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Gendering Federalism in India

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Abstract ; This paper seeks to explore the gendered impact of Indian federal structure. Different aspects of federalism such as intergovernmental relations, asymmetrical relations, and multi-level federalism and its impact on the way women's movement engage with the state structure are discussed. The impact of three-tier federal structure is visible in the presence of women's organizations at all the three levels. The multi-level federal structure can provide opportunities to women's organizations for forum-shopping. It can also provide opportunities for policy-innovation and experimentation. Feminist scholars in India have paid little attention to the impact of federal arrangements on women's politics. Similarly, the huge literature on federalism has neglected the impact of federalism on women's politics. The debate on asymmetrical federalism in India has till now ignored the impact of asymmetrical federalism on women's politics. Despite the fact that strengthening of inter-governmental relations is necessary for the smooth functioning of cooperative federalism, it may have negative consequences for women's politics since intergovernmental decision-making generally takes place behind closed doors and thus may not be accessible for women's organizations. Thus this paper represents an attempt towards gendering the federalism discourse in India. It tries to point out certain tendencies regarding the impact of federalism on women's politics. It seeks to explore the ways through women's movement negotiate and mediate the mesh of multi-layered federal structure.

The issue of women and politics is not entirely new in the Indian political discourse as the question of social reforms in relation to women can be traced back at least to the nineteenth century in modern India. The nineteenth century social reform movements raised a few glaring issues of exploitation of women such, for example, as Sati, child marriage, conditions of widows and their remarriage, education, dowry etc. These initiatives emanated from liberal British-colonial administrators like Governor General Lord William Bentinck and liberal middle-class Indian social reformers like Raja Rammohan Roy, Keshav Chandra Sen, Ishwar Chandra Vidyasagar, etc. Nevertheless, feminism as we know it today as a wider and deeper concern with the question of gender equality is a relatively more recent development. We can date it back to the post-independence decades.

Politics of Gender and the State

Feminist politics has found it difficult to change the situation where religious communities and social institutions including the family are concerned. The resistance to reforms is much greater at these levels. It has been much easier to influence the institutions of the state such as the legislature, executive, bureaucracy, courts and political parties. Right from the nineteenth century to the present, the state has been an important instrument to legislate and reform laws relating to women's rights to property, marriage, and rape, custody and guardianship of children, women's education, reservation and empowerment.

However, some feminists like Nivedita Menon argue that in its laws "Indian State shows itself to be the protector of patriarchal values". She also maintains that most Indian feminists regard the Indian state as "a class and patriarchal state".¹ Further the development and planning paradigm in India is seen as one which is intrinsically patriarchal 'top-down' where the Federal planners know better than the lower levels of governance and the 'child like' masses, especially females.

Sawer and Vickers have pointed out that feminist scholars have paid little attention to the impact of federal arrangements on women's politics. Similarly, the huge literature on federalism has neglected the impact of federalism on women's politics.²

Vickers point out that 'Gender scholarship's focus on power and change will also make theorizing about federalism more dynamic.'³ It can help in enriching the federalism's studies by way of bringing new questions, concepts and hypotheses. ⁴Different aspects of federalism such as intergovernmental relations, asymmetrical relations, and multi-level federalism impact on the way women's movement engage with the state structure. Since the structure of the state in India is a multi-level federal, one may argue that reformist ideas may have a better chance of adoption in laws and public policies at the federal level than at the regional and local. This is because the lower orders of government are arguably embedded in a more traditional, cultural and social setting. To an extent this argument appears to be tenable as women's organizations and movements are denser as well as active at the national level. Yet, the 33 percent reservation for women was first introduced at the level of local government by the 73rd and 74th constitutional amendments. Maybe this has been possible at that level precisely because local bodies in India have been historically powerless and resourceless, and even after the constitutional amendments, the state laws relating to the local bodies generally fall short of the ideals of the said amendments. This even in the context that liberalization along with the decentralization process in the 73rd and 74th amendment purportedly desired to change the paternalistic development paradigm to empowering the women at the lowest level of governance as the engine of development. Nevertheless, studies at the local level have increasingly shown that these reservations have created a new ambience for change which augurs well for more consequential power shifts at the local level in the time ahead. It has been noted by many feminist scholars that the chances of women's electoral representation increases if power is devolved to minority/ peripheral nations.⁵

