however, did not change the relative weight of subnational entities in the aggregated finances as these acts did not change the actual distribution of functions between the entities. As result, these initiatives were not considered farreaching enough and some regions began requesting further reform along federal lines. Also in consequence of the electoral success of the Northern League party in the 1990s, the federalism issue entered in the Italian public debate.

3.2 The Reform of the Constitution in 2001

The reform of the Title V of the Basic Law, which modified Articles 114 to 133, took place on 8 November 2001, after being approved by the Parliament and confirmed by a referendum (Constitutional law number three of 2001). As for Articles 117 and 118, important changes were introduced, particularly a dramatic increase in the number of concurrent competencies shared by the national and regional governments. Regions were accorded legislative powers in areas of their exclusive competences in both spending and taxing areas. However, this reform also presents problematic and unresolved aspects, as power-sharing in the areas of overlapping competences was not clear, giving rise to numerous conflicts of interpretation.

The new Constitution establishes as exclusive competences of the central state foreign policy, immigration, religious affairs, currency, the national tributary system, national bookkeeping, fiscal equalization, electoral systems, public order and security, citizenship, definition of minimum standards in public services provision, general framework on education, on welfare, on environmental protection, and on cultural and artistic goods. All other functions are regional competences, except for those defined concurrent among which international trade, education, scientific research, professions, and health care.

This reform changes the nature of the Italian state toward a federal state but gives no indication on how fiscal relations between the different levels of governments should be designed, leaving to ordinary laws the task of redesigning the resource and expenditure interaction between the centre and the periphery.

Between 2001 and 2006, several follow-up constitutional reform proposals were proposed by the government in charge known as *devolution laws*: re-specifying health, education, and administrative police as areas of exclusive regional competence; the creation of a second chamber as a federal senate; as well as a substantial modification of the powers of President of the Republic and the strengthening of the power of the Prime Minister. Eventually this reform did not change much in the fiscal relations between the different levels of governments. The law known as law 268/2005 did not pass the popular referendum test in 2006, and so the 2001 reform with its imperfections continues to be in force and to pose questions about allocations of responsibilities between the various levels of government, and more problematically still, the need to find solutions through ordinary law.

The constitutional reform process is not finished yet, as the new articles are difficult to interpret and leave many contentious issues, and are full of deficiencies that make their translation into ordinary law very difficult. The general picture is that the Constitution calls for a rather high degree of federalism, but its implementation has been non-linear because of political disagreements.

3.3 Fiscal Arrangements between the Centre and the Regions

Fiscal arrangements between the central government and the subnational entities have seen devolution of competencies over the last 15 years. The devolution reforms in the 1990s increased the share of subnational government spending, rising from nearly 15 per cent in 1990 to nearly 30 per cent in 2005, as well as the resources to finance these expenses. Fiscal federalism has evolved, aiming at improving the efficiency of public services and to better meet the desire of citizens to decide and control their own destiny. However, the results are still far from being satisfactory.

By now subnational spending is financed by a mix of own revenues, shared taxes, state transfers, and debt. New tax assignments have kept pace with new spending responsibilities but the devolution of tax and spending powers remains highly disproportionate: subnational tax revenues cover less than half of their current expenses, leaving a substantial role to state transfers. This reflects a vertical financing gap that, while contrary to the intent of the new Constitution, is nevertheless reinforced at the practical level.

Generally, three different types of fiscal arrangements among different levels of governments can be identified: (i) tax base and revenue sharing mechanisms, (ii) intergovernmental transfers, and (iii) institutional arrangements, including independent grant commission, intergovernmental forum and intergovernmental cum civil society forum.

The actual resources of regions consist of the IRAP professional tax, the tax surcharge on personal income tax, fuel tax, and a share of VAT, but these resources are not sufficient to cover the expenditures derived from the provision of goods and services as established by the new Constitution. Until now, this imbalance has been covered by ad hoc transfers from the central government.

In order to give regions fiscal autonomy, tax bases and revenue shares should be better designed, and a higher degree of coordination between the centre and the periphery is needed. Furthermore, as discussed below, the decree Law 56/2000 should be revised.

A different approach to promote a more intense cooperation between the central and local governments is by setting up institutions where macroeconomic objectives, budgetary programmes, and the related enforcement mechanisms (such as the Domestic Stability Pact) are established through a negotiation process involving different tiers of government. The complexities inherent in intergovernmental fiscal relations strongly suggests, following the examples of Germany and Australia, that some decision-making powers should be assigned to an independent fiscal council, where all levels of governments are adequately represented. The fiscal council provides the forum where a number of delicate issues can find resolution: the decision about overall deficit target allocation across different levels of government, the monitoring of compliance of such limits; the definition of budgeting rules effective for both central and local governments; the setting up of uniform standards and financing responsibilities in the case of concurrent functions among central and regional governments; and the determination of equalizing criteria underpinning the system of interregional transfers.

3.3.1 Art 119 of the Constitution

The general framework for fiscal arrangements between the central and subnational entities is established by Article 119 of the new Constitution. Article 119 gives complete revenue autonomy to lower levels to finance their normal activities, with the introduction of an equalization fund designed to have a marginal role in poorer regions. The separation of powers in terms of precise revenue sources was left vague and dependent on ordinary law. The Article identifies different means of financing: own taxes, and tax sharing supported by an equalization fund (general purpose grants) without assignments for entities with lower fiscal capacity. The Article establishes that these three types of resources should allow subnational entities to be fully financed. Finally, it is established that regions and local entities can issue debt only to finance public investments.

3.3.2 Decree Law 56/2000

Already before the reform of the Constitution, the government passed a decree law known as 56/2000, where intergovernmental fiscal relations were redesigned with the aim of redefining interregional equalization and developing greater local fiscal autonomy. The decree law regionalized health expenditure and introduced new instruments to finance subnational governments, among them

tax sharing arrangements on personal income tax, on fuel tax and the new equalization method. In particular, this decree law abolished central government transfers and replaced them with a rulesbased system of regional sharing and horizontal equalization based on a portion of national VAT receipts. The sharing of the national VAT revenue would become the highest source of regional revenue. According to this law, the sharing formula allocates 38.55 per cent of national annual VAT revenues to the regional level and then divides this amount by each region's share in national consumption. 40 per cent of this amount would constitute the basis of the national equalization fund where rich and poor regions benefit according to their historical spending, resident population and deviation from national average tax capacity. The setting of the tax sharing formula would be established with the collaboration of subnational levels via the State-Regions Conference with periodic modifications if necessary.

In the end, this decree was never completely implemented as some mistakes were made in the calculation of transfers and other parts of the constitutional reform remained to be implemented. At the end of 2004 the government suspended the validity of the equalization systems (decree 314/2004) and since 2002 no agreements on equalization funds have been achieved and for matters related to health financing, monthly transfers are used, while the financing of the administrative decentralization is done through.

Nevertheless, this decree remains relevant and the model of fiscal relations presented seems consistent with new Article 119 and its insistence on eliminating ordinary central government transfers through financial self-sufficiency in the regions. In 2005, the High Commission on Fiscal Federalism (ACOFF) proposed a revision of the decree law modifying the taxes assigned to regions and instituting a vertical equalization system in which each region is guaranteed 95 per cent of their fiscal requirements through own taxes and tax sharing.

Seven years after the decree law 56/2000, a new proposal on the application of fiscal federalism appeared in the summer 2007, approved by the national government but not by the Unified Conference (State-Regional, Provincial-Local). Unfortunately, the new proposal renders the political acceptance of fiscal federalism even more difficult. For example, Article 6 establishes that equalization for municipalities under a certain population threshold is done by the region and establishes the shift to an equalization fund mechanism based on production standard costs for the provision of certain social services and no longer on a historical expenses basis. The transitional phase to its full implementation is similar to that of Decree 56/2000—fixed for 5-10 years—and hence a long transitional period that will end in 2013 or even later.

3.3.3 Grants and Equalization

According to the new Constitution, regions should be fiscally autonomous and the central government is responsible for an equalization fund for those entities with lower per-capita fiscal capacity. Until to now, the discussion around how to structure this fund has been very prolonged and, aside from decree law 56/2000, there has been no other serious attempt to define the new equalization system. Agreements on how to redistribute resources among regions have until now been made on a year-by-year basis and have shown several design weaknesses:, the difficulty of establishing the fiscal need of a region (at the moment based on historical expenses); the strong dependence of regional resources on the tax base (hence on economic cycles of the regions); and the possible increase of dualism with the consequent need to compensate for these disparities with an ever-larger equalization fund.

The new Constitution establishes that all regions should treat identical persons identically in the provision of public services. In order to ensure this, all regions, depending of their fiscal capacity, would receive a transfer to meet the needs of the population. The definition of these minimum standards has also encountered several problems.

This raises the critical question of how to the design of the fiscal equalization through local assignment of the tax system. This poses the question about how to optimally design an equalizing system that guarantees the necessary yield of autonomous tax effort by local authorities and at the same time provide for right incentives for poorer jurisdictions without discouraging richer ones.

3.4 Some Future Challenges from Italian Perspective

Building on this general framework, the main suggestions offered by the recent Italian experience can be summarized as follows. It is generally recognized that the strengthening of (marginal) tax autonomy at subnational level is needed to improve subnational government accountability. However, this contrasts with the difficulty of relying on taxing powers consistent with the fundamental features required by the literature on fiscal federalism. In this sense, a possible solution consists of recognizing and allowing subnational governments' significant room for manoeuvre in setting surcharge rates on taxes shared with the central government. Attempts should be made to define a more transparent separation of the assignment of public expenditure responsibilities between central and local governments, in terms of designing, implementing, and financing public programmes.

The system of intergovernmental fiscal relations in Italy has moved in cycles with varying degrees of decentralization. As measured by the ratio of local-to-total public spending, the degree of decentralization has steadily increased following the increased activity of regional governments. The functions assigned to regional and local bodies have progressively increased over time as a result.

The system of fiscal federalism designed by the new Constitution, however, is far from being satisfactory. On the expenditure side, the sharing of responsibilities between national and regional government is marred by the overlap of legislative competences on a variety of crucial public activities. Inadequacy is even greater on the financing model, as the new Constitution does not state clearly the fundamental choices on the degree of interregional diversity that the new system is expected to generate in the provision of public goods. Great emphasis is laid on own taxes (which differ greatly in per capita terms in different regions due to long-standing differences in per capita incomes), but no indication is provided on the extent to which fiscal capacity should be equalized.

To fulfil the reform in the direction of federalism there is an urgent need to implement Article 119 defining new regional and

local tax assignments. This should be correlated with spending functions, allowing regions to participate in determining a defined and flexible VAT sharing mechanism, and defining a new redistribution mechanism with a hard lower level budget constraint in order to avoid the common pool problem that has a long tradition among certain subnational governments in Italy.

4. Conclusion

The two case studies described show how fiscal relations among different levels of government are a sensitive topic and that different historical, social, and economic factors may lead to different pathways. In the case of Italy, steps toward federalism are seen as a way to reduce national/central interference in the lives of citizens. Until now, a significant advance toward decentralization and regionalism has been reached. Further developments are difficult to foresee, however, because of the reluctance of the central government to implement the necessary laws. Also in the case of India, where the federation has existed for around 50 years, the central government tends to prevail over its constituent units, dictating unilateral arrangements to maintain the national unity among the very heterogeneous subnational entities.

In a world of growing integration and economic interdependence, fiscal arrangements are necessary either to maintain national cohesion (through an adequate perequation system) and to face international pressure more effectively (negative and positive externalities do not stop at national borders). Fiscal arrangements should be flexible enough to allow single jurisdictions to perform the policies asked for by their citizens and to maintain a sound fiscal system and the cohesion of the federation.

A high level of vertical earmarked grants suggests an inclination towards interfering in subnational entities from the central government, but is also a way to overcome certain gaps in the provision of services (guaranteeing a minimum standard level across the country). Even if specific-purpose grants are used extensively to minimize the risk of suboptimal spending in domains characterized by significant positive spillover effects, or to secure minimum

standards for specific services throughout the country, unconditional grants increase the discretionary power of local governments as to how to organize local provision in the most effective way.

Other arrangements like internal stability pacts are useful to guarantee the sustainability of public expenditures and avoid free-riding and bailing-out opportunities. But at the same time, they can hinder the dynamism and growth of an area that would need more flexible public policies at a given moment to foster economic developments.

What is really essential in designing such fiscal arrangements is the active involvement of all parties, who should agree on certain issues and cooperate to fulfil them, as well as the existence of open forums in which variations and updates to fiscal arrangements are periodically discussed. This is essential to keep the precarious balance between the (often diverging) requirements of the different constituent units of a federation.

THEME 3 INTERACTION IN FEDERAL SYSTEMS

Intergovernmental Responses to Water Disputes in Australia

Adam Wand

1. Introduction

Measured on rainfall levels, Australia is naturally the driest populated continent on earth. The more recent impact of climate change has greatly compounded the effects of water scarcity on the Australian economy, society, and environment. The ever-present and increasing scarcity of water throughout the Australian federation gives rise to a considerably high risk of disputation over water resources, their allocation, and the risk of over allocation and a commensurate need to manage these risks. The geographical area in which this risk is highest is the Murray-Darling Basin (MDB), an area one million square kilometres in size or 14 per cent of Australia, that straddles the states of New South Wales (NSW), Victoria, Queensland, South Australia, and the entire Australian Capital Territory (ACT) and is based around the rivers Murray and Darling, the former of which actually forms a long inter-state boundary. As a product of both the multi-jurisdictional nature of the MDB and its problems and due to fact that legislative responsibility for water and environmental management under the Australian constitu-

*The content of this paper is exclusively based on the personal views of the author. They do not, in any way represent the views of any other party, including any Government or Minister thereof. tional structure is shared between both the state and federal levels, the Australian system has approached the issue of water management and disputation with the objective of pre-emptive avoidance through various tools of innovative cooperative federalism, particularly through intergovernmental agreements. It is of great concern then, that in more recent times it appears that the Commonwealth level is trending towards an abandonment of cooperative federalism, in relation to water and numerous other issues, in favour of what has been termed "opportunistic federalism," an approach that threatens past agreements and in its latest guise in the form of the 2007 *National Plan for Water Security* has itself given rise to a major new dispute related to water.

Australian Federalism: An Overview and Trends

Australia is one of the oldest functioning federations in the world, arising as it did out of a series of conventions held during the 1890s between then British colonies. Formal federation occurred in 1901 by way of the enactment by the Imperial Parliament of the Commonwealth Constitution. Over the 106 years since Federation, Australia has maintained a highly stable system of democratic government administered eventually by six states, two territories, and the federal-level Commonwealth. The Constitution does not confer on the Commonwealth Parliament the power to legislate on all subjects but rather enumerates its powers in a limited list. The states by comparison are able to legislate on a much broader array of issues, being bound only by the limits placed on them by the national Constitution. Thus, on paper, it would appear that the Australian states are the most powerful level of the federation, yet this is not the case. Since Federation, the Commonwealth has steadily extended its powers and broadened its finances, supported by the regularly supportive interpretations of the High Court of Australia.

Several trends become discernable as long-term features of the Australian federation, namely, (i) a relatively high degree of shared functions, particularly as an outcome of the Commonwealth moving into areas of traditional state responsibility; (ii) a strong

centralising trend, supported by supremacy of Commonwealth law over inconsistent state law, the role of tied financial grants to the states and, as outlined above, by the High Court's interpretations (the most recent example of which is the key case of NSW vs. Commonwealth (2006) concerning the Federal takeover of the industrial relations system in which the Court made it clear that it would continue to give full breadth to Commonwealth powers regardless of the federal implications); (iii) a relatively high degree of vertical fiscal imbalance, with the states raising only 19 per cent of all taxes but responsible for at least 40 per cent of public spending; and (iv) a propensity towards innovative initiatives in cooperative federalism (Twomey and Withers, 2007).

Whilst all inter-jurisdictional issues within the Australian federation ideally need to analyse through the complex multi-layered lens of all four of these trends, it is the latter characteristic—cooperative federalism—that relates most closely to the issue of water management and disputation.

Cooperative Federalism and Water Policy

The enumerated powers of the Commonwealth Parliament do not expressly include the environment or water management. Yet, through the use of other powers, widely interpreted by judicial review, environmental and water issues have been and remain the subject of Commonwealth legislation (and of course state legislation also). An example of this is seen in the use of the external affairs power to allow the Commonwealth to legislate on an environmental issue domestically in order to give effect to an international environment treaty, even when the Commonwealth is not a party to the international agreement. Furthermore, the Commonwealth's role in water issues is reinforced by the existence of a Federal Minister for the Environment.

In part as a reaction to this trend, the Australian federation has an innovative track record in developing successful tools of cooperative, or what others have termed collaborative, federalism. Most notable of these are the Council of Australian Governments

(COAG) which first met in 1992 and consists of the Prime Minister and all Premiers and Chief Ministers. COAG meets at least annually and traditionally maintains a detailed and heavy working agenda. A further example is the more recent formation of the States and Territories-only Council on the Australian Federation in 2006. Both of these forums regularly consider water-related management and disputation issues. In addition to these whole-of-government forums, an immense array of subject-specific forums have been developed in areas requiring targeted collaboration. These range from the informal through to summits and formal intergovernmental agreements (IGAs).

Regardless of the constitutional niceties of legislative power allocation, the issue of water—where it rains and where water can be found—pays no respect to borders nor to the accompanying political bargaining. This is particularly so in the MDB and even more particularly so during periods of adverse climatic conditions. As such, the management of scarce water resources has a long history as a subject for IGA's within the Australian federation and within the MDB. In fact the first MDB IGA was signed between the Commonwealth and all relevant states in 1914. This was renewed in a 1993 IGA and most recently in the MDB IGA of June 2006, again signed by all relevant parties. This latest IGA, formalized by a detailed signed agreement 61 pages in length, has as its purpose, "to promote and coordinate effective planning and management for the equitable and sustainable use of the water, land and other environmental resources of the MDB".

Importantly, the IGA establishes the ongoing mechanisms for water management in the MDB, namely, a Ministerial Council made up of a maximum of three Ministers from each party, which will consider and determine major policy issues and authorize measures to achieve the purpose of the IGA. The Council must meet at least annually, although in practice most such Ministerial Councils meet at least twice a year. Decisions of the Council must be taken unanimously.

The Council is supported by the MDB Commission made up of a President and Commissioners, appointed by the parties. The Commission is tasked with giving effect to the Council's directions. The substantive areas of the Council and Commission's focus illustrate the underlying dispute avoidance and, if necessary, dispute management methodology of this approach to federal interaction. Work centres on investigating, measuring, and monitoring water in the MDB, all in aid of a transparent system of water distribution and management based on very specific individual state entitlements to water set out in a schedule to the IGA. The states retain ownership of the water itself and control of the allocation system within the state, once the water is distributed according to the IGA.

A key feature of this, and previous IGA's, is that it contains its own, albeit somewhat flawed, formal dispute resolution mechanism. Commissioners bring motions to the Commission on behalf of state parties; if the Commission cannot reach consensus agreement within two months the matter is referred to the Council, where if agreement is still unable to be reached in a further six months, any party can refer the matter to an arbitrator whose eventual decision binds the parties, the Council, and the Commission. This process has been criticized for being too slow and cumbersome.

Finally, in addition to this specific regime established by the MDB IGA for that river basin, cooperative federalism has also been the norm in relation to the national management of water and water disputation, most notably governed by the 2004 COAG-led IGA on a National Water Initiative. The National Water Initiative (NWI) is a federal-level reaction to the naturally cross-jurisdictional, and sometimes national, realities of water management and potential disputation. It highlights the variability of water resource security in Australia and requires all parties to undertake a series of 70 actions, most involving working across borders. In addition, the state and territory parties (namely, NSW, Victoria, South Australia, Queensland, ACT, and the Northern Territory) were required to develop NWI Implementation Plans. The NWI IGA also established a Commission that would fulfil an analogous role to the MDB Commission, in this case reporting to COAG rather than a Ministerial Council. However, differently from the purely cooperative nature of the MDB IGA regime, the NWI is linked to reform payments. That is, the Commonwealth has the power to suspend competition payments, being the financial benefits flowing directly from the Commonwealth to the states when they fulfil their various reform obligations. This occurred recently until the Prime Minister announced on 13 September 2007, that on the advice of the NWI Commission he was allowing A\$ 43 million in such payments to be disbursed on the basis of new and improved progress by the states on water reform. As such it can be said that the NWI initiative also contains an element of coercive federalism, although this element is secondary to its cooperative motif.

The overarching point here is to draw attention to the long history of cooperative federalism in the area of water management and water disputation, diversion, and management. Whilst there have been many criticisms levelled at these governance structures, especially that they are too bureaucratic and, in the case of the MDB Council too ineffective as a result of decisions only being taken by consensus, they have broadly delivered a cooperative response to the cross-jurisdictional problems of water and water dispute management.

4. The Drought and a New Approach to Water Policy

The drought facing south-eastern Australia, centred on the MDB, is potentially the worst since Federation and likely since well before. Large areas of NSW in particular are experiencing their lowest rainfall levels on record and across the MDB the level of inflows into the Murray River are equally poor with total monthly inflow consistently up to 95 per cent below long-term averages. MDB dams are largely dry and all major eastern state urban areas, and indeed most minor towns, are on varying levels of water restrictions as governments grapple with collapsing supply and expanding populations.

