

Subtheme

Accountability and Transparency

Work Session 9: Can Accountability and Transparency be Achieved where Executive Branches Dominate Intergovernmental Relations?

Work Session 21: Are Centralized Election Agencies Compatible with Federalism?

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Federalism is formalized through a written constitution, which requires a high degree of accountability and transparency. This is why two or more orders of government have been increasingly moving towards a process of governance, bringing together partnerships between state, civil society and market. Operationalization of federalism presupposes mutual trust, constitutionalism, rule of law, honesty, and fair and free federal interaction. These values are becoming all the more necessary not only in smaller federal systems with direct democracy, but also in large federal polities based on representative democracy, as participatory inputs by citizens are being increasingly emphasized both by theorists of democracy as well as political activists and practitioners.

Yet elections continue to be the most institutionalized mechanism of participation and accountability in the world. With the growing salience of mass media and information technology, transparency in federal governance has never been more demanded as well as more feasible, by virtue of deepening democratic values and the globalization and availability of technology.

In a modern democracy, elections based on universal adult franchise have become a global norm and practice. The electoral process is purported to perform the basic functions of political mobilization, representation, putting together coherent and workable policy packages, and electing political elites to perform the roles of government and opposition. Given these vital functions, free, fair and transparent elections are crucial to democratic legitimacy of the political system. It is, therefore, necessary to raise such questions as the following: Are elections constitutionally embedded or legally provided? What kind of electoral laws are followed—plurality/proportional/majority systems? Are elections autonomous of the federal and provincial governments? Are centralized election agencies compatible with federalism? How do the people perceive the fairness or lack thereof of the electoral process?

Elections in multilevel federal systems are increasingly becoming a hot political issue. This is because many federal systems lack a centralized election commission. The recent experience of the Presidential elections in the US has brought to the fore the requirement of ensuring free and fair elections in a federal system where the electoral responsibilities are shared by multiple authorities at different levels of the political system. The need for at least some amount of commonality is widely felt. It is also felt that laws and practices related to the federal elections should be uniform.

Typically, the popular parliamentary chamber is directly elected by the people in multiple single member constituencies spread throughout the nation. The federal second chamber has greater variability of electoral laws and practices, and such chambers are directly elected by the people in the US and Australia, while it is indirectly elected by the elected members of the state legislatures in India. In Canada, the Senate is appointed by the Federal executive in numbers constitutionally assigned to the provinces and regions.

Generally, it is crucial that an election agency cannot be part of the government and should be insulated from the governmental influences of any levels. This has been done in India by entrenching such a commission in the Constitution itself and mandating it to hold presidential, vice-presidential, parliamentary and state assembly elections. The Chief Election Commissioner and other Commissioners, if any, are guaranteed the security of tenure and service condition comparable to the Supreme Court judges. The experience of India at least shows that there is no incompatibility between a centralized Election Commission and federalism. If anything, India's success story as an electoral democracy of considerable creditability at both Union and state levels is largely attributed to such a centralized but autonomous election agency. Evidence shows that where electoral responsibilities are shared between the federal and regional governments, as in the case of USA and Canada, there have been difficulties as a result of this decentralization. And, these countries have shown a great deal of interest in the Indian electoral system.

At present, the Central Election officer at the centre is answerable to the parliament, not to the government. Central election officers at both federal and provincial levels have been independent and autonomous. Since the electoral system at the centre has not posed any serious problem, as it has in the US in recent years, there has been no serious proposal for comprehensive changes in the method of conducting elections. Rather, free and fair elections need a massive exercise of coordination.

The centralized election agency provides the opportunities to learn from the experiences of different subnational elections. For instance, in West Bengal election, the system of Booth Level Officer worked very well. With some modification, a similar system was applied in Uttar Pradesh (UP), which led to deletion of 7.8 million bogus voters and the addition of 6.2 million genuine voters. The Election Commission also checked the West Bengal electoral rolls and, detecting 85 lakhs bogus voters, it deleted these names and added those that were frequently omitted.

Such a centralized agency also does not mean that the process is cut off from the grassroots level. The Indian experience shows that several meetings of district magistrates and block level officers

take place to evaluate and conceptualize the overarching electoral system down to the level of the polling booth.