Women's Representation

Despite the visible participation of women in the freedom struggle in the Gandhi-Nehru phase of the nationalist movement, their representation in the political structures and processes can hardly be said to have gone beyond tokenism even in the 1990s. Women in India got the voting right under the Government of India (GOI) Act of 1919. This Act enfranchised 3,15,000 adult women. The

GOI, 1935 extended suffrage to more than six million women. When elections were held under this Act, eight women were elected from “general” constituencies and 42 from “reserved” constituencies. When provincial ministries were formed under this Act, six women were included as ministers.⁶

Paradoxically, neither the State nor the civil society, and the former because of the latter, can be said to be pro-actively inclined to bringing about gender equality. In the State, the judiciary is perhaps the most progressive in its approach to the gender question. Reservation, which has become the open sesame to social justice for the political class in India, is also withheld with serious reservations when it comes to women. If anything, there is greater resistance to reservations for women at State and national levels in political parties than in the general public. A survey conducted by India Today shows 75 per cent women and 79 per cent men supporting active female participation in politics and 75 per cent men and women are for reservations in legislatures. The opposition in the political class is both “gendered and caste based”.⁷

The representation of women in the Lok Sabha has only marginally moved up from 4.4 percent (or 22 MPs) in the first Parliament (1952- 1957) to 8.3 percent (or 45 MPs) in 2004 in the Fourteenth Parliament (2004- 2009). For the first time, the proportion of women MPs surpassed a significant threshold of 10 per cent, with 58 women MPs elected out of a total of 543 elected MPs.⁸The Sixteenth Lok Sabha has the highest number of women elected in the history of the country at 61 which is slightly higher than the Fifteenth Lok Sabha in the 2009 election which had 58 women members. West Bengal has the highest number of women elected at 13.

In 1974, the Committee on the Status of Women in India in its Report Towards Equality lamented:

The difficulties being experienced by women in obtaining adequate representation and spokesmen of their cause in these bodies, and the

declining trend in the number of women legislators is the result of the reluctance of political parties to sponsor women candidates. The parties reflect the established values of a male dominated society, which would be difficult to alter without certain structural changes in the socio-political set-up. The parties would continue to pay lip service to the cause of women's progress and the policy of 'tokenism' by having a few women in the legislative and executive wings of Government whose minority and dependent status offer serious obstacles of their acting as spokesmen for women's rights and opportunities.⁹

Yet, the Committee did not recommend reservation for women in the Parliament or State legislatures for the following reasons: (a) women's cause has always been supported by 'all progressive elements, men as well as women'; (b) 'separate constituencies for women would narrow their outlook'; (c) their 'interests as such cannot be isolated from economic, social and political interests of groups, strata and classes in the society'; (d) 'system of special representation may precipitate similar demands from various other interests and communities and threaten national integration'; (e) 'the privilege of reservation once granted, is difficult to withdraw'; (f) women must compete as equals with men as since 1952; and (g) the minority argument is inapplicable to women as they 'are not a community, they are a category'.¹⁰ However, the above committee did recommend 'the establishment of statutory Women's Panchayats at the village level to ensure greater participation, by women in the political process' (emphasis in the source), not as 'parallel organizations to the Gram Panchayats', but as 'an integral part of the Panchayati Raj structure, with autonomy and resources of their own for the management and administration of welfare and development programmes for women and children'.¹¹

The political opinion on the issue of women's reserved representation has since changed significantly. The 1990s have witnessed the 33 per cent reservation for women in Panchayati Raj institutions, women's organizations and political leaders cutting across party lines are up in arms for similar reserved representation in the Parliament and State legislatures to the tune of 30 percent of the strength of the legislative bodies concerned.