The worst affected are agricultural producers within the MDB. For example, the almost non-existent wheat crop is having international price ramifications on staple food items in the US and Europe, not to mention within Australia itself. The commercial price of irrigation water has pushed past A\$ 1,000 per megalitre

for the first time ever. The scale of the problem is exemplified by the Commonwealth's announcement just this week of a new programme of A\$ 700 million to support farming communities. In many cases the payments under this scheme will be transitional payments to move farmers off the land due to the very real likelihood, driven further by climate change, that most farming will be permanently impossible in large parts of the MDB.

It is in this water management environment that the Prime Minister, without prior consultation with any affected states or territories, launched the *National Plan for Water Security* on 25 January 2007. The Plan was stated to be for the purpose of improving water efficiency and addressing the over-allocation of water in rural Australia, where 70 per cent of Australia's water is consumed. As such the Plan has no impact on urban water strategies. It is to be backed by A\$ 10 billion in new Commonwealth money. Importantly, the MDB IGA would be abolished and the MDB Commission would be re-constituted as a Commonwealth Government agency, the MDB Authority, rather than the current statutory independent entity, reporting to the Commonwealth Minister rather than the multi-jurisdictional MDB Council.

The Plan was effectively announced as the Commonwealth's answer to the issues faced in the MDB. Specifically, the Plan would "address once and for all" water over-allocation in the MDB, establish new governance arrangements for the MDB and cap surface and groundwater use in the MDB, among other objectives. The central claim was that the cooperative federal governance arrangements outlined above were not in the best interest of the MDB, were "parochial" and "unwieldy and not capable of yielding the best possible Basin-wide outcomes". The Commonwealth claims there is a lack of MDB-wide water data; that Queensland and the ACT ignore the basin-wide water use cap and NSW is regularly in breach; that consensus decision-making at the MDB Council makes it ineffective; and that the inter-state nature of the substantive issues are not reflected in that states are able to negatively affect other states without sanction. As such the Commonwealth has requested NSW, Victoria, Queensland, South Australia, and the ACT sign a new IGA committing them to refer all of their legislative powers in relation to the MDB to the Commonwealth. Under the Plan, water would remain vested in the Crown in right of the states (i.e. the states would still own the water) but the issuing of entitlements to such water and their administration would pass to the Commonwealth alone.

Section 52 (xxxvii) of the Constitution provides that the Commonwealth has the power to legislate in "matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States". Under the Plan, it is the Commonwealth's contention that an efficient outcome can only be achieved with a single level of government performing oversight in MDB water management. Undoubtedly the drought's severity focused the Prime Minister's (the full Cabinet was not consulted prior to the announcement of the Plan) mind on it, as did the forthcoming Federal election due at the end of 2008. But as Twomey and Withers (2007) highlight, "the level of efficiency of the system depends upon how intergovernmental relations between these tiers of government are conducted and how powers and functions are allocated between the tiers". With the release of the Plan, the Commonwealth has acted unilaterally, abandoning the long-held tradition of relatively successful cooperative federalism in this field.

It would be highly unsound to assert that that history of cooperative federalism in water management in the MDB has delivered all the necessary solutions for the problems and disputes faced within the Basin. Also, the new order of magnitude of those issues as a result of the drought mean more and new action is urgently needed. However, the approach adopted by the Commonwealth is a risky and untested strategy at best and liable to lead to the collapse (with no clear replacement) of the current MDB IGA regime at worst.

Before turning to how this new direction has actually given rise to a new level of system dispute over water resources and their management, we should seek to place the Commonwealth's Plan in a broader federal trend being experienced in Australia, namely, "opportunistic federalism".

5. Opportunistic Federalism

Justice Kirby of the Australian High Court, in the minority in the industrial relations takeover case of 2006, called the outcome of that case "optional or opportunistic federalism". Effectively what he and others are referring to is when one level—here (and usually) the federal level—disregards the constitutional legislative power configurations and, as the opportunity or expedient need suits them, behaves outside their normal boundaries. In Australia, the Prime Minister in a recent speech delivered in August 2007 entitled Australia Rising to a Better Future fully embraced this approach, saying Australia should "embrace a sense of aspirational nationalism to guide relations between different levels of government" which will on some occasions "require the Commonwealth bypassing the states altogether". He specifically mentioned "getting the balance right" on the challenge of water scarcity as a key issue to be dealt with within this new rubric. Since that speech the Commonwealth has sought to take over individual hospitals, major export ports, and other key infrastructure, all exclusive state responsibilities.

This entire approach has been criticized on many fronts. Peter Hartcher of *The Sydney Morning Herald* called it a plan for a "constitutional coup d'etat" with "Australia rising" being only at the expense of the states sinking (SMH, 21 August 2007). The Australian newspaper editorial called it a "wily re-election strategy" (21 August 2007). Apart from the clear process weaknesses and the disregard for the well established mechanisms of cooperative federalism such as COAG, the Plan rests on the fact that the Commonwealth has the financial resources as a result of acute fiscal imbalance to fund the necessary reform while the states do not (Twomey and Withers). The principle of subsidiarity is ignored with no examination of which level of government is actually better placed to undertake the task. In fact, when we do examine this issue, it is clear that the Commonwealth has not only played a leading role in any inadequacies within the current MDB regime (as the MDB Council Chair among other key roles), but it has no particular expertise from a public service perspective in fulfilling the role it is seeking to assume (this being evidenced very clearly in the Commonwealth's offer to hire any and all state public servants working in the area the new Authority would control because of its own lack of expertise).

Some have pointed to the element of coercive federalism in the NWI IGA, that is, the ability of the Commonwealth to withhold payments unless reform is progressed, as evidence that this new more aggressively centralist type of federalism is not entirely new to water policy. The weakness in this argument is that the threat of "coercion" under the NWI IGA arises by operation of cooperative agreement, rather than a unilateral Commonwealth decision to enter and takeover a legislative field.

6. New System Disputation

Whilst the ostensible goal of the National Water Security Plan may have been seamless management of water issues, and in particular disputes over water usage and allocation, the exact opposite appears to have been the outcome. Whilst NSW, South Australia, Queensland, and the ACT agreed in principle to refer their legislative powers, Victoria has remained steadfast in refusing to do so, under both its previous and recently new premier. The Victorian government has gone so far as to publish an alternative plan entitled National Water Reform, A Comprehensive and Balanced National Water Reform Plan in which it welcomes any new financial investment in the MDB as sorely needed as a result of the drought but attacks the Commonwealth plan as "under-developed", complex and replete with red tape, lacking clarity and likely to create a "patch-work quilt" of new governance arrangements between the Commonwealth, the new MDB Authority, the states, and those urban areas within the MDB but not part of the Plan (leading to what it calls the "seventh state under centralized control" but looking more like a "Swiss cheese" approach to water management).

Victoria proposes an alternative plan. In it there would be no "broad and poorly defined" referral of powers but a new joint Commonwealth-State Agreement to (i) overhaul the water entitlements system in the MDB to provide enforceable legal title to water entitlements for the environment and new agreed processes to

adjust the balance between consumption and the environment; (ii) the establishment of fully and freely traded water entitlements across the MDB under competitively neutral conditions; and (iii) a new set of governance principles based on an adherence to subsidiarity but with an enhanced role for the Commonwealth overseeing compliance with water allocation and diversion rules and to regulate the water market. The MDB Council would be maintained but consensus voting over policy would be replaced by the Commonwealth having the casting and/or determinative vote in specified areas. The MDB Commission would be kept but reconstituted to provide more independent and expert-based advice. Victoria offered to refer any powers necessary to achieve such an approach.

In essence the Victorians are calling on a quick return to a cooperative approach to the management of water and water disputes in Australia's most important river basin. In response to the Victorian position the Prime Minister has stated that the Commonwealth could achieve the Victorian plan without a referral of powers and that Victoria was acting against the national interest. Nonetheless, the Commonwealth has confirmed that it is moving forward with the Plan without Victoria's formal involvement and relying, for now, on its own constitutional powers. The Commonwealth has subsequently confirmed that large parts of the \$ 10 billion Plan will still be available to Victorian farmers, an outcome that seems to undermine the Commonwealth's contention that benefits and efficiencies will only flow to the MDB under its new opportunistic federalist approach. The second outcome of this new system dispute is the very real possibility of two parallel entities, with the MDB Commission remaining in existence, whilst a new MDB Authority is established. Patently such an outcome will not reduce bureaucracy but add to it.

7. Conclusion

Water and water dispute management in the Australian federation is a shared responsibility between the Commonwealth and states and territories. This is reflective of the substantive fact that water is a cross-jurisdictional issue. The historic outcome of this has been the development of several reasonably successful and innovative cooperative federal structures. Australian federalism's management of water and water disputes is moving into unknown constitutional terrain as a result of a new trend of opportunistic federalism on the part of the Commonwealth. This is a high-risk strategy with little to support it as a viable alternative approach. It is certainly true that the MDB governance structures are in need of reform to meet the pressing realities of drought conditions. But this is best achieved by striking a new more effective balance within the framework of cooperative federalism, not by overturning it completely.

Accountability and Transparency

Challenges to Executive Dominance in Intergovernmental Relations

Tripta Kanojia Rachel Simeon

1. Introduction

Vital democracy requires citizens that are well informed and engaged in the process of governance. Through independent and impartial media, active non-governmental organizations, and new forms of citizen involvement such as e-government, democracy now involves much more than exercising the franchise once every four or five years. For governments where intergovernmental relations play a significant role in governance and where those relations are dominated by the executive order of government—including the Prime Minister, Cabinet, and the departmental officials that support them—the increasing demand for citizen involvement poses a particular challenge. The practice of "elite accommodation" is not conducive to transparency and accountability to the public.

Despite significant differences in the nature and structure of federalism in India and Canada, both these countries face the transparency and accountability challenge. Both countries are characterized by strong executives where power rests with the Prime Minister and Premiers/Chief Ministers, each leading typically

majority governments where party discipline means there is little legislative challenge to government directions. Canada's Constitution delineates a relatively clear division of responsibilities and Canadian federalism is relatively decentralized. By contrast, India's Constitution presupposes functional interdependence and Indian federalism is centralized—meaning that the central government enjoys the majority of power vis-à-vis the states. Yet both countries experience a significant degree of intergovernmental interaction in the day to day operation of government. Similarly, in both countries, intergovernmental relations are practiced largely by executives.

The lack of transparency and accountability has impacted on the legitimacy of government in both countries. In Canada, the failure of two major attempts at constitutional reform (Meech Lake in 1990 and Charlottetown in 1995) is, at least in part, attributable to a rejection of the "behind closed doors" approach to the negotiations that led to tentative accords. In India, the need to improve transparency and accountability in intergovernmental relations is arguably acute, driven by the need to address corruption by officials with too few checks on their powers.

This paper examines how executive federalism in India and Canada threatens the goals of transparent and accountable—and thus democratic—government and proposes some solutions that could address the challenge.

2. India

The development of a federal system of government relies on interaction. In India it plays a vital role due to regional diversity and functional interdependence between different levels of government. A federal form of government promotes decentralized decision-making and, therefore, is conducive to a greater freedom of choice, diversity of preferences in public services, political participation, innovation, and accountability. India is a parliamentary federation where the executive nonetheless enjoys a very powerful position and dominates intergovernmental relations in all aspects. The growth of executive federalism is one of the special and important features of Indian federal development.

Indian Federalism is linked with the parliamentary system where the President is the formal head of the republic while the real power is enjoyed by the Prime Minister and his Council of Ministers who are members of, and responsible to, the parliament. Indian executives enjoy a wide range of powers. As a result, transparency and accountability within intergovernmental relations is reduced, and carries with the risk of abuse of their authority.

The Indian Constitution gave extensive powers to the central legislature and executive to keep the nation together. This has resulted in the dominance by the central government in all social, political, and economic aspects; the division of powers between the centre and state government favours the centre.

Intergovernmental relations are usually carried out by the executives of the two levels of government—centre and state—where they can coordinate, plan, and discuss regional and national developments.

In India, intergovernmental relations are based on the Constitution, which presupposes a functional interdependence between centre and state governments, as set out in Articles 245 to 293 of the Constitution.

2.1 Executive Federalism in India

Executive federalism is becoming increasingly important in India for a number of reasons. First, increasing interdependence in intergovernmental affairs between centre and state governments increases the power of the executive branch. Second, executives serve as the sole link between centre and state governments and so dominate intergovernmental relations. Third, all decisions and meetings are carried out by the executives in governmental and intergovernmental affairs. Taken together, these factors contribute to executives holding a dominant position in intergovernmental and international affairs.

Executive interaction between levels of government is also characterized by high levels of secrecy. If secrecy is observed in these processes of government and is kept hidden from legislative and public scrutiny, it will promote and encourage corruption and abuse of power.

Not only secrecy but executive federalism also contributes towards an unaccountable system of government, where there is minimal public participation in intergovernmental decision-making processes.

2.2 Instances of Executive Dominance in India

Executive dominance manifests itself in two ways: first in relation to other branches of government, particularly the judiciary and legislature; and second, other levels of government, particularly the state level.

The Constitution of India has assigned irrevocable powers to the executive branch of government. The executives are not only vested with executive and administrative powers but they also enjoy legislative power to a large extent. The most important legislative power of the executives is the ordinance making power provided under Articles 123 and 213 for the centre and state executives respectively. The ordinance making power of the executives means that at any time when the legislature is not in session and executives are satisfied that circumstances exist which render it necessary for executives to take immediate action, they can issue ordinances without involving legislative and public discussions. An ordinance has the same effect as any other law passed by the legislature. Such an ordinance ceases to operate at the expiry of six weeks from the date of reassembly of the legislature. The executives have misused this power quite often without any democratic accountability. This encourages them to hold a dominant position without being transparent in their action.

Another example of executive dominance is the central executive's power to invoke emergency, which is provided under the Indian Constitution. The executive of the central government can impose emergency and presidential rule on any state and suspend their democratic functioning. The central executive may give directions to any state at the time of emergency as to the manner in which the state should exercise its executive powers. In short, all state powers are transferred to the central government in such a state of emergency.

Executive dominance can also be observed in the economic affairs of the country, as executives are responsible for the preparation of the budget, levying of taxes and revenues in the state. Again, these processes reduce the scope for transparency and accountability within government.

2.3 Executives and Intergovernmental Relations

In India, the executive has always remained powerful and dominant in comparison with the other two branches of the government. They also hold a dominant position in intergovernmental relations. The executive heads of the two levels of government carry out all intergovernmental business in a largely unaccountable environment.

A number of factors have increased the power of the executives and made them dominate the intergovernmental relations. These include the fact that executives act as a mouthpiece for their respective governments. Therefore, all talks, negotiations, discussions, and decisions relating to intergovernmental policies, agreements, disputes, etc., begin with the executive heads of the two levels of government. All such discussions and negotiations take place behind closed doors, which makes it difficult to hold the executive accountable for the success or failure of such agreements and policies.

If any consensus or agreement is reached between the executives of centre and state governments at an intergovernmental meeting relating to any subject of intergovernmental affairs, they have the power to decide whether or not to enforce the agreement or policy. Executives often avoid taking prior approval of the execution of such agreement by referring it to the legislature. Even if such an intergovernmental agreement were taken to the legislature, it bears no significance, as executives are the members of the party holding a majority in the legislature, thus ensuring easy approval.

From the above discussion, it is clear that executive heads of the two levels of the government not only enjoy dominance in executive branch but also in the arena of intergovernmental legislative policies and agreements.

The executives representing centre and state governments carry all intergovernmental decisions on all subjects. In their decisionmaking process, executives hold meetings in isolation where people and their representatives cannot make out what they are discussing and how they are representing their regional and national interests in intergovernmental talks. It becomes difficult to claim accountability in such a federal arrangement. Moreover, the general public is only aware of that aspect of discussion which is revealed and disclosed by the executives at their discretion. Thus, the whole process of executive intergovernmental meetings lacks transparency and public scrutiny.

Intergovernmental economic affairs are also governed by executive dominance. The Constitution distributes revenue generation and expenditure allocation powers between centre and state governments such that executives of the central government have been given more powers. The state government has to depend upon the central government for aid and funds for the implementation of developmental programmes to be carried out in their regions. All this means that the central government enjoys a predominant position and tends to dominate intergovernmental relations. For example, borrowing by the state government requires prior approval by the centre government. Furthermore, state governments are not allowed to borrow directly from external sources. In intergovernmental economic policies all negotiations and planning take place between the executives of centre and state governments. Executive dominance and secrecy can also be observed in the process of budget formulation and in the determination of expenditure priorities. Here again, the problem is that the closed budget process lacks transparency and accountability towards people.

In India, all intergovernmental affairs are managed inter-ministerial meetings. The establishment of Inter-State Council in 1990 played an effective role in regulating centre-state relations as proposed by the Constitution. Intergovernmental relations presuppose functional interdependence between different levels of government. Article 263 of the Constitution provides for the establishment of the Inter-State Council to harmonize centre-state relations and for encouraging interaction in the federal system. The Inter-State Council consists of Prime Minster, Cabinet Ministers, and Chief Ministers of all states and Union Territories. This is an inter-

governmental forum designed to bring the two levels of the government together to discuss, plan, and negotiate economic and developmental issues of joint concern. It is provided for that all decisions on matters of national importance should be taken after consulting the Inter-State Council. The creation of the Council was a positive step forward in encouraging intergovernmental relations, but it is nonetheless fully dominated by the executives of the two levels of the government. There is no representation from, or role for, the legislature in deciding the agenda, programme, and issues to be discussed in the Inter-State Council. Furthermore, meetings of the Council are held in camera and, while the questions discussed by the Council are determined and decided by consensus, the decision of the Prime Minister/Chairman is final. All this contributes to a curtailment of transparency and accountability in such an intergovernmental forum, and in turn strengthens and encourages executive dominance.

There are several other intergovernmental organizations, institutions, commissions, councils, agencies, forums, etc., established in order to ensure coordination in intergovernmental relations. The executives dominate all the formal and informal intergovernmental processes in all these bodies. Executives always prefer informality and flexibility in intergovernmental forums or councils.

Another institution regulating intergovernmental relations is the National Development Council established in 1952. The Sarkaria Commission on Centre-State Relations in 1987-8, recommended the establishment of National Development Councils along with the Inter-State Council, and it is one of the two major organizations devoted to intergovernmental relations. It does not have constitutional or parliamentary status but was the outcome of an executive order. The executives of the two levels of government come together and discuss all intergovernmental affairs. This institution is also dominated by the executives, as is the Inter-State Council, denying accountability and transparency in their approach to these intergovernmental meetings.

The Finance Commission and Planning Commission are two further bodies regulating intergovernmental financial relations. The Finance Commission is a constitutional body, concerned with the distribution of tax proceeds, revenue, funds, and grants between the different tiers of government in accordance with their share, need and demand. The Planning Commission, by contrast, is an executive body that distributes a larger part of central grants to the states than the Finance commission. The central grants recommended by the Planning Commission are discretionary. Out of the total grants that state governments receive from the centre, 70 per cent is by the Planning Commission and 30 per cent by the Finance Commission. Therefore, the central executives regulate most of the grants and transfers through an extra-constitutional body and thereby dominate the process of fiscal distributions amongst different tiers of the government.

The purpose for listing some these intergovernmental forums that are operative in India is to highlight the executive dominance in intergovernmental relations. These intergovernmental bodies are designed with a view to providing a forum for centre and state governments, to encourage interaction and cooperation in regional and national development. However, they have ultimately resulted in executive dominance in the existing Indian federal structure. It cannot be ignored that these institutions have attempted to bring the two levels of the government together for the purpose of effective intergovernmental interaction. Yet they have resulted in a form of executive federalism which poses a threat to the accountability and transparency executives in intergovernmental relations.

2.4 Some Suggestions

Unaccountable and un-transparent intergovernmental relations are the outcome of executive federalism in India. A cooperative federal structure and functional interdependence between central and state governments encourages executive dominance in intergovernmental relations. Therefore, it has become necessary to create ways to overcome such challenges of accountability and transparency.

There should be reform and improvement in the existing intergovernmental institutions. These institutions should also have legislative participation in the determination of issues and the agenda to be discussed in the intergovernmental meetings. There

should be openness in the functioning of the governments headed by the executives while they are negotiating intergovernmental proposals. The intergovernmental bodies should work transparently without undue interference by the executives.

A more effective role should be assigned to legislatures in intergovernmental affairs. The executives should be held accountable and transparent in all their intergovernmental affairs vis-à-vis financial and social affairs.

There should be an independent body comprising qualified experts who can look into intergovernmental agreements before they are signed and implemented between the centre and state governments. They should have power to question executives regarding all intergovernmental agreements, plans or programmes for which they are responsible and should have the power to demand answers to their questions.

Another step can be the involvement of local governments or village panchayats in the intergovernmental bodies. Panchayats are directly associated with the people and, therefore, should have representation and participation in intergovernmental projects, agreements, discussions, negotiations, and decisions because they will ultimately affect the general population.