Centralized election agency is also required to make the whole process impartial. For instance, appropriation of the commission's work by state government of Madhya Pradesh made the electoral process suspicious because a meeting of district magistrate (DM) and his subordinate officers was held with regards to the elections and was chaired by a minister of the state government. When the information reached the Election Commission of India, it took a strong view of the matter and immediately reprimanded and transferred the concerned DM. During the period of an election process, the bureaucracy of the state government dealing with elections is provisionally placed under the directive and disciplinary action of the Election Commission of India.

There is another instance of a by-election in the same state in which the declaration of result was delayed by three hours by the state level administration under the influence of a powerful state leader. The Election Commission's field observers intervened in the matter and got the election result declared. In yet another instance, a Lok Pal was harassed by the Speaker of the house over a corruption scandal; the Lok Pal was able to secure protection from the Election Commission because it is a constitutional body.

As the federal features vary from country to country, election management also varies depending upon history and geography. In a country like US, where federalism was a product of agreement amongst the states, there are variations in election procedure from state to state. Each state has a separate election commission to conduct all elections in that state, and as a result there is no uniformity in the election law and procedures of various states even for elections related to the posts under federal governments. This has indeed resulted in many complexities and confusion in the American election system. But as already pointed out earlier, India, with extreme diversities, followed a different path by having a centralized and uniform election procedure throughout the country, with parliamentary and state legislature elections under a powerful and independent central election commission.

Following the American model in India might have been disastrous. This is borne out by some recent experiences in relation

to State Election Commissions (SECs) created for city and village councils under the 73rd and 74th Amendment Acts. These SECs have not performed with the same degree of impartiality and objectivity as the Election Commission of India. Apart from lack of uniformity, the SECs are often found to be under the clutches of state government for various reasons. The centralized election system in India has indeed contributed to uniformity and unity, while simultaneously keeping at bay those fissiparous tendencies of regional, linguistic, religious and casteist affiliations. This has been achieved without hurting the federal spirit of democracy by making reasonable use of state official machinery in most of the aspects related to the conduct of elections. Every constituency has been so designed that each one is a pluralist society on its own. The uniform electoral procedure for all states has enabled the Election Commission of India to adopt a non-discriminatory approach towards all voters in every aspect of electoral management. Besides these factors, the role of central police organizations has also grown in prominence in the whole electoral process, in comparison to state police forces.

However, the Indian electoral system has thrown up a few problems that have raised some discontent and controversy. Early on, national and assembly elections were held simultaneously, and national issues largely dominated. In 1971 Indira Gandhi called a snap parliamentary election thereby de-linking the elections for the two levels of the federal polity. Mainly for this reason, and subsequently on account of greater politicization of the electorate and deepening of democracy, local issues now seem to override national issues and give a strongly regional flavor to electoral and political processes. The largely illiterate electorate often gets confused and local and national issues get mixed up.

Another point of dissatisfaction has been the sharp discrepancy between the vote and seat ratio as a result of the plurality or first-past-the post system of election. In the initial phases, the ruling parties got disproportionately large number of legislative seats in comparison to the percentage of votes polled. In more recent years, the articulation of cultural cleavages and social diversities has led to another kind of problem, namely extreme fragmentation of the

party system and enormously large number of parties. Thus, it is evident that the plurality system, which in homogeneous societies has invariably produced two party systems, has in India shown effects of proportional representation in the form of a fragmented multi-party system, likely due to extreme diversities.

Until 1999, Nigeria experienced a decentralized election system. The first ever federal elections in Nigeria (1954) were held under different arrangements prescribed in regulations made separately for each region by the Governor General. Elections in the north were indirect while in the eastern region they were direct and based on universal adult suffrage. The 1954 federal constitution also made allowance for regional police force. The 1999 Constitution provides for Independent National Electoral Commission (under Third Schedule, Part I). The commission has power to organize, undertake and supervise all elections to the offices of the president, vice-president, the governor and deputy governor of a state, and representatives to the federal and state legislatures. But Nigerian experience with such a centralized agency has not been painless. Huge numbers of eligible people could not be registered. The commission has been entrusted with monitoring the political parties, but faced with inadequate capacity to do so.

It is also argued that subnational election commissions are more suitable in post conflict societies as the local population may have more trust in it than the centralized election commission. Thus, the Nigerian experience has been at variance with the Indian experience with centralized election agency as discussed earlier. In the case of the US, the states came together to form a federation, but retained control over the election. The latest experience in the US has caused some concern which can be mitigated by having a centralized election agency. As will be discussed later some steps have already been taken in this direction in the recent times.