There should be accountability and transparency in intergovernmental financial matters. A more effective, vigilant, and active role should be assigned to the Comptroller and Auditor General, so that they can keep account of the executive decisions and practices in financial matters regarding distribution and utilization of proceeds of tax, revenue, and funds.

The involvement of e-governance in the structure will encourage people's participation in governmental and intergovernmental processes. The independent media can also play a role in making the executive accountable for success and failure of their programmes, plans, and policies.

The establishment of facilitation centres can also play a vital role in making executives accountable and transparent in their intergovernmental relations. These centres should have all the information about the functioning of the government in intergovernmental affairs and it should be easily and freely accessible to the public at these centres. Above all, people should be aware of every intergovernmental process that is being initiated, developed or negotiated by the executives so that they can develop a sound public opinion, and can question and hold executives accountable for its success or failure.

3. Canada

Donald Smiley coined the term "executive federalism" in 1980 to describe the predominance of executive interaction in Canadian intergovernmental relations. Smiley was highly critical of executive federalism and his critique continues to resonate today: elite accommodation practised by men behind closed doors to the exclusion of the Canadian public is undemocratic, un-transparent and unaccountable.

According to data from the Canadian Intergovernmental Conference Secretariat, which supports meetings and conferences of Premiers, Ministers, and Deputy Ministers, there are, on average, 103 intergovernmental meetings each year in Canada. This figure would increase tenfold if one were to include all the additional meetings that occur among lower level officials in each sector. Intergovernmental agreements shape almost all spheres of governmental activity from the environment through to economic and social policy. In this context, it is important to take seriously the transparency and accountability challenge.

Much of the criticism of executive federalism is leveled at the arena of what many refer to as "summit politics"—high profile meetings of the Prime Minister and Premiers. Yet the bulk of executive interaction actually occurs among sector Ministers and their officials. The three early childhood development (ECD) and early learning and child care (ELCC) agreements that were reached in the social services sector between 2000 and 2005 illustrate the strengths and weaknesses of the critique of executive federalism. Examining this case can also help point the way toward solutions to the transparency and accountability challenge.

3.1 Executive Federalism: A Canadian Inevitability

Executive-level negotiation and collaboration is inherent to the nature of Canada's constitutional arrangements. While the Constitution defines largely separate spheres of responsibility, it places responsibility for the most costly welfare state programmes with the provinces and majority of the revenue raising powers with the federal government. In addition, there are no institutional arrangements (e.g. provincial government representation in the federal parliament) that provide an alternative forum for the consequent need to negotiate interdependence. In addition, as policy problems and solutions (such as the environment and participation in international accords) become increasingly complicated, they require action from multiple levels governments, further reinforcing intergovernmental entanglement.

The tension between what Banting and Corbett refer to as the "logic of social citizenship and the logic of federalism" is yet another reason why interdependence is inevitable in Canada. The logic of federalism says that regional diversity is the legitimate consequence of regional governments responding to the needs and priorities of their constituents. The logic of "social citizenship" calls for national standards and uniformity to ensure that everyone has the same set of welfare state programmes and services to which they are entitled as members of the larger polity. The experience of Canadian federalism suggests that Canadians are themselves ambiguous in their attitudes toward these two extremes—and ever changing in their view about where the country should sit along that spectrum. While many certainly hold strong views about whether Canada should be more or less centralized, it seems clear that many others may change their views depending on which government of the day supports the issues that they care about most: they want diversity when it suits and the protection of national standards when that suits.

3.2 The Case Against Executive Federalism

The transparency challenge relates directly to the process of intergovernmental relations: the elitism of closed-door negotiations, the

lack of transparency and citizen input and the absence of any role for legislatures in debating intergovernmental agreements. The accountability challenge stems from the results of that process: intergovernmental agreements. Who should be held accountable for what is difficult to determine when you have one government spending money that was raised by another. The ability of the federal government to be accountable to its parliament for what is accomplished with funds spent by a different government is limited. Similarly, accountability is confused for the receiving government because it is not accountable to its own legislature for raising those funds. An obvious example in Canada is health care. As Jennifer Smith points out, "the complex ongoing negotiations between the two levels of government that is required to keep the health-care system functioning defies any simple notion of accountability". Each order of government can easily blame the other for the failures of the system and citizens aren't in a position to see past the spin coming from all directions.

The example of Canadian child care negotiations in the first half of this decade is useful in assessing both the extent of the transparency and accountability challenge and in pointing toward possible solutions.

3.3 Transparency: Social Services Sector Relations and Child Care Negotiations

Canadian Social Services Ministers and Deputy Ministers typically meet twice a year. Agendas for these meetings are determined largely through consensus, though the federal government tends to have the upper hand in determining when to meet and what is discussed. Below these tables, there are large assortments of officials' tables that meet on a frequent ad hoc basis throughout the year by conference call and in person.

Some of these working groups of officials are formed once there is a ministerial decision to work on a joint initiative in a particular area. In the case of child care, the Federal/Provincial/Territorial

¹ Jennifer Smith, "Federalism and Democratic Accountability", Sept. 2005.

(FPT) Early Childhood Development Working Group was formed in the late 1990s as a precursor to negotiations. It built on the long-standing relationships and common expertise of the FPT Directors of Early Learning and Child Care Committee, an information sharing forum with a long history. The first stage of its work was to develop a research paper on early childhood development. To do so, the group engaged with key national and regional stakeholders and experts in the field. In other words, the process was characterized by consultation beyond government at the stage of problem definition and analysis. In parallel to this, the National Children's Agenda consultation paper was developed to seek input on a range of children's policy issues, including child care. Consultation sessions across the country were organized based on this paper as well, and it was accompanied by a workbook that was made available to community groups and schools to encourage a broader array of people to share their views.

Once it became clear that the federal government was interested in reaching a funding agreement, negotiations began. While these negotiations followed the more traditional path of executive federalism—discussions among officials over the course of a number of months culminating in a First Ministers Meeting where the agreement was endorsed and made final—they were informed by the research and consultation stage that had come before. This experience suggests that, if you take a longer-term view of the process, the world of executive federalism is actually more open and, thus, transparent than often thought.

The transparency critique of executive federalism can be challenged from yet another perspective. All of the governments that came to the negotiations represented views that had been formed through their own independent political systems. Placing the focus of criticism on the intergovernmental sphere, rather than at each government individually downplays the legitimacy of the different political processes at the regional level. In other words, following the logic of federalism rather than the logic of social citizenship, scrutiny about the lack of transparency is as relevant to the regional processes that led to the formulation of each government's position as it is to the process of the table itself.

Ontario and Alberta had both elected conservative governments that were not supportive of the vision for child care proposed by the federal government. Moreover, all provinces agreed that the federal vision was problematic in that it limited their flexibility to build on the already disparate systems that existed across the country. The consequence of these differences was that the first negotiations resulted in a broad agreement (the 2000 ECD accord) where provinces were given the flexibility to invest in four areas of early childhood development, of which "early learning and care" was only one option and not a requirement.

Three years later, the federal government opened discussions on a successor agreement. By this stage, the support for child care had grown stronger across the country, leading the positions of some of the key governments (in particular Ontario and Alberta) to change. As a result, the federal government was successful in defining the scope of the negotiations to regulated child care. One of the key negotiating points was how to define "regulated" given the different legislative regimes across the country and the different child care policies and systems that were already in place for provinces to build upon.

By 2005, the dynamic had shifted even further in favour of the child care lobby and the federal government demanded that all jurisdictions invest in the "QUAD" principles—quality, universally accessible, available, and developmental child care. In other words, the vision for child care that was embodied in the agreement had become much more robust, moving the federal government closer to its long-promised national system. Multilateral negotiations on this round did not survive this new federal position and broke down in the final stages. The result was a series of bi-lateral agreements, with the most eager provinces—Saskatchewan, Manitoba, and Ontario (which had recently elected a Liberal government that shared a vision for quality child care)—being the first to sign. Eventually all the others could not hold out against the offer of funding and so also signed. Unfortunately, these bilateral agreements were reached in the dying days of the federal Liberal government and the newly elected Conservative government chose to cancel them all.

The successive agreements reached under the federal Liberal government differed not only in the scope of eligible expenditures; they also reflected a pendulum swing in accountability arrangements. The weaknesses of the accountability arrangements in each of the three agreements suggest that the accountability critique of executive federalism should be taken seriously and solutions should be found.

3.4 Accountability: Early Childhood Development and Early Learning and Child Care agreements

All three of the child care agreements reached in the Canadian social services sector between 2000 and 2005 (2000 ECD, 2003 multilateral ELCC and the 2005 bilateral ELCC agreements) contain accountability arrangements based on the concept of public reporting and the principle that governments are accountable to their constituents and not to each other. Public reporting as the accountability mechanism represents a major shift away from earlier agreements such as the Canada Assistance Plan, which were characterized by detailed accounting and federal scrutiny and determination of what constituted eligible provincial spending.

Because the 2000 ECD agreement, which set the tone for the agreements that followed, was negotiated in tandem with the first of the recent major healthcare funding agreements, a key provincial-territorial consensus behind two key principles defined the terms of the negotiations: (1) defence of jurisdiction through flexible arrangements and broad eligibility, and (2) insistence that the agreement reflect a relationship of equals. The "relationship of equals" argument is what lies behind the shift to public reporting and away from one order of government reporting to another.

In some ways, the public reporting approach can be seen as a step forward in terms of improved accountability in the sphere of intergovernmental relations. This approach requires governments to publicly track spending and report on what is achieved or purchased with that spending. The ECD and ELCC agreements also required governments to begin to track the outcomes in the form of key indicators of healthy child development (though Canadian governments all have a lot of room to improve in this regard).

On the other hand, these public reporting arrangements have obvious weaknesses as mechanisms for ensuring governments are accountable. Public reports are essentially political communications documents. How governments choose to position the information, the level of detail they choose to include, their choice of when to release the reports and with what level of profile, all have an impact on how the information is interpreted by the public. For example, the 2000 ECD agreement includes no requirement for governments to track spending against a particular baseline so there is no ability to judge whether the baseline shifts from year to year. Moreover, most provinces post these reports on their websites without much effort to draw profile to their release.

As a step toward improving accountability in the 2003 agreement, the baseline was defined at the outset (all existing spending on regulated child care) and so one potential loophole was closed. In all other aspects, the accountability requirements in 2003 agreement were very similar to 2000. Most significantly, both agreements transferred the funding through the Canada Social Transfer, a broad unconditional transfer mechanism. As a result, the commitments to spend and report on the funding according to the terms of the agreement were just that: commitments. There was little the federal government could do if a province or territory chose not to abide by the agreement.

By 2005, having experienced a number of very public accountability scandals, the federal government had shifted its position on acceptable accountability arrangements back toward a more detailed, rigorous accountability regime. First, a separate funding mechanism was created legislatively for the agreements and, rather than being simply political accords, they were drawn up as "legal agreements" signed by both parties. Second, the agreements required provinces and territories to identify and report against specific multi-year targets for each of the QUAD principles. The reporting mechanism remained the public report but, at least in theory, the federal government now could withhold funding if provinces did not live up to the terms of the agreement.

While the arrangements in the 2005 bilateral ELCC agreements can be considered an improvement on the earlier accords, many of the concerns about public reporting remain relevant.

Moreover, although it was never tested because the agreements were cancelled, it is doubtful that the federal government would have actually withheld funding from a province or territory on the basis of a questionable public report.

A more fundamental problem with the reliance on public reporting as the vehicle for accountability is that it places the shape of these reports and their content at the heart of the negotiating process alongside other negotiating goals for each party. The inclusion of more detail in the reporting requirements, such as specific measures like the number of spaces created, creates a conflict between the goal of accountability and the principle of flexibility inherent to the logic of federalism. For instance, requiring governments to track the number of new spaces created each year effectively forces governments to focus on system expansion over other goals such as quality improvement.

Fundamentally, the problem for accountability in the negotiation of intergovernmental agreements is that it, like everything else in a negotiation, risks becoming merely another negotiating card to be played or traded as needed. Moreover, the principle of accountability (which everyone supports) is often used to legitimate a host of other negotiating goals over which there is no agreement. For instance, in each of these sets of negotiations, the federal government's position in defence of the principle of accountability became the language with which they pursued their desire for national standards in an area of provincial jurisdiction.

Where the transparency critique of executive federalism may be overstated, the charge that executive federalism results in poor accountability is clearly justified. Negotiations are unlikely to produce arrangements that can reliably hold governments to account while respecting the principle of regional difference that is fundamental to federalism.

3.5 Future Directions?

The case of the 2000 ECD and 2003 and 2005 ELCC agreements demonstrates both the transparency and accountability challenges of executive federalism in Canada. Since 2005, demand for

continued investment in child care has remained strong and will likely continue to outstrip provincial resources in the years to come. Even the current Conservative government has invested in child care despite rejecting the QUAD vision and cancelling the 2005 bilateral agreements. Interestingly, they have returned to the vehicle of the unconditional Canada Social Transfer to allocate the funds and have actively championed provincial/territorial independence rather than the interests of accountability between governments. Arguably, this means that accountability has taken a step backwards rather than forwards. Yet, Canadians' frustration over the lack of transparency and accountability, along with their desire for intergovernmental cooperation to address problems that cannot be solved by any one level of government alone, is likely to grow in the years to come. Solutions to the transparency and accountability challenge must be found.

While the process that led up to the 2000, 2003, and 2005 negotiations was more open, with more involvement from stakeholders and the public, than is commonly understood, the agreements were ultimately the result of behind-closed-door negotiations and there is more that can be done to improve the transparency of the negotiating table. Equally important, however, is to improve the transparency of the process of policy/position development within each government prior to and throughout the negotiations.

Increased use of e-government forums and initiatives to enable greater participation, along with greater scrutiny by media of each government in the negotiation and of the negotiations themselves would go a long way toward improving the transparency of the process and ensuring that the perspectives of Canadians are reflected in the process. For instance, a number of Canadian governments have created Children's Advisory Committees to provide key experts, stakeholders and parents with a continued voice. Similarly, governments are expanding their use of the internet and beginning to realize its potential for providing greater access to government.

Just as it is too narrow to focus only on the sphere of intergovernmental negotiations when addressing the transparency challenge posed by executive federalism, finding ways to make governments more accountable to Canadians for the outcomes of those negotiations requires mechanisms that are outside of the process itself. Because the principle of accountability risks becoming a mere bargaining chip used to further other negotiating goals, intergovernmental agreements are always likely to contain insufficient accountability measures.

A greater role for legislatures, such as through legislative committees, would improve both transparency and accountability. They could be involved in the process of intergovernmental negotiations—for instance through a requirement that they approve or at lease examine or debate, intergovernmental agreements before governments are able to sign them. Similarly, they could play a role in scrutinizing the performance of governments in relation to the commitments made in the agreements.

Yet another possibility for improving accountability in the context of executive federalism would be to give a greater role to Auditors General. The federal Auditor General could be given responsibility for looking into the books of provincial governments to the extent that they spend federally raised tax revenues. Alternatively, and more consistent with the principle of federalism and respect for jurisdiction, there could be mandated collaboration between federal and provincial/territorial auditors to ensure they work in tandem in relation to intergovernmental agreements. For instance, they could agree to a common auditing schedule or approach vis-à-vis such agreements so that all parties were held to common standards of account.

Over the same period that governments were negotiating the ECD and ELCC agreements, interest in the "democratic" agenda in Canada grew. While at the federal level, suggestions were floated to revitalize Parliament through a greater role for Committees and freer (non party-discipline) votes, a number of provinces were exploring proposals for electoral reform to increase the legitimacy of their legislatures. Today, however, the future of these initiatives does not appear to be so bright. In British Columbia, a referendum on a version of proportional representation was narrowly defeated (57 per cent in favour where 60 per cent was the threshold required to pass). More recently, in Ontario the defeat of a similar proposal was by a wide margin (only 37 per cent voted in favour of change).

At the federal level, the most recent Speech from the Throne focuses the democratic agenda on senate reform and it seems unlikely that proposals will address the accountability/transparency challenge of intergovernmental relations. Without greater debate about the democratic agenda and the suggestions outlined above, Canadians' view about the legitimacy of their governments and of the federal process will not likely improve.

4. Conclusion

Executive dominance in intergovernmental relations poses a serious challenge to federalism in Canada and India. Given the nature of the constitutional arrangements in both countries, along with the growing complexity of issues requiring government action, interdependence, collaboration, and cooperation between federal and state governments are necessary to ensure continued development at the regional and national level. Yet, where executives dominate that interaction, it becomes very difficult to hold the two orders of government to account and to ensure transparency in their interactions.

It is very difficult, or rather impossible, to do away with executive federalism in both India and Canada. Yet attempts can be made to reform the institutions of federalism and make it more open and workable, and thus more democratic. New measures are needed in both countries to provide for responsive and accountable executives and transparency in relation to intergovernmental affairs at both the federal-provincial/territorial level and centre-state level in Canada and India respectively. The examination of India and Canada in this paper has pointed to a number of possible reforms to improve accountability and transparency. They involve (1) creating a greater role for legislatures, (2) opening up intergovernmental negotiations, (3) improving third-party accountability through the use of Auditors General, and (4) providing direct access to citizens to seek information about and make comments on the activities of governments.

Executive federalism in all orders of governments tends to weaken governments' accountability towards their legislatures and,

thus, citizens at large. As a result, it is necessary for respective legislatures to perform a vigilant role in holding the executive arm of government accountable for its performance in intergovernmental negotiations, agreements, and decision making.

In Canada, the executive heads of both orders of government are currently not accountable towards their respective legislatures for intergovernmental relations, as they can negotiate and undergo intergovernmental agreements without seeking approval or even allowing for legislative debate before ratifying agreements. In India, the structure is similar to Canada; executive heads of both level of government tend to sideline the legislature, which confines the role of the legislature to that of a "rubber stamp" in their intergovernmental relations. It becomes difficult for the legislatures to exercise their power efficiently amidst executive dominance. To overcome such challenges in both countries, the establishment of intergovernmental committees could prove an effective step in achieving transparency and accountability in intergovernmental affairs. These committees should work at all level of governments and include, or seek advice from, independent and qualified experts who can act as watchdogs, able to question and hold executives accountable in intergovernmental negotiations and agreements.

"Open government" is the essence of democratic accountability and transparency in a federal set up. In both Canada and India, "cooperative federalism" and intergovernmental interdependence have strengthened executive federalism: governments observe secrecy in their interactions with each other and carry out intergovernmental relations behind closed doors. Therefore, openness of inter-ministerial meetings to allow for public scrutiny and intervention can reduce executive dominance in intergovernmental negotiations, agreement, policies, and decision-making processes.

The need for accountability and transparency is necessary in intergovernmental financial matters also. The institution of Auditors General can prove beneficial if, at both the centre and state/provincial levels, they exercise and perform their duties and obligations in a more efficient, active, and coordinated manner in keeping an eye on the executive processes used by the federal/centre government in the allocation of funding to provincial/state governments.

Cooperation among Auditors General at the provincial/state level would allow for third-party independent review of government performance against intergovernmental commitments while respecting the independence of each order of government.

The establishment of information centres can also ensure accountability and transparency in intergovernmental relations. These centres could provide information to the public regarding upcoming and ongoing discussions, planning, and negotiations between executive heads of the two orders of government in order to strengthen their intergovernmental affairs. Information could be provided in the form of brochures and other publications, either in print or web-based. The information provided should cover all executive-dominated institutions effecting intergovernmental relations, and range from economic matters, such as the utilization of funds granted by the federal/central government, to policy concerns such as the scope of eligible expenditures, performance measures and goals of intergovernmental agreements. These information centres should also provide a forum to receive complaints, observations, and other input from the public and should encourage interactive programmes wherever feasible for enquiry and response directly between executives and citizens.

All these measure could prove to be effective and progressive steps in achieving accountability and transparency in intergovernmental relations where they are dominated by executive federalism.

How do Federal States Deal with the Need for Coordinated Policing and Public Security?

Stephen Herbert

1. Introduction

The paper deals with the formal and informal arrangements which have evolved in the UK and India to coordinate the needs of policing and public security. It deals with the common approaches to security and policing in the case of Scottish and UK governments, the devolution of power and institutional arrangements with regional legislatures in the UK. It also deals with the constitutional and other institutional arrangements for the purpose of coordination between the Union and the states in India and the future challenges in matters related to policing and public security.

Common Approaches to Security and Policing: The Case of Scottish-UK Government Arrangements

The paper considers the extent to which there are common approaches to security and policing in the UK and in particular considers the extent to which common structures have developed between the Scottish and UK governments. The process of legislative decentralization is a relatively recent development in the UK with

the process of territorial constitutional change having begun in 1999 following the election of a Labour government in 1997. Prior to 1999 administration of certain areas of public policy was devolved to three territorial departments in the UK: the Northern Ireland Office, Scottish Office¹ and Wales Office. In effect, the process of devolution in the UK involved the establishment of legislatures to oversee the competencies of these former territorial departments of the UK government. Accordingly, the UK currently has three devolved legislatures with varying degrees of legislative autonomy in Northern Ireland, Scotland and Wales.²

As a consequence, 85 per cent of the UK population continues to be governed directly by the UK government in London, while the remaining 15 per cent are governed by a more complex set of institutional arrangements with "regional" legislatures dealing with broadly domestic policy issues and a UK Parliament dealing with the "high" issues of state such as foreign affairs and macro-economic policy. Traditional features of federal systems of government such as a written constitution are not present in the UK case due to the territorial variation in the manner in which government is exercised in different jurisdictions. Given that the vast majority of the UK population continues to be governed within the structure of a unitary state, then at most the political structure of the UK can be described as being one of "asymmetrical federalism". Although in contrast to other European states, such as Belgium and Spain, where there are variations in the extent of power devolved to subnational legislatures, the extent of the asymmetry in the UK position is more pronounced given that power is only devolved to

¹ Prior to the creation of the Scottish Parliament in 1999, the territorial department responsible for Scottish domestic affairs was termed the Scottish Office, and between 1999 and May 2007 the Executive arm of the Scottish administration was termed Scottish Executive. Since May 2007, following the election of a Scottish National Party (SNP) minority Government, the Scottish administration has been termed the Scottish Government. These terms will be used throughout this paper depending on the particular time period being referred to.

 2 While recognizing that legislatures do exist in the Isle of Man and the UK Channel Islands.

certain aspects of the state reflecting the pluri-national identities present within the UK. In order to give a sense of the extent of variation in "national identity" between the constituent parts of Britain Tables 1 and 2 provide some data on national identity.

Table 1: Trends in "Forced Choice" National Identity (1999-2003)

	1997	1999	2001	2003
England				
English	34	44	43	38
British	59	44	44	48
Scotland				
Scottish	72	77	77	72
British	20	17	16	20
Wales				
Welsh	63	68	57	60
British	26	14	31	27

Source: Jeffrey, C (2006) p. 80.3

Table 2: Moreno National Identity (2003)

	Scotland	Wales	England
X, not British	31	23	17
More X than British	34	28	19
Equally X and British	22	30	31
More British than X	4	9	13
British, not X	4	10	10

Note: X refers in each case to the nation in the respective columns, so 31% of Scots felt Scottish, not British, 23% Welsh, not British, etc.

Source: Jeffrey, C (2006), p. 81.

This paper first outlines the extent of the devolution of powers to Scotland and the some of the mechanisms which have been put

³ C. Jeffrey, "Devolution and Social Citizenship: Which Society, Whose Citizenship?" in S. Greer, ed., *Territory, Democracy and Justice*, Palgrave, London, 2006.

in place to deal with intergovernmental relations between the Scottish and UK governments. Second, it considers the extent to which there are common approaches to policing and security between the Scottish and UK governments is considered.

2.1 Scottish Devolution

The parameters of the powers devolved to Scotland are set out in Schedules 4 and 5 of the Scotland Act 1998 which details the powers that are reserved to the UK government. All powers that are not listed as being reserved, therefore, fall within the competence of the Scottish Parliament. In broad terms, the following powers are reserved to the UK government:

- The Constitution
- Foreign affairs
- Defence
- International development
- The Civil Service
- Financial and economic matters
- National security
- Immigration and nationality
- Misuse of drugs
- Trade and Industry
- Various aspects of energy regulation (e.g. electricity, coal, oil, and gas; nuclear energy)
- Various aspects of transport (e.g. regulation of air services, rail, and international shipping)
- Social security
- Employment
- Abortion, genetics, surrogacy, medicines
- Broadcasting
- Equal opportunities

Some of the main devolved policy areas are:

- Health and social work
- Education and training

- Local government and housing
- Justice and police
- Agriculture, forestry, and fisheries
- The environment
- Tourism, sport, and heritage
- Economic development and internal transport

From this it can be seen that while policing is a responsibility of the Scottish government, national security is a function of the UK government. The resulting need for coordination between the governments is dealt with through two principal mechanisms, termed Concordats and Joint Ministerial Committees.

2.1.1 Concordats

The 2002 Memorandum of Understanding⁴ between the UK Government and Scottish Ministers sets out the principles which underlie relations between the UK and Scottish Governments. The Memorandum states that the document is: "a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. It intended to be binding in honour only."

The Memorandum outlines a number of ways in which the UK Government and the devolved administrations will work together, namely, through communication, consultation and cooperation with each other on matters of mutual interest and through the exchange of information, statistics and research. In addition, five supplementary concordats were agreed on: the "Joint Ministerial Committee", the Coordination of European Union Policy Issues, Financial Assistance to Industry, and International Relations and Statistics. Lastly, each UK government department has agreed a concordat with the Scottish government.

2.1.2 Joint Ministerial Committees

The Memorandum of Understanding also acknowledged that a degree of central coordination was required and that a Joint

⁴ Accessible at: http://www.scotland.gov.uk/library2/memorandum/

Ministerial Committee (JMC) should be established to provide this. The terms of reference for the JMC are:

- (a) to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities;
- (b) where the UK government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in the different part of the United Kingdom;
- (c) to keep arrangements for liaison between the UK government and the devolved administrations under review; and
- (d) to consider disputes between the administrations.

According to the supplementary agreement of the Memorandum of Understanding, the JMC will meet at least once a year and would be chaired by the Prime Minister or his representative. The Deputy Prime Minister, the Scottish and Welsh First Ministers, each together with one of their ministerial colleagues, and the Northern Ireland First Minister and Deputy First Minister will also attend. In addition, other ministers may attend where appropriate.

According to the agreement, meetings of the JMC will be held for two purposes, "to take stock of relations generally and of the way in which the devolution arrangements are working in a particular area; and to address particular issues or problems".

The Joint Ministerial Committee Plenary has met on three occasions⁵ and the Joint Ministerial Committee on Europe has met on twenty-eight occasions. In addition, there have been four Joint Ministerial Committee meetings on the subject of health, two on the knowledge economy and three on poverty.⁶ It is important to note that a Joint Ministerial Committee does not exist to address the issue of either policing or security.

⁵ Scottish Parliament Question S3W – 907.

⁶ Scottish Parliament Questions S2W – 22136 and S2W – 6045.

2.2 Policing and Security Policy

Delineating the devolved/reserved functions with regard to policing and security functions is relatively straightforward. Policing in Scotland is a devolved matter and responsibility for policy on criminal justice and the administration and funding of policing is a responsibility of Scottish Ministers. Accordingly all eight "territorial" police forces (i.e. police forces based wholly in Scotland) are responsible ultimately to the Scottish government. There are, however, a number of other police forces operating in Scotland which are the responsibility of the UK government. These are:

- British Transport Police police force for the railways providing a service for rail operators, their staff and passengers across Britain
- Ministry of Defence Police provides security within Ministry of Defence property across Britain (e.g. the nuclear submarine base at Faslane in Scotland)
- Civil Nuclear Constabulary provides protection for nuclear materials on designated UK nuclear licensed sites and in transit

The one exception to this picture in terms of police forces is a grouping of police forces termed "Special Branch" which are based within Scottish police forces but can carry out reserved functions. Special Branch is responsible for a range of activities in relation to terrorism, espionage, subversion, serious crime and threats posed to public order. In this context Special Branch operate closely with the UK Security Service (MI5). Special Branch officers are responsible to the Chief Constable of the relevant Scottish police force. However, where Special Branch officers are engaged in activity which relates to reserved functions, such as counter-terrorism, then these officers will be responsible for the delivery of UK government policies. The Chief Constable of the police force involved is required to give his/her agreement to these activities. In effect, the policy on issues such as counter-terrorism is reserved, but the delivery is devolved. The Home Office (the UK government department res-

ponsible for policing), Scottish Executive and Northern Ireland Office agreed to guidelines⁷ covering the work of Special Branch in the UK reflecting the different tiers of government to which the service works.

The Home Office and the Scottish Executive have agreed a "concordat" establishing a framework for cooperation between the two bodies. The 2002 Concordat summarizes the relationship between the two bodies as follows:

Under the Scotland Act 1998 considerable areas of work for which the Home Office is responsible in England and Wales are the responsibility of the Scotlish Executive in Scotland. To a large extent this reflects the fact that Scotland has always had its own distinct system of civil and criminal law and procedures, with separate legislation governing the police, prison, and probation services. . . .

Even in areas which are the responsibility of the Scottish Executive in Scotland, notably most civil and criminal law and procedures, overlaps of interest will arise either on a regular basis, or from time to time. The purpose of this Concordat is to indicate the elements of good practice which should inform contacts between the two administrations in such cases, so as to encourage good communication, promote understanding of the operation of policy and practice in the respective jurisdictions and ensure that the actions of one administration do not unwittingly create difficulties for the other. (Scottish Executive, 2002, p. 1)

The Concordat goes on to list devolved issues, reserved issues, reserved issues which are the subject of executive devolution, and areas where joint working will be particularly relevant. Reserved issues (subject to executive devolution) and areas of joint working which are most relevant to this paper are listed in Appendix I.

⁷ Scottish Executive (2004) "Guidelines on Special Branch Work in the United Kingdom". Accessible at: http://www.scotland.gov.uk/Publications/2004/03/19162/35117

In terms of security policy, the distinction between reserved and devolved issues is even clearer than that existing in terms of policing. The UK government agency responsible for internal national security is the "Security Service" more commonly known as MI5. Again the Home Office is the responsible UK government department. The Concordat between the Home Office and the Scottish Executive makes no mention of security issues reflecting that security is an entirely reserved issue, although the use of intercept information relating to devolved issues in Scotland (i.e. serious crime) does require the authorization of Scottish Ministers. However, in relation to national defence more generally the, Scottish government has signed a Concordat with the Ministry of Defence (UK Government). The Concordat states that:

All matters relating to the defence of the United Kingdom remain the direct responsibility of the UK Government. This is to provide for a strong internal defence policy and a seamless and effective defence capability for the UK as a whole, and has been achieved by the reservation of defence matters to Westminster in the Scotland Act 1998. (p. 3)

The Concordat states that it seeks to ensure that the:

- Scottish Ministers take into account the need for the unimpeded conduct of the defence of the UK, and the interests and responsibilities of the Secretary of State for Defence and the Armed Forces, when framing and implementing Scottish legislation or otherwise undertaking actions and functions within their competence.
- interests, rights and responsibilities of the Scottish Ministers are recognized and taken into account by the Secretary of State for Defence in framing and implementing UK defence policy and activities likely to have an impact in Scotland. (p. 2)

The Concordat proceeds to list a range of activities where cooperation takes place between the Ministry of Defence and the Scottish Executive. Appendix II reproduces this list of activities.

In addition to formal protocols, a range of informal contacts exist between Scottish Ministers and officials with the UK Government. For example, recent high profile events such as the car-bomb attack on Glasgow Airport witnessed the participation of Scottish Ministers in the UK government emergencies committee termed "COBRA". Although there is no legislative requirement for such participation it is understood that such participation is now expected in situations where an event affects Scotland.

3. Conclusion

Legislative devolution in the United Kingdom is a relatively recent process that only affects a minority of the UK population. This is reflected in the UK largely retaining the structure of a unitary state lacking institutions and mechanisms for formally ensuring the mediation of territorial disputes which tend to be found under federal systems of government. Nevertheless, the creation of concordats and Joint Ministerial Committees has created mechanisms for interaction between the UK government and devolved administrations. To some extent, in relation to Scotland, these mechanisms were not so essential when the same political party was in power in both London and Edinburgh. However the election of an SNP minority government in Edinburgh may see a greater use of the mechanisms in future.

The devolved nature of policing and reserved nature of security ensures that there is a fairly limited scope for joint working across these policy areas. However, it is also evident that where cooperation has been necessary, for example in relation to specific events such as the outbreak of foot and mouth disease or the car bomb attack upon Glasgow airport, that fairly significant levels of cooperation do take place despite there being no "formal" necessity for such cooperation to take place. In part, these forms of co-operation reflect

8 COBRA meetings are held in the Downing Street and the acronym refers to "Cabinet Office Briefing Room". Both the Scottish First Minister, Minister for Justice and the Lord Advocate (Chief Public Prosecutor in Scotland) have participated in COBRA meetings via video-link. aspects of UK political culture with regard to the importance of non-legislative conventions in shaping political processes. Moreover, the spheres of policing and security are shaped by a considerable degree of consensus across political parties when a particular policing or security "event" takes place thereby making co-operation between tiers of territorial government within the UK relatively uncontroversial. It may be that cooperation across other policy spheres, such as developing common positions on European Union debates, may prove more testing and "contested" for existing processes of territorial cooperation and negotiation within the UK state.

Appendix I

Concordat between the Scottish Executive and the Home Office

Reserved Matters which are the Subject of Executive Devolution

- Administration of certain aspects of firearms licensing (licensing of rifle clubs, authorization to hold prohibited weapons or ammunition, museum licences)
- Payment of grants to police authorities for expenditure on safeguarding national security
- Establishment and operation of police and fire pension schemes
- Extradition casework in Scottish cases
- Authorizations under the Interception of Communications Act 1985 for the purpose of preventing or detecting serious crime for targets located in Scotland
- Authorizations under the Intelligence Services Act 1994 for the purpose of preventing or detecting serious crime for targets located in Scotland
- Authorizations under the Wireless Telegraphy Act 1949 for the purpose of preventing or detecting serious crime

Joint Working

- The planning and implementation of responses to civil and other emergencies, where such emergencies affect, or may affect, the whole of Britain
- Changes affecting the policy or procedures governing the release of life or determinate sentence prisoners
- The cross border transfer of prisoners, offenders subject to supervision and restricted patients
- Other cross border issues relating to mutual police assistance and powers of arrest and search

Appendix II

Areas of Cooperation between the Ministry of Defence and the Scottish Executive

- 1. Radioactivity, explosives and other dangerous materials (use, storage, carriage, disposal)
- 2. Nuclear accident response and other emergency planning
- 3. Matters affecting training (including training on private land, and land clearance for adventurous training)
- 4. General policing and security matters
 - Counter-terrorism
 - Police/Military Joint Tactical Doctrine liaison on policy guidance for the police and military for the protection of Key Points and preparations and activation of Government Defence Agreement plans
 - Arms control (including liaison on receiving arms control inspections)
 - Security issues (including Special Branch, liaison with Army HQ Scotland)
 - Firearms Act (liaison with Army HQ Scotland)
 - Vetting investigations undertaken by Defence Vetting Agency for Scottish Police
 - Defence courier services (occasional assistance)

- General liaison with Ministry of Defence Police and RAF Police, as police forces with authority and operating in Scotland, on all police matters
- General liaison between Procurator Fiscal and RAF Police
- Radio site clearance and control of jamming
- 5. Shipping (including dockyards, harbour regulations, powers of port authorities)
- 6. Aviation (largely reserved, but including MoD use of airports, etc.)
- 7. Search and rescue and Mountain rescue
- 8. Fishery protection
- 9. Meteorology, including weather radar
- 10. Military aid to the civil authorities
- 11. Procurement Issues
- 12. General defence activities

Are Centralized Election Management Bodies Suitable for Federal Structures?

Indraneel Datta

1. Introduction

This paper asks whether centralized election management bodies (EMBs) are more effective than decentralized bodies to ensuring free and fair elections in a federal polity. We define a centralized election management body as one which has been founded for the purpose of, and is legally responsible for, managing one or more of the elements that are essential for the conduct of elections, and of direct democracy instruments—such as referenda, citizens' initiatives, and recall votes—if those are part of the legal framework. These essential elements include: (a) determining who is eligible to vote; (b) receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates); (c) conducting balloting; (d) counting votes; and (e) totaling votes from polling locations.

Our case study of the 2006 post-civil war elections in the province of Aceh, Indonesia, challenges the conventional wisdom that centralized EMBs are invariably better suited for federal polities than a state level EMB. While acknowledging that EMBs demonstrably work more effectively and voters' interests are better served when the EMB has a clear accountability and performance control structure from its highest to its lowest levels, we hold that state

elections in post-conflict federal polities constitute a clear exception. The 2006 elections in the province of Aceh, Indonesia, marked the culmination of a peace process that brought to an end three decades of armed conflict between Indonesia's central government and the separatist Free Aceh Movement (GAM). We show how deeply-rooted suspicions from the part of the Acehnese public visà-vis the central government that it would gerrymander the elections required that the EMB be independent from the national election commission, headquartered in the provincial capital of Aceh, and managed by Acehnese with a demonstrated track record of impartiality during the conflict.

2. Challenging the Conventional Wisdom about Centralized Polities

The question of whether an election agency should be centralized is probably most salient when polls are held in ethnically divided or/and post-conflict polities. Successful elections are not merely about efficient and impartial management of the voting process, but also depend very much on *perceptions* by voters and contestants that the polling process was "free and fair". The 2006 local elections in Aceh were the culmination of the peace process between the central government and the GAM. The Peace Treaty, while emphasizing that Indonesia is a unitary state, granted the Province of Aceh self-rule vis-à-vis the Government of Indonesia. Aceh's self-rule contains some of the key features of a federalist arrangement. In view of widespread suspicions by large segments of Acehnese society that free and fair elections could be held in that province if they were managed by the national election commission, Indonesia's national parliament took the unprecedented decision to allow the establishment of an Aceh election commission that was independent from the national election commission. Examining the main technical and political challenges faced by Aceh's Independent Election Commission (KIP) in managing these landmark elections, we make the argument that decentralized election agencies are essential for ensuring free and fair local elections in federal polities which have experienced ethnic conflict. We caution that post-conflict federations, especially those where the ethnic communities have clear geographic boundaries, must avoid at all costs managing local elections through a centralized election management body.

Aceh and Indonesia's Central Government: From Uneasy Coexistence to Armed Insurrection

Aceh has become infamous for the Boxing Day Tsunami of 2004 that tragically claimed almost 180,000 lives in that province alone. As the Acehnese political scientist Rizal Sukma has put it succinctly, excessive centralization, unfair exploitation of Aceh's resources, human rights violations, and impunity by the security forces were the key factors that created the conflict in Aceh which began with an armed rebellion in 1976 and ended with a peace treaty signed in mid-2005. Ever since the war of liberation from Dutch colonial rule which ended with Indonesia's de facto independence in 1949, the province of Aceh had a contested status within the unitary state of Indonesia. Two striking features, one economic and the other ethno-religious, set Aceh apart from the rest of Indonesia. First, Aceh had massive reserves of natural resources, especially gas and oil but also numerous precious minerals. Second, the Acehnese adhered to orthodox Islam. It contrasted sharply with the syncretic form of Islam espoused by the country's ruling elite on the island of Java, which had resulted from a blending with Buddhism and Hinduism which had prevailed for centuries before the venture of Islam in the fifteenth century.

Following the discovery in 1971 of the world's largest gas field in Aceh, tensions between the Acehnese and Jakarta were no longer ethno-cultural, but tangibly economic. It had become a struggle over resources and wealth, and by the mid-1970s contributed decisively to the establishment of the Free Aceh Movement (GAM) whose charter called for Aceh's independence from Indonesia. The movement was based in the oil and gas rich regions of north-east Aceh. By 1979, a brief rebellion had been easily suppressed by the Indonesian Armed Forces (TNI). GAM's growth was to a large extent fueled by the increasingly intense exploitation of the

province's natural resources without any commensurate increase in living standards among the population. It is estimated that in the mid-1970s Aceh contributed one-third of Indonesia's Liquid Natural Gas (LNG) production making it the world's largest exporter. However, only 5 per cent of gas and oil revenues remained within the province, making it one of Indonesia's poorest.

In May 1998, retired General Soeharto, who had presided over Indonesia for more than three decades, stepped down. The fall of the dictatorship ushered a transition to democracy that culminated with general elections in June 1999. Meanwhile, Aceh failed to a large extent to capitalize on Indonesia's impressive socio-political transformation. As the 1990s drew to a close, the TNI continued to have an estimated 20,000 troops deployed throughout the restive province. Very few, if any, of Indonesia's new political freedoms materialized in Aceh, and there remained a media blackout which made it impossible for national public opinion to get a real sense of the conflict's roots and magnitude. It is widely held that the failure of Indonesia's political reforms to materialize in Aceh enabled GAM for probably the first time to evolve in a genuine political movement. Sensing the growing alienation of the Acehnese public vis-à-vis the central government, in late 1998 GAM resumed its military activities.

4. The Path from War to Peace: 1999-2005

During the tumultuous period leading to Indonesia's first free and fair elections in fifty years, the country underwent spectacular political reforms. The regions, which had long resented the centralistic, top-down approach of their national government, were given unprecedented freedoms to manage their affairs locally through an ambitious devolution plan. East Timor was given the choice to choose between remaining with Indonesia under a special autonomy arrangement or to become an independent nation. In a UN-

¹ Laws 22/1999 and 25/1999 on fiscal and administrative decentralization, known as the Regional Autonomy laws.

supervised referendum in August 1999, 80 per cent of the East Timorese voted in favour of independence.

In early 2000, the central government took steps toward a political settlement with GAM through international mediation. For complex reasons beyond the scope of this study, peace did not last and in fact the conflict escalated in 2003 and for much of 2004. A watershed came with the election of a new Indonesian president in the fall of 2004. Within weeks of being sworn-in, the new President set out on a peace initiative for Aceh. Again, this was to involve international mediation. The government of Indonesia's formal invitation to the GAM leadership for direct peace talks was fatefully sent 48 hours prior to the 2004 Boxing Day Tsunami. This tragedy, in which thousands of soldiers and guerillas were annihilated, acted as a powerful catalyst for peace, and within the stunningly brief period of eight months the former enemies signed a peace treaty in Helsinki to end almost three decades of conflict.