The US Congress has supervisory power over elections. It is empowered to protect the voter's right and prevent corruption in the election process. In the last 32 years with the establishment of Federal Election Commission, the federal role has gradually increased in the US. Besides the issue of neutrality, that of competence is of equal importance. The US Federal Electoral Assistance

Commission has been set up recently with the task of providing resource assistance to the state election commissions, with respect to certain broad and uniform election procedures.

During the early decades of the Brazilian federation, the member-states had the authority to legislate on electoral matters concerning state and municipal elections. During this period, electoral frauds under the patronage of state governments were rampant. Moralization of the electoral system was one of the forces behind the Revolution of 1930, which led to the end of the Old Republic.

In 1932, the central government published an electoral code to regulate elections throughout the country (federal, state, and municipal), and it instituted a specialized arm of the judicial branch at the federal level, called the Electoral Court, with the function of managing the conduct of elections and settling disputes arising there from. The current federal Constitution, enacted in 1988, maintains the Electoral Court essentially as it was initially established. For different layers of elections, there are different levels of electoral courts. Regional electoral courts are concerned with state level elections, while electoral lower court conducts municipal elections. These courts are not entirely packed with executive—nominated judges, rather some of them come from the bench as well. The Superior Electoral Court has the power to review decisions of the regional electoral courts, though this authority is restricted to the circumstances stipulated in the Constitution. The management of elections by the Electoral Court in Brazil is fully compatible with the principle of federalism, both in its structure and in its functioning.

It is evident that in older and relatively developed federations, the presence of a centralized electoral agency is not only compatible with federalism but also more effective in ensuring the legitimacy of the electoral process throughout the federation. However, in a relatively new and developing federation like Nigeria, the local voters are more suspicious of a centralized election agency and place greater trust in local agencies. In such a scenario, accountability and transparency of the electoral process becomes crucial for building up trust and legitimacy.

The issues of accountability and transparency with special reference to federations, where the executive branches dominate inter-governmental relations (IGR), have become increasingly more important. This is in the backdrop of regionalization and decentralization of centralized federations and the contemporary challenges of privatization of the state sector of the economy, rise of the civil society institutions, and globalization of national economies. Executive federalism is even more likely to dominate the federal-provincial relations in parliamentary federations than in presidential federations, where the principle of separation of powers, and checks and balances ensure a certain degree of mutual accountability and deliberative democracy due to the very design of such a constitution. Nevertheless, the question of accountability presents a formidable challenge in how to conceptualize it and enforce it in a system where despite separation of powers in the constitution, the federal system must in its functioning become mutually inter-dependent. On account of this, it often becomes very difficult to attach responsibility of a sector, level and an agency of a government which is so divided that it becomes difficult to determine where sovereignty lies in the US. Fixing responsibility and accountability also requires understanding where the money came from, to whom it came for, and how is it supposed to be spent and accounted for. The states can be more or less accountable for what they are doing. But when the money comes from the federal exchequer and schemes are to be implemented by state action and supervision, legislative autonomy and control is lost throughout process. States resent federal supervision and since the money comes from Washington, state legislatures have no legitimate authority over it. Thus, there is neither congressional control nor state legislative control.

Executive federalism in parliamentary federal systems over the years became vulnerable to centralization of power as a result of economic crisis' and wars. The relative peace and unprecedented prosperity in developed Western federations tended to bring the issue of accountability and transparency to the forefront of the governance debate. Relatively successful federal systems in the developing parts of the world like India, Malaysia, Russia, and South Africa have also found themselves face to face with similar, if lesser

magnitude, pressures in favour of accountability and transparency. In Canada, the federal government gives bloc and specific grants to provincial governments for use. Ottawa initially made an attempt to ensure uniform standards across the provinces and did some monitoring. The provincial governments have increasingly questioned undue federal interference and the governments in Quebec have gone to the extent of opting out of federally sponsored schemes, demanding that they be given their share of the grant to be utilized for province sponsored schemes without any federal inputs. In India, in the Nehru and Indira Gandhi eras, centrally sponsored schemes were implemented by the state governments under continuous and active monitoring by New Delhi. Prime Ministers Indira Gandhi and Morarji Desai often visited state capitals with Union officers to supervise development activities funded by the Union. These practices have virtually disappeared under subsequent regimes, especially in the era of federal coalition governments. In Germany, the accountabilities of the federal and *Land* governments are in a way interlocked because of direct representation of provincial chancellors or their nominees in the *Bundesrat*, the federal second chamber. Thus, *Land* governments are directly associated with federal legislative process. However, the implementation of laws is divided between federal and *Land* governments and this divided accountability may pose some problems. *Land* governments have their own compliance system and federal control appears tenuous.