Translating Good Words into Policy: Aceh's 2006 Local Elections

The Helsinki Memorandum of Understanding (MoU) contained three provisions which, in our view, were the prerequisites for a successful completion of the transition from war to lasting peace. First, it called for the decommissioning of weapons by GAM and the demobilization of TNI forces in Aceh. Second, it required the enactment of the Law on the Governance of Aceh (LoGA) which provided the legal framework for Aceh's quasi-federal status within the unitary state of Indonesia. This was the most controversial provision in the MoU given that the law was to be enacted solely by Indonesia' national parliament, not Aceh's provincial legislature. Third, democratic local elections were to be held not later than eight months after the signing of the Helsinki MoU. In the remainder of this paper our focus will be on the lessons learned from holding the local elections in Aceh and how these are relevant to elections in other ethnically divided or post-conflict societies. We will focus on the role of Aceh's election agency, the Aceh Independent Election Commission (KIP).

It is widely acknowledged that implementing the broad principles of a peace treaty into concrete policy is a process fraught with risks, and if decisions are reached without careful consideration and support from all the parties, they can ultimately undo the peace. As we saw from our above synopsis of the Acehnese conflict, it was permeated by the population's deep-seated distrust of the central government, and in particular of the military. The debate over whether a central election agency was compatible with the political context of the Aceh elections highlights the perennial dilemma faced by election agencies: legitimacy *vs.* efficiency.

The LoGA called for the establishment of an Acehnese independent election agency to manage the province's formative elections. While the draft law was being debated in national parliament there was significant opposition to this proposal on both political and technical grounds. Politically, the nationalist parties saw the creation of KIP as a dangerous precedent that eroded national sovereignty over the province. Moreover, there were also concerns that a provincial election agency is more vulnerable to being hijacked by local power structures than a national one. For example, the incumbent, the security forces, or GAM. Technically, they voiced deep skepticism about the capacity of a local, inexperienced election agency to manage such a decisive suffrage. In Indonesia's 32 other provinces besides Aceh, elections are managed by the local chapters of the national election agency (KPU).

Those in favour of creating KIP highlighted the exception represented by Aceh given the high political stakes of the election. If we consider the legacy of Acehnese distrust toward the central government, there was a very clear danger that if the electorate were to perceive the election as gerrymandered by Jakarta in any shape or form, it could either result in very low voter turnout or/and rejection of the results by the public and candidates alike. Technically, while it is undeniable that an Aceh election agency would have limited experience at best, the election itself was not very challenging technically provided that the agency was given a realistic timeframe to conduct the election. As a yardstick of comparison, Aceh had a total of 2.6 million registered voters, a small number com-

pared to local elections in the province of West Java with 27.5 million voters.

The argument in favour of the creation of subnational election agencies managed by Acehnese commissioners won the day. In fact, not only did the LoGA enact the establishment of a provincial election agency to conduct the governor poll, but also allowed for the setting up of municipal/district election agencies that would be independent of the provincial agency and responsible to conduct the election of mayors and regents.

Although the national parliament harboured doubts about the technical capacity of the Aceh Independent Election Commission, it preferred to err on the side of maximizing the legitimacy of the polls.

In what reads like a list of the pros and cons of establishing subnational election agencies, both sides of the argument saw their claims substantiated by the course of events in the 2006 Aceh local elections. On the plus side, voter turnout was very high, at 85 per cent. By comparison, in the 2004 national parliamentary and presidential elections conducted by Indonesia's central election agency, turnout in the province of Aceh had been in the lower 60s, well below the national average of 84 per cent. Crucially, the high turnout combined with the fact that the provincial agency was managed by Acehnese citizens widely recognized by the public as nonpartisan was instrumental in ensuring that the defeated candidates accepted the results which saw the guerrilla movement's former chief of intelligence win the election for governor of Aceh.² This was no small feat if we consider that all reliable public opinion surveys prior to election day did not identify the winner among the two front-runners for the governorship.

The potential dangers that are inherent in subnational election agencies also materialized as the election unfolded. Technically, the election agencies often appeared out of their depth. For instance, names of candidates were misprinted in ballot papers for some of the municipal elections. Also, several thousand blank ballot papers were misplaced and subsequently found in a warehouse mixed up

² Opinion survey conducted by IFES-Democracy at Large, October 2006.

with voter identification cards. At a more serious level, the incapacity of the election agency to distribute voter ID cards in time for the election prompted a last-ditch change in the regulations, allowing voters to use their national ID cards in lieu of the hitherto compulsory voter ID cards. However, the fact that there was no vertical chain of command—municipal/district election agencies were administratively independent from the provincial agency—meant that the last-minute change in regulations was not systematically communicated to polling stations. Consequently, voters were disenfranchised, but fortunately only a small number that did not bear impact on the final results.³

A more sinister by-product of the decision to create administratively independent municipal/district election agencies was that they were easily penetrated by local power structures. Two cases of collusion at Regency level between the incumbent, the election agency, the local parliament and the police were of such magnitude that, six months after the election, the results had yet to be formally announced in these two Regencies. This highlighted the warning made almost one year earlier that read as follows:

Electoral Management Bodies (EMBs) demonstrably work more effectively and voters interests are better served, when the EMB has a clear accountability and performance control structure from its highest to its lowest levels. The . . . LoGA does not provide for this, but for the opposite—a fractured structure for electoral management in Aceh, requiring Municipal/Regency election agencies (KIPs) to be established by Municipal/Regency [parliaments] and affirmed by the relevant Mayor/Regent, with no reference to the provincial election agency. Integrating Municipal/Regency KIPs into provincial electoral management will be difficult if not impossible to achieve under proposed selection/appointment arrangements, whereby each Muni-

³ The winner of the governor election and the runner-up were separated by 22 percentage points.

cipal/Regency KIP derives its authority from a different source.⁴

In our view, the gross electoral fraud conducted by the Regency KIPs in South-East and Central Aceh Regencies indicates the limits to de-centralizing election agencies. The case of Aceh contributes to the vast body of evidence that small election agencies are prone to be hijacked by local interests, and thus tend to be less accountable to voters. In the case of Aceh's Municipal/Regency KIPs, the hijacking of the electoral process was made easier by the weak electoral framework that allowed for a "fractured" structure for electoral management in Aceh.

As we shall subsequently demonstrate, damage inflicted by the weak legal framework of the Aceh elections did not stop at the Municipality/Regency level. Another major flaw in design had the potential to undermine the Aceh polls in a way that reads as a cautionary tale for post-conflict elections. As national parliament rushed to meet the deadline set in the Helsinki peace accords to enact the LoGA, it borrowed heavily from existing legislation for regional elections. In the crucial articles that defined the electoral system to be used in the Aceh elections, the LoGA adopted a First Past the Post (FPTP) system, which falls under the Plurality-Majority systems. FPTP is the electoral system used in a majority of Indonesia's provinces. This "cut and paste" job was apparently done without due consideration of the fact that Aceh's election was to take place in a post-conflict political context, and therefore starkly different from Indonesia's other regions.

In a FPTP system, the winning candidate is simply the person who wins more votes; in theory he or she could be elected with two votes, if every other candidate only secured a single vote. In most of Indonesia's regional elections, the candidate who meets a threshold of 25 per cent (plus one vote) of valid ballots automatically win the election. The greatest advantages of this electoral system are its simplicity for voters and cost-effectiveness. Voters

⁴ Personal communication, March 2006. The author of this analysis has requested to remain anonymous.

only need to tick the name of the candidate on the ballot, and given that the winner only needs to get one quarter of total valid votes cast, it is virtually guaranteed that the election will be decided in one round rather than two rounds.

The choice to have a FPTP electoral system for Indonesia's regional elections had been reached several years prior to the Aceh 2006 elections. This choice was the outcome of an unspoken political compromise between the two dominant parliamentary factions in the Indonesian House of Representatives. Although touted by its supporters for its technical merits which we outlined above, the appeal of a 25 per cent + 1 threshold to the two largest political parties in parliament was on political grounds. Their previous electoral performance indicated that they could not get absolute majorities in most local elections. These two dominant parties calculated their "magic number" for winning a local election at approximately one quarter of votes, and consequently they reached a quid pro quo which "tailored" the electoral system to their advantage.

One month prior to Election Day, the first voter opinion polls about the governor/vice-governor elections indicated a deeply divided electorate. Of the eight pairs of candidates, none of them could muster more than a quarter of the vote, perhaps not entirely surprising if we consider the profound political cleavages in this post-conflict society. The candidates offered radically different visions of Aceh's future. There was a moderate platform with a message of reconciliation that brought together a national Muslim political party based in Jakarta with GAM's older generation that had been in the diaspora during the conflict. Then there were Islamists promising to implement sharia law more comprehensively in Aceh. Finally, there was a ticket representing the military wing of GAM and pro-independence activists. The latter belonged to the younger generation of GAM and had experienced the brunt of the Indonesian Armed Forces' clampdown on the resistance. According to the opinion polls, the front runners were the "moderates", followed by the "Islamists". GAM's "military wing" was a distant fourth.

Crucially, the result of the opinion polls underscored the dangers posed by the electoral system in this profoundly divided society. In this fiercely contested election, if none of the candidates

could muster the support of a quarter of the electorate, then there would be a run-off between the first and second highest performers. This would ensure that the winner had an absolute majority of Aceh's vote. However, if one of the candidates were to have a late surge in the polls and scratch past the 25 per cent mark by a couple of points, would this be accepted as a legitimate mandate by the majority of Acehnese who did not vote for the winner? An even worse potential scenario would have two deeply ideologically opposed groups each scoring approximately one third of the votes. What would have happened if the "GAM military wing" candidate lost the elections by 32 per cent to the "moderates" 33 per cent? There would be no run-off, yet the winner would almost surely have a weak mandate given that more than two thirds of the voters would have not voted for him.

As the election campaign unfolded, the nightmare scenario did come remarkably close to reality. Supporters loyal to the "GAM military wing" candidate attacked the convoy of the "moderate" candidate who was at the time leading in the opinion polls. The candidate escaped relatively unharmed, but the fact was that the candidate camp with the most overt military profile had sanctioned violence and intimidation against other contestants. This reality was all the more disturbing because if we examine the patterns of violence in highly contested polls in post-conflict societies, hostilities tend to occur after the election results are announced, not beforehand.⁵

Fortunately, there was to be no violence after Aceh's Election Day. There are many reasons beyond the scope of this paper as to why bloodshed was averted. We can never know whether the violence and intimidation by supporters of the "GAM military wing" candidate was a bluff. It is completely conceivable that they would have refrained from violence even if their candidate had lost. Ultimately, the "GAM military wing" candidate won the governor elections by a convincing, if not overwhelming, 38 per cent of the

⁵ Kenya's 2008 presidential election, erupting at the time this paper was written, is an obvious example of post-election violence. Other cases in point are: Haiti (2006), Timor-Leste (1999), Angola (1992), and Burma (1989).

vote. The runner-up only won 16 per cent of the vote, giving the winner "a mandate to lead more than to govern" in the words of the Chief Election Observer of the European Union. The point we are making is that the choice of an electoral system needs to be informed by a careful reading of the political context. In the case of Aceh 2006, the electoral system had several potentially perverse effects on an already complex political situation. It should have promoted moderation and victory by absolute majority so as to increase the legitimacy of the winner. Instead, it unwittingly rewarded contestants with potentially extremist platforms and victory by a simple majority rather than by an absolute majority of the votes.

6. Recommendations

We make four main recommendations. First, the case of Aceh provides compelling evidence for advocating the creation of subnational election agencies in post-conflict elections because they contribute to markedly increase confidence in the electoral process by both voters and candidates. Consequently, voter turnout tends to be higher, and mechanisms for resolving electoral disputes are more effective.

Second, we caution that limits should be set on the extent to which election agencies are decentralized. While decentralized electoral agencies are a key to increasing the legitimacy of subnational elections, too much decentralization can yield the opposite result. In the Aceh 2006 elections, the creation of election agencies at municipal/district levels which were unaccountable to the provincial election agency became perhaps the greatest hurdle to free and fair elections. Politically, several of these local election agencies were hijacked by local power structures (incumbent, legislature, police, and strongmen) who manipulated the validation of electoral participants and election results. Technically, many local election agencies were overwhelmed by the task at hand due to lack of training and management experience, making mistakes ranging from misprinting ballots to requiring the wrong voter eligibility documents at polling stations.

Third, we postulate that the question of whether de-centralized election agencies are compatible with federalism becomes largely redundant unless it is addressed in conjunction with an analysis of the legal framework of the elections. A weak legal framework which, for instance, fails to clearly define the powers and responsibilities between the different election management bodies or to adopt an electoral system that is suitable to the particular political context, has the potential to undermine the integrity of elections regardless of whether the election body is centralized or not. As the case of Aceh makes abundantly clear, the disruptive potential of a weak electoral framework is markedly increased in the context of a post-conflict election because of low levels of trust in the process by both voters and candidates. Therefore, our final conclusion is that the legislature which enacts the election legal framework and the election agency tasked to operationalize the law must cooperate in a way as to maximize the prospects that the law is suitable to the political and physical/logistical environment of the election. Or at the very least avoid things which could lead to the breakdown of democracy.

7. Conclusion

Our case study has highlighted the perennial tension faced by election management bodies: efficiency vs. accountability. At the 4th International Conference on Federalism, India's Chief Election Commissioner N. Gopalaswami captured this tension by stating that "elections are very much about managing perceptions". The Aceh 2006 elections leave little doubt that de-centralized election management bodies are far more vulnerable to being penetrated by local vested interests than a centralized EMB. Therefore, we can safely conclude that in a majority of instances, elections in federal countries are safest in the hands of a national election commission with a strong mandate and independently appointed members. The exception to that rule is an election held in a post-conflict society where significant numbers of voters and contestants hold deep-seated suspicions toward institutions at the national level. This is particularly the case in a federal country where conflict was

ethnically or religiously motivated, and the communities are geographically separated from each other as in the case of Aceh. Given that it is impossible for an election to be conducted freely and fairly if the voters do not perceive the EMB to be impartial, we conclude that under the above conditions it is better to establish a de-centralized EMB. In the short-run, establishing a de-centralized EMB, for instance at the state level, will probably mean lower levels of efficiency. However, drawing from our study we believe that it is better for an EMB in a post-conflict society to err on the side of management shortcomings but being perceived as impartial and accountable to voters. The reverse could spell disaster because in a democratic election voters can forgive some degree of incompetence, but will not tolerate the faintest smell of deception.

THEME 4 LOCAL GOVERNMENT IN FEDERAL SYSTEMS

Local Government Leading the Empowerment of Disadvantaged Groups

The Cases of India and South Africa

Neetu Prasad Reuben Baatjies

1. Introduction

According to the World Bank empowerment is the "expansion of assets and capabilities of poor people to participate in, negotiate with, influence control and hold accountable institutions that affect their lives". Therefore, empowerment is essentially a political process. The centrality of the notion of empowerment is located in the dynamics of sharing, distribution and redistribution of power, which has a basis of legitimacy. In a democracy the state draws legitimate power from the people and this power should flow back to the people through the process of empowerment. Empowerment of disadvantaged groups cannot be completed without their participation in the political process, and thereby enhancing their control over society's resources.

While there are many forms of empowerment, this paper is confined to empowerment in the form of the extent to which the institutions of local government are representative of the disadvantaged groups in society (*representative* democracy), and whether those disadvantaged groups have a voice in the decisions that affect them (*participatory* democracy). By the same token, while there are many categories of disadvantaged groups, the term is used in this paper only to refer to women and the poor or marginalized.

2. To What Extent have Local Governments Lead the Empowerment of Disadvantaged Groups in India?

Indian society has been historically iniquitous. Religion ordained hierarchy amongst the majority Hindu population ensured that certain castes were accorded higher ritual status than others. The caste system subsequently turned out to be a vehicle of discrimination and oppression. At the lowest rung of this hierarchy were backward classes were Other Backward Classes and the Scheduled Castes. Tribals living in remote areas, though not part of the caste system, remained undeveloped and marginalized. These groups have been subjected to various kinds of social, economic and political exploitations, oppressions and harassments.

Women in India have traditionally been accorded low status and lesser rights in all spheres of life. Though they constitute roughly 50 per cent of the total population they received only a small share of development opportunities and little say in political, social and economic matters. They have often been excluded from education, better jobs, from participation in political system and from adequate health care.

With the dawn of independence and the adoption of the Republican Constitution, several constitutional and statutory measures in the nature of "Affirmative Action" were taken by parliament and the government of India, which improved the status of women, Scheduled Castes and Tribes, and Other Backward Classes in India. The most significant landmarks in this direction were the 73rd and 74th Amendments to the Constitution in 1992.

2.1 Historical Background

Panchayats have always been an integral part of Indian society, much before there was any statutory prescription for it. In ancient and medieval India, gram panchayats were self-sufficient and autonomous administrative units. They not only engaged in running the day-to-day affairs of the village but also had a great influence on the overall economy of the state, and the lives of the inhabitants. The medieval temple towns of the south are good examples of these arrangements. Mahatma Gandhi foresaw the strength and potential of the local bodies and strongly advocated the distribution of power to the villages. During the British colonial rule the state had consciously distanced itself from the people for obvious reasons. However, even after India's independence in 1947 and the inception of democracy, the popular alienation continued. The distance between the decision-makers and those affected did not narrow significantly and no mechanism of popular consultation and participation was put in place.

The top-down approach to planning seriously hampered the true spirit of democracy and led to lopsided development. Policies and plans were conceived without adequate appraisal of the groundlevel realities, and appreciation of the needs of the people. This approach failed to realize the development objectives of the government, both in terms of the macroeconomic targets as well as social justice. The most disadvantaged groups were also the most alienated in this approach, as they neither had any say in deciding the development strategies and goals or in monitoring their implementation and holding accountable the bureaucracy implementing it. The stated objective of the Indian state was to "secure to all its citizen justice, social, economical and political". With annual GDP growth rate stagnating at around 4 per cent, 40 per cent of the population surviving on less than a dollar a day, caste and gender based atrocities remaining as frequent as ever, and the political power remaining concentrated with the upper castes and classes, this promise was far from being realized. Against this backdrop the government brought in a new framework to enable popular participation in governance in the form of 73rd and 74th Amendments to the Constitution.

2.2 Concept of Local Government in the Indian Context

In India, local government represents the third tier of the system of governance. The national government administers certain competencies as prescribed in the Constitution throughout the country. These include competencies like foreign affairs, defence, currency, communication, and railways. At the middle level, the states also have their jurisdiction over certain competencies like land administration, police, public order, health, and education. Local governments, or municipal corporations or municipalities (collectively called urban local bodies or ULBs), in the urban areas and panchayati raj institutions (PRIs) in the rural areas, represent the last tier of this system.

The 73rd and 74th Constitutional Amendments were a path-breaking event to strengthen local government in India. The Act envisaged decentralization of powers, duties and resources from state government to local government. Decentralization in a democracy is critical for its success. Decentralization empowers society in general to question the actions of bureaucrats and democratic representatives, use of government money and resources, allocation and implementation of works. This power itself deters corruption. Decentralized governance seeks to tap local initiative and practices by involving grass roots organizations such as self-help groups. The decision-making is done by all interest and pressure groups, ensuring that planning at the local level makes the best and most effective use of the resources available.

2.3 How the 73rd and 74th Constitutional Amendments have Helped in the Empowerment of Disadvantaged Groups

The main features of the 73rd and 74th Amendments can be summarized as follows:

- (a) It envisages a three-tier system of PRIs; gram panchayat at the village level, panchayat samiti at the intermediary level and zilla parishad at the district level.
- (b) Elections to all the seats to panchayats at all levels are direct where as the post of the chairman at the intermediate and district levels are indirect. The mode of election of the chairman to the village level has been left to the respective state governments to decide.
- (c) Seats have been reserved for SCs and STs in proportion to their population at each level.
- (d) Women have been provided a reservation of 33 per cent in both the reserved and non-reserved categories.
- (e) Similar reservations have been made in respect of the office of the chairpersons.
- (f) The state Election Commission shall conduct elections to these bodies every five years.
- (g) A Finance Commission must be appointed every five years to make recommendations regarding distribution of revenue between the PRIs and the state, grants-in-aid and recommend measures to strengthen the financial position of the panchayats.

The intent of these reforms is revolutionary. It seeks to alter the power structure of society by transforming those structural arrangements which legitimizes the subservient or subordinate position of the disadvantaged groups like women, SCs/STs and OBCs. The enactment of the 73rd and 74th Amendments provides psychological empowerment and a sense of political efficacy to those who had been left powerless, to influence public decisions that affect them. The electoral outcome in terms of women's participation has been very encouraging in certain cases, not merely in the constituencies reserved for them but also in general constituencies where women contested and won. In many cases the percentage of women elected to the PRIs exceeded the reserved quota. The first election to the PRIs after the 73rd Amendment Act suggested that in Karnataka 43 per cent, in Madhya Pradesh 38 per cent and in West Bengal 35 per cent of the elected positions in the PRIs was held

by women. Karnataka had an all-woman panchayat in Mydolalu village in Bhadrawati taluk in Shimoga district. The election of 2002 to the ULBs of Kerala proves that given an opportunity women are capable of assuming powerful positions and making meaningful decisions and implementing them too. The percentage of female representation in the municipalities was 36 per cent and in the corporations it was 35 per cent. If we compare these figure with the elections held in 1995, it is clear that there has been an increase in the percentage of female representation (see table below).

Women's Representation in ULBs in the State of Kerala in Elections of 1995 and 2000

Urban Body	Total Wards (Year 1995)	Representation (%)	Total Wards (Year 2000)	Representation (%)
Municipalities	1568	34.7	1597	36.88
Corporations	208	34.7	298	35.07

Apart from contesting elections and getting elected to PRIs, women have played an important role in imparting leadership, sincerity and commitment to development work. In the state of Uttar Pradesh, it was found that the empowerment processes has certainly brought about a marked change in the knowledge, attitude, status, lifestyle and self-identity of the elected women. Participation in PRIs has given them a chance to discuss and understand politics and power. The elected women gave priority to issues like:

- Job creation for women
- Improving health and drinking water facilities; and
- Addressing the issue of violence against women.

Elected women in some states have taken part in protests and rallies against low and discriminatory wages and for basic civic amenities like drinking water. Some are reported to have participated in demanding better implementation of government schemes and have disseminated information about government schemes amongst those for whom they were meant. In Ernakulam district

of Kerala state, women representatives of the panchayat strived for the enrolment of children in school and reducing incidences of dropout. Studies have indicated that the attendance of women in panchayats has been consistently higher than that of men in the north Indian states of Rajasthan, Madhya Pradesh, and Uttar Pradesh, though these states are known to have strong patriarchal societies.

Similarly, several instances can be cited where SC/ST representatives have used these institutions to further the cause of justice and equity. While in the initial years such representatives did function as proxy office bearers, with time their assertiveness has increased. Studies conducted in the state of Karnataka indicate that the representation of the Most Backward Classes rose to the extent of 30 per cent of the total number of seats in the PRIs in the year 2000 and they together with the SCs/STs accounted for 60 per cent of all the positions, thereby decisively eroding the dominance of the landed Lingayat and Vokkaliga communities. The elections 2001 in Bihar led to increased representation of SCs and Most Backward Classes at the positions of mukhias (sarpanches) in the areas which had witnessed a high level of discrimination against them at the hands of upper castes.

Local government in India is instrumental in bringing economic empowerment to the disadvantaged groups. There are several government sponsored schemes like the National Slum Development Programme, Jawaharlal Nehru's National Urban Renewal Mission and other poverty alleviation programmes run by panchayats and ULBs. These schemes ensure employment to the poor through training, skill development and by providing backward and forward linkages. In the state of Andhra Pradesh many thousands of women are able to change the course of their live through self help groups. These groups are assisted by the ULBs in every possible way. ULBs in Andhra Pradesh are implementing the slum development programme, under the name "Andhra Pradesh Urban Services for the Poor". It is based on participatory appraisal. The inhabitants list local needs and play a very active role in implementing and monitoring civil and other works.

From the above analysis it becomes clear that the women, SCs/ STs and OBCs have come a long way since the new framework for local bodies was introduced. During this fourteen-year journey, the reservation given to them in PRIs and ULBs has helped them in becoming a part of the governance in their villages and towns and now they are in a position to determine their future as well as that of their constituency. The experience of these years, however, has brought to the fore certain issues which need to be addressed to realize the full potential of these institutions.

2.4 Challenges

2.4.1 Weak Gram Sabhas

Gram sabhas continue to function imperfectly in most of the states since they have limited powers and only meet sporadically, largely at the instigation of local bureaucrats. Attendance in gram sabha meetings is generally poor as substantive issues are rarely discussed, with the result that they do not provide an effective platform for deliberation of local policy options and programme priorities. For these reasons popular oversight is weak and the accountability of elected representatives cannot be ensured.

2.4.2 Proxy Representation

While representation of the disadvantaged groups has been ensured by the reservations discussed above, in many instances the traditional elite still dominate the PRIs and its decision-making. Many elected representatives are only proxy candidates for the traditionally dominant castes and landed sections. Even though many women have found a place in the PRIs, their male family members often exercise most of the power on their behalf. Influential male relatives influence decision-making and control resources. Outspoken Scheduled Caste and female representatives often have to contend with violence, ostracism or non-cooperation from dominant interests.

2.4.3 Misplaced Priorities

Enhanced numerical presence in PRIs of the disadvantaged groups has generally not translated into sustained pro-poor development outcomes, at least not at a significant level. This tends to reflect the limited resources at the disposal of panchayats and the limited power they possess to determine local expenditure priorities. Moreover, the resources available for social welfare programmes in the form of subsidized housing and employment generation are spread very thinly, with the result that only a handful of individuals receive these benefits each year. Without a much greater devolution of financial resources, the potential development impact of decentralization will remain limited. Similarly the fact that health and education remain subject to highly centralized forms of provision means that elected representatives at the local level have little influence over service delivery.

2.4.3 Financial Devolution

Financial Devolution has progressed to a very limited extent as resource flows are determined by the implementation guidelines for state and central government anti-poverty schemes. The scope for local revenue mobilization is very limited, resulting in a high level of dependence on funds from higher levels of government. Gram panchayats are empowered to raise modest resources through local property taxes, but these are difficult to collect and only a small proportion of their funds are raised through this source. In practice, the recommendations of the state finance commission governing PRI finance are often ignored by their respective state governments usually on the grounds of resource constraints. Most state governments are experiencing fiscal deficits and are reluctant to devolve greater expenditure autonomy to the local governments. Furthermore, the budget for capital expenditure is very limited since recurrent salary costs account for a large share of the resources and the bureaucracy is very resistant to reforms.

2.4.4 Administrative Decentralization

Most of the PRIs are facing shortages of skilled manpower. Most states have been unable to effect sufficient transfer of staff from the state to the lower tiers of government. Trade Unions and even senior officials resist efforts to transfer personnel to local bodies or to downsize the state administrative establishment.

2.4.5 Administrative Inexperience of the Elected Representatives

Many of the elected representatives do not possess sufficient knowledge, skill or experience in administration. As a result bureaucrats in local governments, especially gram panchayat secretaries, continue to exercise considerable influence over elected representatives as they are privy to information contained in government orders that may not be readily accessible to the elected representatives.

2.5 Prospects

The promise of local self-government envisaged in the 73rd Amendment to the Constitution of India has, at best, only been partially realized. While the states have put in place the PRI structure, the extent to which these grass roots institutions of governance have been empowered has been largely inadequate. For effective decentralization there are three necessary conditions:

- 1. the existence of strong commitment at the higher levels of political authority;
- a fair degree of autonomy amongst the local bodies to take decisions and implement them; and
- 3. the availability of sufficient economic resources at the local level.

While the framework suggested by the constitutional amendments are enabling in theory, the onus of realizing them lies with the states. It is here that some states have been found wanting in their commitment to empower the local bodies. Many states have not made reasonable provisions for financing the PRIs. Many of the important competencies have been retained with the state governments and there is little supervisory role for the PRIs and ULBs on critical departments like health and education. It is evident that the state legislators see these institutions as rivals and fear that the local bodies would strengthen at their expense. The bureaucracy is also reluctant to lose power and face enhanced levels of accountability.

While the system already in place may still be far from perfect, it is a vast improvement over the previous mode of governance and service delivery. In the Indian context, empowering the local bodies does to a large extent translate into empowering the disadvantaged groups. While local governments do not possess any legislative powers, their activities affect the daily lives of common people in numerous ways. Yet a majority of the people coming from the weaker groups in society remain unconcerned or even unaffected by the larger issues which preoccupy the state and national governments. Only local governments can sincerely address their concerns and, hence, should take the lead in empowering them. Only with their basic requirements fulfilled and armed with the basic training in democratic participation can these groups be expected to play a larger and more meaningful role at higher levels of governance.

Local Government as the Key Institution for Democracy and Empowerment of Disadvantaged Groups in South Africa

Local government, by its very nature of bringing government closer to the people, ought to make the translation of community needs into policy and development programmes more likely. Locally based decisions are often more practical and sustainable in that they acknowledge and accommodate local diversity and historic complexities that may exist within a particular locality.

The South African system of decentralized government consists of three distinct, interrelated and interdependent spheres of government – national, provincial and local. The Constitution of the Republic of South Africa of 1996 establishes and entrenches local government as a distinct sphere of government. In comparison with other federal systems, local government in South Africa enjoys considerable constitutional recognition. In many respects South Africa is a leader in the emerging role that local government is expected to play in entrenching democracy and promoting development.

Based on the notion that local government is the sphere of government closest to the people, the Constitution mandates local government to provide democratic and an accountable government to local communities and encourage the involvement of communities and community organizations in the matters of local government. In line with the constitutional framework, the White Paper on Local Government (1998) put forward a vision of developmental local government, one which is committed to working with citizens, groups and communities in meeting the social, economic and material needs of communities in a holistic way. A central principle of the post-apartheid Reconstruction and Development Programme (RDP) was the empowerment of poor and marginalized communities. People-centred and people-driven development that emphasizes growing empowerment and reliance on mobilizing the energies of communities was a central concept of the RDP.

According to the White Paper, local government is uniquely placed to achieve this inclusivity. The White Paper emphasizes that a key characteristic of the vision of developmental local government is "leading and learning". In this regard, local government must play a central role in empowering, and improving the quality of life of their communities, "especially those members and groups within communities that are most often marginalized or excluded, such as women and the very poor".

Given the importance of local government in enhancing democracy, it should be inclusive of the entire community it represents, including disadvantaged groups. An inclusive form of governance requires that all the inhabitants of the community claim their rightful place in local government. But this requires a strong public that can interact with local government in an informed and directed manner and use the spaces available for participation on key decisions for more effective local solutions. In this regard, it is incumbent on local government to encourage and create conditions for the local community to participate in the affairs that govern them.

3.1 Inclusive Local Government

The South African local government system is premised on bringing government closer to the people through both representative and participatory democracy. It is charged with the responsibility for deepening democracy by facilitating the participation of minorities and disadvantaged groups. Inclusive local government is vital for the sustainability of the institution and enhancement of democracy.

The world over, local governments are premised on the notion that the municipal institution belongs to the inhabitants of the locality. In South Africa, this position is legislated. Fundamentally, local government legislation defines a municipality as comprising its political structures, its administration and the community of the municipality. Local government legislation, thus, makes it clear that communities are an integral part of municipal governance of local government affairs. A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance.

3.2 Representative Local Democracy

3.2.1 Proportional Representation

A starting point for making elected local councils more representative is the electoral system. The main strategy for the inclusion of the disadvantaged in the institution of local government has been the emphasis on getting more women elected as municipal councillors.

The use of a quota policy to address the problem of underrepresentation of women has frequently been the subject of heated debate in South Africa. While quotas are not legally enforceable, local government legislation encourages political parties to ensure that 50 per cent of the candidates on the party list for a local election are women, and that women and men candidates are equally distributed on the list. In the absence of mandatory legislative quotas, the policy of each political party on women's representation determines the extent to which women will be represented in municipal councils.

The White Paper on Local Government, thus, encourages parties to draw up the party list in such a way that the first candidate on the list and every second candidate thereafter, is a woman. In the South African system where half the councillors are elected from a political party's proportional representation list, the parties have large sway in determining women's representation on municipal

councils. This is so because if a political party wins, say, 30 proportional seats in the municipal council, the first 30 candidates on the party list are declared councillors. By adopting their own quota policy, political parties can, thus, contribute to the enhancement of equal representation of women in local government.

In the 2006 local elections, 40 per cent of local councillors elected were women. This is a significant increase from the 29 per cent women councillors elected in the first democratic local elections in 2000. Significantly, this places women in local government ahead of women's representation in the national assembly, which stands at 33 per cent. This was due largely to the lead taken by the majority party, the ANC, 46 per cent of whose elected councillors were women. Impressively, 43 per cent of proportional councillors (determined by party lists) were women. The increase in women's representation in local government, and particularly the majority party's progressive approach to attempt to bridge the divide, is highly commendable. However, while significant strides have been made with regard to women's representation in local government, the ideal of 50 per cent women councillors is still elusive.

Of mayors, 229 are male only 54 are female; 74 deputy mayors are male and 24 are female; 186 speakers are male and 77 are female; 163 chief whips are male and 27 are female; 264 municipal managers are male and 18 are female. Thus, unlike India where quotas also apply to leadership positions, only 15 per cent of the mayors in South Africa are women. Despite the general increase in women's representation in local government, their representation in executive leadership positions is still extremely low. This is a vital aspect of women's empowerment at the local level, one that needs to be addressed to ensure that women's representation is not merely symbolic.

A more difficult question is the representation of marginalized groups other than women.

3.2.2 Ward Representation

In municipalities where ward committees are established, 50 per cent of local councillors are directly elected by their ward constituencies. However, there is no means of ensuring the representation of marginalized groups. It is presumed that because ward councillors are directly elected by their communities, they would almost by implication, be representing the interests of their constituencies. If the constituency of a particular councillor is a marginalized community or a very poor one, it is, thus, presumed that the councillor elected by them would represent their interests on the municipal council. The proximity of citizens to their elected representatives also makes it easier to call them to account. This is based on the assumption that ideally, the ratios of local representation will be small enough to ensure that all municipal councillors are "within reach" of their constituencies.

This assumption has not always materialized in practice. Given the reality of ever-increasing urbanization, however, municipal representatives are becoming more and more distant. Moreover, elected ward councillors have all too often drifted away from their constituencies on the flood of cooption and benefits of office. This is particularly true in the South African context where councillors are handsomely remunerated, so much so that the race for councillorship has become a heated and sometimes fatal arena of contestation.

3.3 Participatory Local Democracy

Election to public office is not an end in itself; equally important is keeping the elected representatives to their promises. Participatory democracy is of particular importance at the local level, allowing the community to identify with the political institutions that govern them and fostering a sense of ownership over common resources.

Community participation is key to the functioning of local government. One of the constitutional objects of local government is to encourage the involvement of communities and community organizations in local government. Thus, community participation, in various forms and to varying degrees, is now a legal requirement in nearly every key municipal process. A municipal council must develop mechanisms to consult the community and community

organizations in performing its functions and exercising its powers. Local government legislation lists a number of structures and mechanisms for community participation. First, participation must take place through political structures or any committee or other collective structure of a municipality that has been elected, designated or appointed in terms of legislation. Of the various structures that fall within this definition, the ward committees and the subcouncils are most obvious. Second, the ward councillor is also a vehicle for participation. A municipality must further establish its own appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality.

Municipalities are, therefore, tasked with developing mechanisms to ensure citizen participation in policy initiation and formulation, and the monitoring and evaluation of decision-making and implementation. Municipalities must promote the participation of marginalized and excluded groups in municipal processes by adopting inclusive approaches to fostering community participation, including strategies aimed at removing obstacles to, and actively encouraging, the participation of marginalized groups in the local community.

3.3.1 Value of Community Participation

In a landmark judgement in South Africa in 2006, the Constitutional Court made it clear that community participation is particularly important to ensure that the interests of vulnerable groups in society are protected. The Court remarked that "participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist". Local government legislation incorporates this principle by emphasizing the protection of vulnerable groups as a principle that permeates the legal framework for community participation in local government. The legislation makes it clear that in designing and implementing community participation strategies, the special needs of *inter alia* women and other disadvantaged groups must be taken into account.

The benefits of an effective system of community participation are manifest. Importantly, the Constitutional Court outlined the benefits of community participation as the following:

- It provides vitality to the functioning of representative democracy.
- It encourages citizens to be actively involved in public affairs.
- It encourages citizens to identify themselves with the institutions of government.
- It encourages citizens to become familiar with the laws as they are made.
- It enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of.
- It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice.
- It strengthens the legitimacy of legislation in the eyes of the people.

The Constitutional Court, thus, reinforced the importance of citizens' voices in South Africa's system of participatory democracy. It places the onus on local government, as the sphere of government closest to the people, to ensure that "the public is afforded a meaningful opportunity to engage with and contribute to the decisions that affect them". The municipality's duty in this regard further extends to ensuring that the citizens have the necessary information and opportunity to exercise this right. The Court also stressed that public participation must be facilitated at a point in the decisionmaking process where involvement by interested members of the public would indeed be meaningful. Participation in decision-making processes is meaningful where they are concerned with the key decisions that a municipality must make. These decisions include the development of the multi-year strategic plan of the municipality, the budget, the passing of by-laws and decisions about the delivery of basic services.

Municipal documents often talk of "participatory processes aimed at empowering the poor and marginalized". However, rhetorical political enthusiasm for participation is not matched by practice. Contrary to the RDP principles, communities have been the passive recipients of development rather than initiators and drivers. All too often, strategic agendas and budget allocations are agreed upon before public participation processes, rendering the participatory efforts largely meaningless since the outcome is a *fait accompli*. The process seems to have created a hierarchy of limited participation, one in which more organized, affluent groups are invited to influence the details of plans which have already been devised, while the unorganized grass roots poor are excluded entirely. The community organizations necessary to make development a reality have been sidelined or weakened.¹

Thus, an official assessment by a government department of whether grass roots opinions found its way into official decisions found that "mechanisms for identifying the correct beneficiaries and the mechanisms of consultation which will lead to the incorporation of the needs of the poor in project design are not practised. Issues of importance to the rural poor are frequently excluded as they are regarded as not relevant. There was, not surprisingly in light of these revelations, low participation, if any, from black women and the poor." Crucially, the report found that capacities at the local level to participate meaningfully in the decision-making process were not addressed.

The exclusion of disadvantaged groups from the focus of municipal attention is a manifestation of the practice that has developed among some municipalities of becoming inward-focused—the vehicle for a self-serving elite—rather than being community and development orientated. In the recent past, many municipalities flagrantly neglected the public participation requirements in the legislation or found roundabout ways of circumventing it. A key question in this regard relates to whether the legal framework for participatory democracy has perhaps had the unintended consequence of municipalities adopting a "bare minimum" compliance approach, viewing community participation as a legal hindrance

¹ Friedman 2005.

or irritation, rather than an imperative empowering tool for the poor and marginalized. Indeed, some critics believe that the failure of participatory democracy in practice is largely attributable to the preoccupation with delivery and the consequent "bare minimum compliance" approach to the policy and legal framework. In essence, participation was marginalized in the interests of getting the job done.

But the disquiet about whether municipalities have been able to establish a sound and interactive relationship with their communities has become increasingly public and even violent. In recent times local government has faced the most persistent spate of violent protests since the end of apartheid. These protests indicate a deep dissatisfaction with municipal performance. They appear to be directed at poor service delivery, unresponsive decision-making and "conspicuous consumption" or even allegations of corruption on the part of municipal councillors and officials.

Renewed efforts at reconnecting communities with their municipalities are, therefore, necessary. A key question in this regard is how community participation can be transformed from a chase for legal compliance into a genuine effort to enhance the quality and legitimacy of decision-making. Compliance with the spirit of the law giving effect to participatory democracy is as important, if not more so, than the letter thereof. As much as anything else, it requires a change in attitude and approach and development of an institutional culture of participatory democracy. A political "culture of participatory governance" is vital if the vision of development local government, so eloquently articulated in the White Paper on Local Government, is to be realized. The development of such a culture is vital for the sustainability of the institution of local government and the enhancement of democracy.

3.3.2 Ward Committees

Another vehicle for community participation, which is offered to municipalities as a mechanism to ensure communities contribute to municipal decision-making, is the ward committee. The typology of a local or metropolitan municipality determines whether or not it can establish ward committees.

The White Paper on Local Government makes it clear that the central role of ward committees is the facilitation of local community participation in decision which affects them, the articulation of local community interests and the representation of these interests. The object of a ward committee is, thus, to enhance participatory democracy in local government. It is, therefore, not posited by the legislation as a governance structure. A ward committee can make recommendations to the ward councillor on any matter affecting the ward. It can also make recommendations through the ward councillor to the council, the executive mayor/committee or to the relevant subcouncil. The primary function of a ward committee is, thus, to be a formal communication channel between the ward community and the council and its political structures. The ward committee is, thus, seen as an "influencing agent".

Ward committees comprise the ward councillor—who chairs the committee—together with a maximum of ten additional persons. The council must determine a mechanism to elect those ten members. The parameters for arriving at a system that includes the additional members are that (1) they must be elected and not appointed, (2) that the need for women to be equitably represented is taken into account, and (3) that the need for a diversity of interests in the ward to be represented is taken into account. The purpose of including the ten additional members is clearly to ensure inclusion of those interests that have not been accommodated already through the formal political processes. This is in line with the commitment of the Constitution and the Systems Act to participatory democracy.