In European governments, the problem of accountability appears to be especially complicated because there are three levels of federal and confederal authorities in federations, namely, federating states, the federal member states, and the confederal European Union. It requires an enormous amount of political and administrative ingenuity to simply get this labyrinthine machinery moving. Yet it seems to be slowly but steadily evolving with occasional hiccups.

Moreover, the question of accountability and transparency is also complicated in asymmetrical federal systems where units enjoying asymmetrical powers and autonomy at the cost of symmetrical units engender envy and a sense of relative discrimination among those who are denied such privileges. On the one hand, the trend

of regionalization all over the country prompts all units to seek to devise a new federal balance of forces that would allow more equitable and just sharing in federal power and national resources. On the other hand, privatization and globalization empower the civil society and market to demand a freer, accountable and transparent partnership between the government, civil society and the market in governance. The Indian experience shows that special status to Jammu and Kashmir, Nagaland, and Mizoram are strongly resented by the states with strong regional identities elsewhere such as Punjab, Tamil Nadu, Andhra Pradesh, and other states of the north-east. The new partnership in political, corporate and civil society governance in India is passing through its teething trouble and terms and patterns of relationships including statutes in some cases still in the process of being formulated and evolved.

The newer trends in contemporary federations have underlined the accountability of the executive branch to the legislative branch, that of the federal government to the state governments, that of state governments to the local governments, and finally, that of all public authorities to the public and the media. The mushrooming of non-traditional agencies and forces like the NGOs, old and new social movements and international financing agencies have contributed to the greater concern with the problem of corruption in public office. The media are also becoming more numerous and investigative in exposing government, corporate and civil society institutions associated with governance and development.

Federal systems are responding to the imperatives of accountability and transparency through a variety of mechanisms, such as open processes of negotiation, policy formulation, and implementation by various orders of governmental and non-governmental institutions. The meetings of executive heads of government are now more openly reported in the media and the representatives of civil society and the corporate sector are invited to participate in the intergovernmental interactions and decision making. In federal systems like India where the constitutionally entrenched autonomous office of the Comptroller and Auditor General of India (CAG) is mandated to audit the accounts of the Union and state governments, as well as any important authorities created under acts of

Parliament, it is observed that the effectiveness of parliamentary committees over government accounts and expenditure is somewhat better at the parliamentary level though it leaves much to be desired at the level of state legislatures. An area of darkness is the accounts of local bodies and NGOs which are outside the jurisdiction of CAG of India. At this level, there is neither parliamentary nor legislative control. In a few states like Rajasthan and Maharashtra, the practice of what is called social audit has been initiated by the vigilance of the civil society which forces such agencies to open their records to the public.

The experiment of the institution of Ombudsman in India is still not very developed. At the Union level, the need for a Lok Ayukta has been debated for decades without any parliamentary statutes being passed, and the issue of exempting the prime minister from its net has not yet been resolved. Several state governments have enacted Lok Pal Acts but studies show that the institution is neither very powerful nor very active. A notable recent development is the enactment of the Right to Information Act by the Parliament under which a reasonably powerful union Information Commissioners Office has been set up. The kind of information that was completely closed to the public has become accessible under this Act covering both the Union and state governments.

In a globalizing world, the problem of accountability and transparency is particularly amplified because of growing levels of violence, terror, corruption and criminality. Federal constitutions were not drafted anticipating these unforeseen problems especially at their present levels of incidents. Enactment of anti-terror laws at federal and provincial levels has often risen to insurmountable levels of difficulty especially in a developing federation like India. Such laws are more easily enacted and implemented in developed and institutionalized federations than in the developing ones. Similar problems have been encountered in dealing with corruption and criminality at the legislation and implementation levels.

To sum up, in the emergent discourse on good governance involving in a joint venture, the state, civil society and the market, the problem of ensuring accountability and transparency has acquired a centrality that cannot be gainsaid. The complexity of

the problem stems largely from the fact that the process of federalization has been expanding both *within* and *among* the nations. The new global political and economic order cannot postpone this problem much longer. Federalists all over the world must apply their intellect in devising institutions and practices to adapt democratic and federal governance to the challenges of the twenty-first century. In the end, it is needless to add that the stepping stone to these goals in governance is free, fair, and transparent elections.