In practice, however, the ward committee system has not been effective. A major challenge has been that the ward committee structure often undermines and competes with community leadership structures, rather than complementing and mobilizing them. A major challenge is that in practice ward committees are largely chosen by ward councillors, not elected by residents as envisaged in the law. Ward councillors have become "gatekeepers" to resources, reluctant to accept or allow opposition structures and as a result many community structures have been blocked or co-opted. In many instances, community organizations are unhappy as they want independent forums that do not fall under the sway of councillors.

Moreover, two-thirds of municipal councils reported that their ward committees had "no powers" and only 44 per cent confirmed that ward councillors in fact tabled reports on issues raised by ward committees. There is general political concession that the majority of ward committees, those that are actually convened, are not functioning as dynamically as envisaged, or even at all.

3.4 Challenges for Inclusive Local Government

The major challenge facing local government in South Africa is, thus, with regard to participatory democracy. While electing more women and ensuring better representation of the poor and marginalized remains a challenge, it is the ideals of participatory democracy that have largely not been achieved in practice. The plethora of formal mechanisms which enable citizens to participate in government should make South Africa a model of participatory governance, a democracy in which citizens have ample opportunity to shape decisions which affect their lives. But for many the ideal of participation has become little more than a mantra. Expectations for meaningful participation in decision-making are created but not met. Some critics even go as far as suggesting that the relegation of community participation has precipitated a crisis of sustainability manifested in the constant barrage of municipal service delivery protests.

The defining feature of the new system of democratic government is the space it offers communities to participate actively in development decision-making. Through the ward committees and other formal participatory structures, government has opened up political space for public participation in decision-making processes. But, as one former provincial local government minister noted, the opening of formal political space creates a vacuum, one which is often filled by those who have the power and means to fill them – often to the exclusion of the poor and marginalized. This may be indicative of the fact that participatory mechanisms do not enhance participatory governance since they are biased towards those with the capacity to participate.

While civil society participation in local government decisionmaking acts as a counterweight to secret lobbying and influence peddling of the powerful groups in society, it is, unsurprisingly, the better organized and well-off sectors of civil society that exploit the opportunities for participation. The mere fact that participatory mechanisms exist does not automatically mean that they are used by disadvantaged groups. The very fact of their marginalization is often the obstacle to participation. Indeed, the marginalization of community structures in political processes has been evident in the predominant failure of ward committees and the weak levels of participation in the strategic planning process.

Practice confirms that formal, structured participation forums do not deepen democracy because it excludes those who most need to be heard in government decision-making. The participatory process insofar as the strategic or integrated development planning is concerned has been weak. While this may not necessarily be a consequence of the failure of the vehicles of participatory governance to operate as they should, though they often don't, it is confirmation that formal participatory structures by definition cannot, however well they are run, give a voice to the poor and marginalized. While channelling community voices into administratively neat channels, such as forums or other structured forms of public participation, might best suit administrators and politicians, citizens, particularly the poor and marginalized, may well prefer less structured forms of participation.²

The inability of formal participatory governance mechanisms to provide a voice to the poor suggests a need to rethink participatory governance. What lies behind the approach to community participation typically adopted by government is an assumption that the state can penetrate the full spectrum of society—that communities are homogenous groups. Experience suggests that this assumption is seriously flawed, and that a different approach that fully engages people in the development process is required. Some argue that a departure from the ideal conception of "community" in favour of a more realistic sense of localities where there are divisions across ethnic, cultural, class and gender divides is required if participation is to be more effective.

² Friedman 2005.

Since the purpose is to deepen democracy, the test of participatory mechanisms should perhaps be whether they offer people, who would otherwise remain voiceless, a means of participating in decision-making. If forums are offering only a more formal and structured opportunity to be heard to those who would otherwise be heard in another way, then they are not deepening democracy.³ Given current capacity constraints on the part of communities and limitations in the government's own capacity, an approach which mobilizes and complements existing capacity within communities may be more sustainable, rather than competing with and undermining them. Participatory approaches, thus, need to build on local strengths by working with existing community structures and organizations. In this regard, the de-politicization of ward committees and the fulfilment of the legislated vision of ward committees inclusion of those interests that have not been accommodated already through the formal political processes—is a key challenge. This is particularly crucial with regard to the impartial representation of community structures and organizations in those ward committees.

4. Conclusion

While the systems already in place in both India and South Africa may still be far from perfect, it is a vast improvement over the erstwhile modes of governance and service delivery.

In the Indian context, empowering the local bodies does translate into empowering the disadvantaged groups to a large extent. While local governments do not possess any legislative powers, their activities affect the daily lives of common people in numerous ways. Yet, a majority of the disadvantaged groups in society remain unconcerned by the larger issues which preoccupy the state and national governments and its citizens. Only local governments can sincerely address their concerns and, hence, should take the lead in empowering them. Only with their basic requirements fulfilled and armed with the basic training in democratic participation can

³ Friedman 2005.

these groups be expected to play a larger and more meaningful role at higher levels of governance.

In South Africa, while strides have been made with regard to representative democracy, in particular electing more women and ensuring better representation of the poor and marginalized, it is the ideals of participatory democracy that remain a major challenge. For many the ideal of participation has become little more than a mantra. Expectations for meaningful participation in decision-making are created but not met. To ensure that the political, social and economic priorities are based on broad consensus and that the voices of the poorest and marginalized groups are heard in the decision-making process, local government needs to rethink its approach on how it is going to make participatory democracy a reality for the majority of its communities. Otherwise the poor and marginalized will remain mere spectators of democracy and development. Only by learning the value of participatory democracy, will local government truly lead the empowerment of disadvantaged groups.

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Democratization and Decentralization in Latin America and the Case of Participatory Budgets

Alberto Kleiman

During the last decade, the winds of democratic change have blown around the world, and democratic decentralization has spread globally. On every continent, most governments have embraced decentralization programmes. "Some 95 per cent of democracies now have elected subnational governments, and countries everywhere—large and small, rich and poor—are devolving political, fiscal, and administrative powers to subnational tiers of government." A survey of twenty-seven countries in the Commonwealth of Independent States (CIS) found nine to be keen decentralizers, seven to be uncertain decentralizers, eight to be non-decentralizers, and three to be decentralizers by necessity. During the last ten years, post-communist Russia has seen substantial decentralization to the regions, partly to forestall local demands to set up separate independent republics. In Africa democratic decentralization has been undertaken in Ethiopia, Ghana, Mali, Togo, South Africa, and Uganda, among other countries.1

¹ See James Katorobo, *Decentralization And Local Autonomy For Participatory Democracy*, Chapter 10, and 7th Global Forum on Reinventing Government—Building Trust in Government, 26-9 June 2007, Vienna, Austria - PUBLIC Administration And Democratic Governance: Governments Serving Citizens.

1. Decentralization in Latin America

The democratic wave which took over Latin America during the 1980s was followed by a movement of decentralization. Despite this process having taken different forms in each country, there are common features related to objectives, means and results. It can be observed that, on the one hand, in Latin American countries the decentralization process is associated with a strong wish to deepen democracy through the reinforcement of participation and representation. On the other hand, this process is also associated with a search for higher standards of governance and efficiency of the state. This process can be interpreted as a transfer of power and resources towards municipal governments, while the consolidation of intermediate or regional governments will take place later and only in certain countries.

Decentralization and Citizen Participation

Until in the 1990s, citizen participation was mainly understood as a participation in the elective processes. Reforms opened institutional spaces for participation: "cabildos abiertos", popular initiatives, referendums and plebiscites. Innovative experiences of participation placed Latin America at the *avant-garde* of the phenomenon of participatory democracy. In this respect, one can cite the experiences of participatory budgets in Porto Alegre (Brazil), the participative decentralization of Montevideo (Uruguay), the policies for fighting corruption in the municipality of Moron (Argentina), or the projects of participative investment in Rosario (Argentina). However, these policies of participation are not exclusive to big cities. They also develop in rural settlements, in particular in Bolivia, Peru, and Mexico. These practices tend to become references for European communities where the crisis of representation brings a reconsideration of the relationship between citizens and the political process.

In less than 15 years, the participatory budget (PB) has become a central topic of discussion and a significant area of innovation for those involved in democracy and local development. It has

been adapted and adopted by a wide range of cities in Latin America, mostly in Brazil, where it began in the late 1980s.

According to estimates, around 250 cities are currently applying the participatory budget. Although the great majority of the experiences are still being carried out in Brazil, new initiatives have been flourishing in other Latin American cities, in particular in Peru, Ecuador, Colombia, and in the Southern Cone countries. Furthermore, several experiments have been undertaken in European cities, many of them making reference to Porto Alegre as a model. Although the numbers are growing, it is still limited when compared to the 16,000 Latin American municipalities.²

3. The Brazilian Case: Building Federative Dialogue

The Federative Republic of Brazil is a federal state composed of twenty-seven states, including the Federal District, the capital, Brasilia, and 5,562 municipalities. States and municipalities have elected governments. The Federal District of Brasilia has a unique status, with a directly elected governor and a district assembly, and has, at the same time, the budgetary capacity of a state and a municipality.

In 1973 and 1974, nine metropolitan areas were created and equipped with metropolitan authorities. Representing 32 per cent of the population until the mid-1980s, they played a role as decentralized agencies of planning and coordination of development policies, infrastructure and the regulation of the urbanization. The metropolitan authorities were abolished by the Constitution of 1988, which gave to the state governments the capacity to establish them again, respecting the principle of municipal autonomy.

Brazil is characterized by an unequal distribution of its population. In 2000, only 525 municipalities (9.5 per cent) had more than 50,000 inhabitants, but together they constituted more than 60 per cent of the national population. In 1996, 11 municipalities

² Yves Cabannes, URB-AL Network 9, "Local financing and participatory budget" (Work paper).

had a population exceeding one million inhabitants. The largest Brazilian city, Sao Paulo, had more than 9.6 million inhabitants and had the fourth largest national budget after the federal budget and the budgets of the states of Sao Paulo and Minas Gerais. On the other hand, 3,611 farming communities, which represented 73 per cent of the municipalities, had less than 20,000 inhabitants.

Municipalities have a unipersonal executive, "prefeito", and a council, "câmara dos vereadores". The mayors are elected separately, according to a simple system of majority, except in the municipalities of more than 200,000 inhabitants, where they must obtain at least 51 per cent of the votes, and, if needed, a second round. The number of councillors depends on the population. According to the Constitution of 1988, municipalities of less than one million inhabitants have from 9 to 21 councillors; between a million and five million inhabitants, 33 to 41 councillors; more than five million inhabitants, 42 to 55 councillors. The municipalities themselves decide on their number of councillors, within the limits imposed by the Constitution, which constitutes an exception in Latin America. The councillors are elected according to a list-based system of proportional representation. The municipal mandates are four years. The councillors can present themselves at the end of their mandate, contrary to the mayors, who can only be reelected once consecutively.

Brazilian local governments are inspired by the North-American presidential model. The separation of the capacities is such that the mayor does not attend the meetings of the town council, which is unique in Latin America. The domination of the executive is reinforced by the fact that, in practice, the council cannot refuse the budget presented by the mayor, or modify it in the direction of an increase in the total amount. The mayor can impose his veto on the decisions taken by the Council, which can then pass it only with a two-thirds majority.

Considering the relationship between levels of government, the Constitution of 1988 establishes a framework which guarantees the autonomy of the three levels of government. It guarantees the municipalities and the states the autonomy of federated entities, which constitutes a characteristic of the Brazilian federalism. This

autonomy is at the same time political, administrative and fiscal. However, the different levels of government remain interdependent, on the one hand, because the majority of competences are shared and, on the other hand, because the financial transfers are insufficient, in particular for the municipalities.

Since President Lula's election, he has undertaken a series of measures which aim to reform the federal pact, by developing the municipal level and giving at the federal level, called the "Union", a more active role in the direction of the process of decentralization. Within the framework of the Secretariat to Federal Affairs, directly linked to the Presidential Office, he created a Committee of Federal Articulation, intended to include the mayors in a common programme of structural reform. The Ministry for Cities was also created in 2003, in order to establish, through a participatory process, a national policy of urban development and to guarantee to all citizens "the right to the city", which is based mainly on the promotion of an equitable access to municipal public services.

The Brazilian Experience with the Participatory Budget: The Case of Porto Alegre

The analysis of worldwide varieties of participatory budgets allows multiple levels of analysis. The ones that seem most relevant to highlight the options and institutional factors in the Brazilian case will be examined here. The objective is to show contrasting points and to open a variety of topics for discussion.

A first relevant consideration is the government system: either parliamentary or presidential. In some countries, the mayor is chosen by the parliament, not directly. In these cases, when there is an option for the participatory construction of the budget, occasional disagreements between the citizenry and the local parliament tend to be slighter. In Brazil, a presidential government system is in force in which the leaders of the executive branch at all levels (nation, states, and cities) are elected by universal suffrage. This is also how the members of the respective legislative bodies are elected.

Parliaments in Brazil have a secondary role when compared to the executive. The executive branch is responsible for proposing budgets. These budgets, once approved at their respective legislative bodies, impose no more than a limit for expenses. The executive may manage the budgetary implementation at its discretion, and it can use a single account for all expenses, as long as some legal conditions are met (a limit for expenses on personnel, a minimum percentage of investments in education and health, reduction of debt, among others). Further, each newly-elected chief of the executive branch can bring with him/her a considerable number of assistants chosen at his/her discretion. It is possible to change considerably the operation of the administrative sectors by changing up to one third of key positions within the public administration at every change in government in a city, a state, or the nation. This has happened in many municipalities over the last two decades. To what extent the experiences of participatory budgets withdraw even more power from the parliament, or to what extent they express a sort of failure of these structures, is a permanent question in the analysis of these experiences. It is important to remember that participatory budgets in Brazil operate with district representation, ensuring a territorial dimension of politics that is not included in the electoral system.

Another level of analysis concerns the degree or mode of citizen involvement. At one extreme, there is what has been called participatory democracy, within the principle of radicalizing democracy by devolving direct decision-making power to the citizen; at the other, there is the consultative democracy, aimed at strengthening the bond between citizens and the state through their opinion (the lien social, as Yves Cabannes says in his synthesis of international experiences). In between these two extremes, there would be what Yves Cabannes proposes to call community-based representative democracy, in which the process of deliberation takes place with the involvement of community leaders who have been elected in their own organizations. In practice, both of these tend to be combined. In the case of Porto Alegre, for example, there was a participatory democracy in that the population directly decided what their priorities and proposals for the budget were. It took place together with a community-based representative democracy that formed part of the discussion of the municipal budget as a whole that were then collectively agreed upon by the election of delegates and councillors.

It is also possible to distinguish between experiences in which there are city-wide councils to integrate the work developed in the different regions of a city, such as Porto Alegre's Participatory Budget Council (PBC), and those variations that do not feature such a body, and favour a territorially decentralized performance.

Another point of contrast concerns the percentage of budgetary funds involved. Currently there are cases in which a minimal percentage of the budget is discussed (less than 1 per cent), as well as cases in which 100 per cent of the budget is discussed.

Usually, when there are previously set percentages and values, the process of deliberation will involve both demands and projects. In some cities, Porto Alegre for instance, there is a combination of things. In the regional and thematic popular assemblies, participants decide on investment proposals. In the PBC, councillors discuss the budget as a whole, being able to redefine demands and policies coming from government, but with scarce or no power to change the amounts directed, such as salaries or others determined by the Constitution.

To centralize or to departmentalize is another level of differentiation between experiences that deserves consideration. There are cases that opted for participatory budgets by department or by government body. This is the case for the Toronto Housing Company, in the city of Toronto, which applies funds for the maintenance of more than 50,000 housing units of social interest (social rent) through a participatory budget process. Even in Porto Alegre, besides the city-wide participatory budget, there is a participatory budget involving education only, allowing municipal school communities (parents, students and education professionals) to build projects for the use of institutional spaces in keeping with the interests of these communities.

Confidence in the Institutionalization

Participatory budget experiences in Brazil have their own appeal due to a direct bottom-up social contract by which social issues occupy the centre of politics. Nevertheless, they are incomprehensible if one does not make reference to the context in which they emerged, at the peak of the re-democratization process, after more than two decades of dictatorship.

Initially, it is necessary to highlight the strengthening of the federative structure in Brazil after the current Constitution was promulgated in 1988, the so-called *Citizen Constitution*. As already mentioned, states and municipalities have been given relative autonomy in tax collection and budget implementation, as well as having benefited from compulsory transfers of funds collected by the federal government.

In Brazil, the 1990s showed multiple possibilities of joint experiences between society and the state. Participatory councils for the management of social policies exist in the great majority of Brazilian municipalities (there are around 27,000 local sectoral councils). Participatory budget experiences involving citizen participation in the definition of local investments have already reached approximately 160 cities. Porto Alegre, São Paulo, Belo Horizonte, Recife, and Belém are the five state capitals that developed their budget based on popular participation. Programmes involving public and private funding, non-governmental organizations and non-profit private-sector foundations in the most diverse areas are increasingly more significant to society. It is estimated that the third sector in Brazil involves 540,000 entities, employing 2.5 per cent of the work force and generating US\$ 10 billion per year (1.5 per cent of GDP).

In 1996, almost all Brazilian states had already organized collegiate bodies for the decentralized management of the main national fund for housing and sanitation, the FGTS. In the same year, 65 per cent of all Brazilian municipalities boasted health councils organized to receive funds from the Single Health System (SUS). Currently, there are more than 4,000 health councils. In 1998, there were 3,081 councils for the rights of children and adolescents, covering 60 per cent of the municipalities and 80 per cent of the population. In 2000, there were 27 state social work councils and 3,146 municipal councils, although many were not actually operational.

Panchayati Raj in India

Are They Really Successful in Participatory Decision-Making?

Nupur Tiwari

Constitutionally mandated panchayati raj institutions (PRIs) have moved into their second decade, and we need to set in motion a second generation of reforms. The focus now is to ensure a sustainable foundation of empowerment such that panchayats become the principal authority for planning, decision-making, and implementation at grass roots levels, through the effective devolution of functions, finances, and functionaries. This can happen only if planning from below becomes a reality and local communities are enabled and empowered to work out a profile of development activities based on their own assessment of locally available resource endowments, relative absorptive capacity, and the felt needs of the local people.

Panchayati raj in India, in terms of the size of the electorate, the number of grass roots institutions (about 240,000), the number of persons elected (3.6 million in the panchayats and nagarpalikas), and in terms of the empowerment at the grass roots of women, is the greatest experiment in democracy ever undertaken anywhere in the world or at any time in history. No less than one million women have been elected to the panchayati raj institutions, constituting some 37 per cent of all those elected and rising to as high as 54 per cent in Bihar, which has 50 per cent reservations for women.

One of the key objectives of panchayati raj is to ensure that the process of planning for development in the country follows a bottom-up approach and commences at the grass roots level. The core approach is that the village panchayat plans, prepared with peoples' participation, are joined by plans prepared by the intermediate and district panchayats and then these are consolidated by the district planning committee (DPC) along with Municipal Plans into the Draft District Development Plan, in accordance with Article 243 ZD of the Constitution. The State Annual Plan is an integration of all the Draft District Development Plans. The Planning Commission has embarked on a re-alignment of the planning process, which happily has coincided with the commencement of the Eleventh Plan in 2007. The significance of these two developments cannot be over-emphasized. The nation now has an opportunity to realize Mahatma Gandhi's dream that the national plan becomes an integration of plans prepared with popular participation, starting from village panchayat levels.

1. District Planning Committees

The Constitution enjoins that all states and Union Territories¹ are required to set up DPCs in order to consolidate the plans prepared by the panchayats and municipalities into the draft development plans for the district. DPCs have also to oversee matters of common interest between the panchayats and the municipalities including planning, sharing of physical and natural resources, the integrated development of infrastructure, environmental conservation, and assessment of the extent and type of available resources, both financial or otherwise. DPCs are mandated to consult such institutions and organizations as may be specified in undertaking their activities.

¹ Except Meghalaya, Mizoram, Nagaland, Jammu and Kashmir, the Hill areas in the state of Manipur, the Hill Areas of the district of Darjeeling for which Darjeeling Gorkha Hill Council exists, the National Capital Territory of Delhi, and Sixth Schedule Areas where Autonomous District Councils have been constituted.

Planning Commission circulars have also made it clear that the constitution of DPCs is indispensable to the Eleventh Plan exercise. In consequence, states are generally moving to cure this infirmity in their preparedness for the Eleventh Plan, and it appears that they will constitute their respective DPCs fairly soon. For instance, Andhra Pradesh, Bihar, Haryana, and Punjab are well on the way to doing so; Gujarat, Maharashtra, Tripura, and Arunachal Pradesh have also initiated steps in this direction.

2. Planning at the Grass Roots

In order to strengthen the panchayats in planning and decision-making, it is necessary that district and subdistrict plans are formulated at all levels of panchayats to meet the basic minimum needs of citizens at the grass roots level. It is further important to strengthen the planning machinery at the district and subdistrict levels, including issuing guidelines to DPCs for consolidating these plans. The guidelines of the Centrally Sponsored Schemes (CSSs) and central level programmes should also be reviewed to ensure participation of panchayati raj institutions from the beginning right through to the level of implementation of schemes.

3. Case Studies

A significant feature of the district planning process is that it includes the integration of the economic plan and the credit plan into the district plan. The success of this kind of bottom-up planning for the growth and development of villages is best illustrated by the plan drafted by a woman sarpanch (village leader), of Gopalpura panchayat in Churu district of Rajasthan. The gram panchayat of Gopalpura has taken a decision to develop this village as a model village and has got a master plan prepared for this purpose by engaging professional consultants. The principal objectives of the master plan include optimizing the resource utilization and meeting the land requirements for the next 20 years; evolving self-sustaining strategies for development; bringing about a qualitative

improvement in peoples' lives; and developing detailed proposals in respect of these strategies. The plan uses the base year of 2005 and the horizon year of 2055. The plan has developed composite growth strategies, including plans for residential areas, commercial development, recreation and tourism, social amenities, and water bodies.

3.1 The Kudumbashree Initiative

Kudumbashree is a multi-faceted, women-based, participatory poverty eradication programme jointly initiated by Government of Kerala and the National Bank for Agriculture and Rural Development (NABARD). It has been scaled up from two UNICEF-assisted initiatives in Alappuzha municipality (under the Urban Basic Services for Poor) and Malappuram district (Community-based Nutrition Programme). The programme is implemented by Community Based Organizations (CBOs) of poor women in cooperation with panchayati raj institutions. Kudumbashree aims to eradicate absolute poverty in ten years through concerted community action under the leadership of local governments.

Kudumbashree is much more than a well run self-help movement. It is particularly positioned as a pro-poor initiative—membership is restricted to poor families. While other self-help groups have largely remained aloof from the panchayats, or merely participate in the gram sabhas, kudumbashree groups proactively link up with panchayats, participate in their programmes, and have, thus, flourished under the patronage and leadership of local self-governments.

From this beginning where a visionary panchayat led the way, the anti-poverty initiative has now been extended to all panchayats in the state. The anti-poverty plan now has a clear structure with kudumbashree groups identifying those in need and participating in plan preparation and implementation by panchayats.

Similar initiatives have been taken up by kudumbashree groups in conjunction with panchayats in leasing land for farming, microhousing, and micro-enterprises.

3.2 Karnataka

The chairperson of Bellandur gram panchayat of Karnataka, in the first two years of his tenure, computerized the panchayat's records, accounts, and property tax collection system with assistance from a software company. He also began to televise gram panchayat meetings through the local cable operator. The increase in revenues from taxing land sales and the transparency introduced into panchayat finances enabled the gram panchayat to plough back its own funds into improving the panchayat's infrastructure and providing additional services. Bellandur is thus very different from the average unplanned slum that most city-engulfed rural panchayats become. The roads are well maintained; there is an extensive underground drainage system, a new panchayat office, and a health centre.

3.3 Kerala

On the eve of the Ninth Five Year Plan, Kerala took the landmark decision to devolve 33 per cent of its planned budgetary allocation as untied funds to panchayats. On the ground, this translates into each of the nearly 1000 gram panchayats in Kerala receiving more than 10 million Rupees as largely untied funds. Maintenance grants are also separately devolved to panchayats. In order to ensure participative planning from the grass roots level upwards, a massive peoples' planning campaign was launched, involving more than one hundred thousand volunteers assisting panchayats to collect data, elicit peoples' needs, prioritize, supervise implementation, monitor, and evaluate. Employees of key government departments were placed at the panchayat-level and are accountable to them, even though they retain their position as government employees.

3.4 Punjab

A late starter, Punjab is rapidly forging ahead on panchayati raj by taking several steps, particularly in respect of devolving responsibilities in health care and education to panchayats. In a recent farreaching decision, rural health subcentres have been transferred

to the zilla parishads (district-level government) by the Department of Health. The state government aims to give block grants in aid to zilla parishads to run these dispensaries. Zilla parishads are permitted to engage doctors as service providers on a service contract for a period of three years. More than 3000 centres have so far been transferred on this account. The service provider identified by the zilla parishads to whom the task of running the primary health centres (PHC) is outsourced has the responsibility of engaging a qualified paramedic, ensuring cleanliness of the dispensaries and also paying the electricity and water supply bills. He is to be paid a proposed lump sum of 30,000 Rupees per month. The government also proposes to supply medicines worth 7,500 Rupees per month per dispensary.

4. The Gram Unnayan Samiti

In 2003, an amendment to the 1973 Panchayat Act was passed to establish the gram unnayan samiti, which is a statutory village-level standing committee of the gram sansad (the lowest level of the panchayat system) and is accountable for its functions and decisions to the gram sansad. The gram unnayan samiti has the responsibility of ensuring active participation of the people in the implementation, maintenance, and equitable distribution of benefits with respect to such subjects as may be prescribed. Gram unnayan samitis have now been entrusted with the task of preparing village level plans of the gram sansad, which shall be the basis of the gram panchayat plan and will also be implemented by the gram sansad.

Each panchayat samiti (intermediate panchayat in West Bengal) shall have a block sansad consisting of all members of the gram panchayats pertaining to the block and all members of that panchayat samiti. One half-yearly and one annual meeting of the block sansad are held each year. The block sansad has powers to guide and advise the panchayat samiti in all matters relating to development including preparation of annual plans, budgets, and implementation of development programmes for economic development and ensuring social justice. The deliberations and

recommendations of the meeting of the block sansad shall be considered in the meeting of the panchayat samiti within one month from the meeting of the block sansad.

A similar system for zilla parishads is through the zilla sansad, which comprises pradhans (or leaders) of all gram panchayats in the district, sabhapatis (presidents), shaha-sabhapatis (vice-presidents), and karmadhyakshas (standing committee chairpersons) of all panchayat samitis and all members of the zilla parishad. The activities of the zilla sansad are similar to those prescribed for the block sansad.

Introducing Clarity into Panchayat Expenditure Assignments: The Principle of Subsidiarity in Expenditure

A significant reform introduced recently through an executive order envisages that if the estimate for a project is below a particular financial limit, it shall be implemented at a prescribed level of panchayat alone and not at any level above. Thus, all works estimated at an outlay level below 200,000 Rupees shall be undertaken by the gram panchayat alone. Similarly, all works with an outlay of more than that amount, but below a million Rupees, shall be undertaken by the panchayat samiti. Zilla parishads can implement only those works that are estimated at above one million Rupees. Under this policy, even if a higher level of panchayat, such as a zilla parishad, sanctions a work less than its prescribed floor limit, it is obliged to transfer the money allocated by it for that work to that level of panchayat which has been entrusted with the task of implementation. This approach provides a disincentive for higher panchayat levels to sanction a large number of small works that are better undertaken by the appropriate level below. It also leads to a clear understanding and separation of who does what, regardless of who sanctions what.

The above snapshot of experiences across states and panchayats offers a glimpse of the groundswell of change that is being brought about by panchayats in planning and decision-making across the country. It is clear that given a nurturing environment and a robust

structure that provides incentives for effective functioning, panchayats can use the flexibility given to them in innovative and effective ways. However, these examples and best practices, while encouraging, are also an indication of the tasks ahead so that panchayati raj can herald true prosperity and equity in India's villages. The institutional innovations described above have already triggered off a chain reaction, by releasing the creative energies that lie bottled up in our villages.

6. The Challenge of Participation

There remain, however, many impediments and barriers to the functioning of panchayati raj institutions as a successful element of participatory planning and decision-making. A continuing challenge is the one of energizing participation in gram sabhas. As per the recent amendments to the Constitution of India, the gram sabha (the body of electorate in a gram panchayat area) will be the "supreme body" to make all decisions regarding management of assets and local resources. The government agencies will play a supportive role to this body and assist them on a demand basis. Giving a prominent legal position to the gram sabha is of little consequence, however, if these remain neglected institutions. There is scepticism about the concept of people getting together to solve their problems. The feeling prevails that in the face of elite groups, marginalized segments, and local politics, this does not work on the ground. The hard reality is that participation has an opportunity cost. People will not participate if they have more productive things to do, or if matters of survival have to be sacrificed for the luxury of participation. The challenge, therefore, is to make participation in panchayati raj relevant, such that it is perceived to provide value-added.

A question is often asked as to how a community spirit can be awoken and a common vision ignited, in order to motivate the capacity to act in the pursuit of the common good. Clearly, such motivations cannot be inculcated by training from outside—it has to come from within. What can be done is to develop opportunities where those who want to participate are supported. The practice in some

states of providing for peoples' assemblies below the gram sabha needs to be widely adopted. In parallel, awakening interest in common interest groups to participate in gram and ward sabhas will surely yield rich dividends. While the kudumbashree initiative in Kerala has been widely acclaimed in this regard, self-help group and other such groups are becoming a potent force in gram sabhas in several states. Finally, people will attend the gram sabhas when they see them as having real powers. The predominance given to the gram sabha under the PESA—the Panchayats (Extension to the Scheduled Areas) Act, 1996—in beneficiary identification, approval of programmes and projects, and above all, the authorization of utilization certificates, needs to be emulated in all panchayati raj legislation.

Social auditing is a close corollary of successful gram sabha functioning. Practices in social auditing have now gone far ahead of the pilot stage. Once community conscience is awakened, experience indicates that social auditing is entirely feasible and practical. Social auditing has its own teething troubles, but persevering with it could be a path-breaking way of inculcating respect for downward accountability processes amongst elected representatives and government officials. The experience of implementing the National Rural Employment Guarantee Act (NREGA) in Dungarpur district in Rajasthan, one of the poorest in the country, indicates that if society and particularly beneficiary groups keep a strict vigil on implementation, leakages can be virtually eliminated.

7. The Challenge of Decentralized Planning

Immense background work on an unprecedented scale is required to meet the requirements of people-level planning and decision-making. Contrary to popular impression, the issue might not be so much on eliciting participation—indeed examples from remote areas such as Kalahandi and Bolangir districts of Orissa indicate that that the poor and weak can effectively use apparently sophisticated tools of micro-planning to develop their own simple local plans. On the contrary, the dominant challenge will be to bridge the information gap, that is, to slice chunks of data that the

government possesses into easily comprehensible panchayat-sized bites, for people to use locally.

Once panchayats gain credibility as reliable monitors, it is only a matter of time before they can ensure that, eventually, annual plans in respect of the flagship schemes are prepared by them and also implemented by panchayats. There will emerge fresh challenges, such as releasing finances directly to panchayats (whether from the centre or the states), based on their furnishing expenditure details. Currently, districts are considered the basic units for furnishing utilization information, which tends to average out performance of individual panchayats.

Across the country, we see more and more panchayats moving away from the stereotype of being passive recipients of power devolved from above. Panchayats have a begun to challenge the fetters, real or imaginary, which prevent them from realizing their full potential. Panchayats have become "government" where they have worked like governments. Most important, people have begun to perceive the panchayats as government. The map of India is now dotted with the lamps of panchayati raj. The lamp lit in Nagaur has been joined by many more lamps in innumerable panchayats, which, through no greater effort than local participation and collective implementation, are making a real difference to their people. The challenge, therefore, is no longer for panchayats to prove themselves worthy of greater powers. It is to realize in practice the collective power of a multitude of simple local initiatives, to document them and bring more panchayats into the fold of excellence. In the words of Mani Shankar Aiyar, "the singular achievement of the Constitution Amendment is that they have made panchayati raj ineluctable, irremovable and irreversible".

The Reform of Federal-Local Relations in Germany

Hendrik Hagemann

1. Introduction

The German Federalism Reform Commission that sat from November 2003 to December 2004 dedicated numerous sessions to the relationship between the federal level and federal states (Länder), particularly in the context of how to interact with local government. In addition, Commission members and the Commission's expert advisors produced a great deal of further written studies. Despite, or perhaps because of, the extensive deliberations, the Commission failed to come to any agreement. Its co-chairs Edmund Stoiber, then governor of Bavaria, and Franz Müntefering, then speaker of the SPD faction in the federal parliament, singled out federal-Länder relationships in local matters as one of five areas where the Commission was unable to reach a consensus on reform in their valedictory statement.

Then, when the creation of the CDU/CSU-SPD grand coalition after the 2005 federal elections opened up the prospect of a second go at reform, changes in communal matters were agreed upon. There was a substantial change to Article 84(1) of the Basic Law: the overall result was a prohibition on collaboration between the local and the federal levels of government.

This first part of the paper will outline how the German federal system was organized prior to the work of the Federalism Reform Commission I (a subsequent one, focusing on the federal-Länder financial relations, was initiated by the two German parliamentary chambers in December 2006 and started its work in March 2007). The second part describes the work of the German Federalism Reform Commission I and its outcomes, especially the prohibition on collaboration between the local and the federal levels, while the last part of the paper gives a short outline of how the changes have been implemented.

The German Federal System Prior to the Results of the German Federalism Reform Commission I

The federal elements of the German Constitution have historical roots reaching back beyond the existence of a democratic state in Germany. Without going into these historical details, one has to point out some key features of the recent federal system as it was laid down in Basic Law in 1949 and evolved from there. Today, there are 16 Länder, which are the regional units of the federal system, of which each has its own parliament and government. The Länder differ substantially with regard to size, number of inhabitants and economic performance. There are regional cultural differences in the Länder, despite them sharing a common language. On the federal level there are two main chambers: the Bundestag, whose members are elected in national elections every four years, and the Bundesrat. The Bundesrat, or second chamber, represents Länder interests and functions as a safeguard for intergovernmental coordination and cooperation between the federal government and the Länder governments. It consists of those cabinet members of the sixteen Länder who were delegated by the respective Länder governments. Each Land with less than two million inhabitants has three votes; those with between two and six million inhabitants have four; those with more than six million inhabitants have six votes. The votes of each Land must be cast uniformly. There is strong judicial safeguarding of the federal elements of the constitution, which is reflected in the fact that the Bundesrat cannot be dissolved by the federal government, having the status of an "eternal" organ in the Basic Law. At the same time the federal government is not accountable to the Bundesrat; nevertheless the latter plays an important role in the drafting of legislation.

While the Bundesrat mainly embodies intergovernmentalism on the regional level, the practical operation of the federal system as a whole also requires that intergovernmental relations are conducted between all levels of government. There are many more intergovernmental organs in German political practice, in more or less constant communication with each other:

- (a) The level of the "whole state", on which political institutions both of the federation and the Länder are represented on an equal basis. It's most important institution is the Conference of the Heads of Governments of the Federation and the Länder, which meets every four months and is based on accommodation and compromise. Furthermore, there are a number of coordinating institutions at the party level and interparliamentary coordination.
- (b) At the federal level, several institutions deal with matters within federal competence or subject to federal procedure (including the joint tasks or *Gemeinschaftsaufgaben*, originally exercised by the Länder, then based on specific administrative agreements and finally abolished by the Commission). The most important body is the Bundesrat. The Bundesrat's permanent advisory council, consisting of all the Länder presidents, is the main force behind the institution's political business. Furthermore, there are many more selected and issue-based committees who also support the President of the Bundesrat, who chairs the plenary session held every third Friday.
- (c) The "third level" represents the horizontal cooperation between the Länder themselves, preparing decisions that have to be taken by all of them. This consists mainly of the Conference of the Minister-Presidents, which meets monthly, before the meeting of the Conferences of the Länder Heads of Government with the Chancellor.

2.1 The Länder as the Main Administrators

The multi-faceted network of intergovernmental relations between the Federation and the Länder set out above reflects the fact that the Länder have always been the main administrators not just of their own laws, but also of most federal and directly applicable European legislation.

The administrative role of the Länder is defined in Article 83 of the Basic Law, which confers upon them both the right and the duty to "execute federal statutes as matters of their own concern in so far as this Basic Law does not otherwise provide or permit". Articles 84 and 85 of the Basic Law differentiate in this field between administrative functions to be performed by the Länder "as matters of their own concern" (under general administrative rules requiring the Bundesrat's consent and subject to federal supervision relating to legal standards only), and other matters in which "the Länder execute federal statutes as agents of the Federation" (subjecting them "to the instructions of the appropriate highest federal authorities" and to federal supervision dealing also with the "appropriateness of execution"). Nonetheless, in the entire field of administrative functions, the Länder are clearly the predominant bodies, while federal administrative powers, defined in Articles 87-90 of the Basic Law, are classed as exceptions to that rule. These powers only cover areas such as the foreign service, defence, the federal waterways and others which are conducted "as matters of direct federal administration with their own administrative substructures". All of this explains the otherwise rather obscure provision in Article 50 of the Basic Law that "the Länder . . . participate through the Bundesrat in the . . . administration of the Federation".

While the attribution of administrative functions may sound to be a more or less technical matter, its significance within the German system derives from the implications which flow from it for the position of the Bundesrat in the passing of federal legislation: all federal statutes providing "for the establishment of the requisite authorities and the regulation of administrative procedures" require the Bundesrat's consent, even if such a provision is only contained in a single paragraph or section of the respective federal act. This is the main reason that approximately 55 per cent of all federal legislation needed the consent of the Bundesrat – one of the primary targets for reform during the first commission. The same applied to delegated legislation of the federal government (ordinances) pursuant to such statutes and generally to all matters "that are executed by the Länder as agents of the Federation or as matters of their own concern" (Article 80 of the Basic Law). It also applied to federal legislation with administrative relevance based on European Directives (framework rules to be given effect through legislation in the Member States of the European Union). With European competence constantly expanding into fields of federal relevance in Germany, the European dimension has naturally had an increasing impact not only on the field of administration, but also on that of legislative powers (as discussed later). The important observation at this stage is that alongside its core function of representing regional interests in federal legislation, the most outstanding function of the Bundesrat is to apply the administrative experience of the Länder to the shaping of federal law.

2.2 Local Government Autonomy

While considering the field of administration, reference needs to be made to the role of local government autonomy in the German constitutional system. Since the beginning of the nineteenth century, that autonomy—on both the town and county levels – has always been of considerable importance for German structures of government as a whole. Its status can even be compared with that of the federal principle due to the fact the Basic Law accords an institutional guarantee to that autonomy in Article 28 (despite the fact that the organization and supervision of local government clearly and indisputably belongs to the legislative and organizational sphere of the Länder). Local government bodies, which carry out large parts of the administrative functions attributed to the Länder by federal legislation, thus enjoy the constitutionally protected status of an autonomous tier of government (which even entitles them to raise matters concerning that status before the

Federal Constitutional Court). The functional area linking the Länder and local government most closely together is that of regional and town and country planning, where they possess substantial autonomy vis-à-vis the federal tier, thus balancing much of the legislative losses which the Länder (and with them local government) have suffered.

Changes to the German Federal-Local Relations as a Result of the German Federalism Reform Commission I

During the autumn of 2004 the work of the German Federalism Reform Commission I got stuck due to numerous propositions urged by the Länder and members of the commissions on how to change the crucial Article 84 of the Basic Law and its implications for direct federal-local relations within the German federal system. The implications of the proposal for the local level were that the Länder would be granted a right of divergence (Abweichungsrecht) for laws and administrative procedures issued by the federal government and to be implemented by the Länder. Due to the problem of administrative interconnectivity for the local level discussed above, where, many laws and administrative procedures had to be implemented by the local authorities, Article 84 would have had to be amended to prevent direct assignment of duties and responsibilities by the federal level to the local level, and would have constituted a fundamental change in the traditional relationship between the federal and local administrative level. In the future, all dealings would have to be between the federal level and the Länder, who in turn would work with, equip and control the local level alone. However, the Commission failed to come to any agreement in its initial phase from 2003 until the end of 2004.

These reforms were only possible following the creation of the CDU/CSU-SPD grand coalition after the 2005 federal elections. Article 84(1) was amended, with the overall result being a prohibition on collaboration between the local and the federal levels.

4. Implications of the Changes to Article 84 of the Basic Law and the Prohibition on Cooperation (*Kooperationsverbot*)

During the year 2007—the second year of the grand coalition – Ursula van der Leyen, the Federal Minister for Family Affairs, Senior Citizens, Women, and Youth, stirred up a controversy about her political lobbying concerning the lack of nursery schools and kindergarten places in Germany, especially in the west of the country. For historical reasons, while 35 per cent of children up to the age of three were provided with a place in a state run nursery school in the eastern Germany, this percentage was only 7 per cent in the west. This discrepancy is widely believed to be one of the main drivers behind the low birth rate in Germany as a whole but among young professional women trying to combine work and child-raising in particular. Furthermore, due to the results of the Federal Commission mentioned above, the federal government is prohibited from intervening in the local matter of providing and financing nursery school places, including the provision of federal funds. Thus, only a year after the Federal Commission had amended the Basic Law to prevent financial interaction between the federal and local level, there was already political and public opinion pressure for change. The matter was compounded by the Länder, who either lacked funds to provide their local communities with sufficient funds, or, in the east, still wanted their "fair" share funds. As a result, the federal government was forced to find a way around the new rule in Article 81 in order to provide sufficient funds to the local level. The actual process for doing so—which is still ongoing will establish an endowment fund outside the normal budget rules and without the proper control of Parliament, funded by VAT revenue belonging to the federal level.

In conclusion, while the issue appears to be a technical one, it illustrates the potential limits of constitutional reform in strengthening the federal system. Despite the work of the reform commission, it is clear that if political pressure rises sufficiently the govern-

ment will find ways around the strict wording of the constitution—even if they run counter to the underlying federal principle. In the future, then, such constitutional changes will be better served if they reflect political realities.

Contributors

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