An amendment bill with this objective which has been in public debate including in the Parliament, was largely supported by the women's movement but the segments of the movement were also worried that (a) "the quotas could form a ceiling rather than a minimum to be improved upon," and (b) "that women candidates might be pliable because of their dependence on male party leaders," and (c) "that reservation will treat women like a homogeneous group, which increases the likelihood that the 'biwi brigade' of the educated, upper class, upper caste women will be elected, particularly because the Bill does not provide for sub-quotas of OBCs."¹²

This bill, in any case, got passed by the Raja Sabha early in 2010) by the UPA government, but was not placed before the Lok Sabha. Successive government-shave professed to be committed to it and says it is trying to secure consensual support of the all the political players, mainly the OBC-led parties (RJD), Samajvadi Party, and JD (U) and the BSP.

Carole Spary pointed out that coalition politics has also caused problem in increasing legal quotas for women in the national parliament due to the presence of many smaller state based parties in the coalition which adopt an anti-quota stance and prevent the passage of national legislation.¹³

In an analysis of women candidates and part nomination trends in 2009, Spary found that most regional parties nominated a lower proportion of women than the two major national parties of the BJP and Congress. But she added that this was not true for all parties and varied across states.¹⁴ Some parties did not field any women candidates like the BijuJanata Dal in Odisha and the JantaDal (Secular). Another thing to take note of is that none of the women who contested as independent candidates could win.¹⁵

Moreover despite the fact that the national parties like Congress (roughly 10 percent of Congress candidates were women) fielded more women candidates than the regional parties, this obscures the fact that there huge variations from one state to another. For example, while women made up of 20 percent of Congress party candidates in Rajasthan, there were no women candidates of Congress in the states

of Odisha and Jharkhand.¹⁶

Another interesting aspect to note is that states such as Kerala and Karnataka have low levels of women's nomination and election despite better profile in terms of women's literacy and health.¹⁷ On the other hand states such as Rajasthan and Haryana have higher levels of nomination and election, though lagging behind in women's literacy and health accompanied by an unfavourable sex-ratio.¹⁸ This shows that patriarchy operates at different levels and lack of discrimination at one level may co-exist with discrimination at another level.¹⁹

While the emergence of regional parties as important members in coalition politics has led towards greater federalization, its implications for women's representation are not encouraging.

After 30 years, single largest party could secure a majority on its own. The Sixteenth Lok Sabha Elections resulted in BJP winning 282 out of 543 seats. It needs to be seen whether this huge numbers leads to the passing of Women's Reservation which has been lingering in Parliament for years.

Women's Movement

Given these formidable hurdles to gender equality, it would appear that as things are, women could expect more from political mobilization and women's movements than from the State or the civil society. When movement activism around issue of gender engages with the state, they have done so largely in the forum of bureaucracy rather than within the electoral domain.²⁰ Women's movements by now have had a long and chequered history. Taking stock of women's movements in relation to the state as the target of demands, Lakshmi Lingam²¹ gives a classification and evolutionary profile of women's movements as follows: 1.) social reform movements, 2.) agrarian struggles and revolts, 3.) issue-based campaigns such as traditional roles and values of women, anti-price rise campaigns, campaigns on water, the Chipko movement, etc., and 4.) women's liberation movements against patriarchy by "autonomous women's organization not affiliated to any political party. As is evident from the discussion, issues important for women are quite

diverse with locations in diverse sites. This naturally diffuses and weakens women's movements, with the possible exception of the anti-patriarchy autonomous movements. This fact is also evident in an earlier study of women's movements by Nivedita Menon.²² She shows that women's movements are concerned with issues as wide-ranging as development, social violence/ violence against women, health, sexuality, work, reservation for women in representative institutions, uniform civil code, etc. Menon also finds that women's movements by themselves are not sufficiently powerful and effective. They face the dilemma that in all broader alliances forged by them with the nationalist movement, left-wing movements and parties, they must subordinate their cause and radicalism to imperatives of the nationalist or class issues lest they are decried as forces divisive of the nationalist campaign or class struggle.

Mangala Subramaniam, writes,

The contemporary Indian women's movement comprises numerous groups and organizations which vary in location, form and type; groups include urban, rural, small, large, informal, formal, localized, national, internationally affiliated, and combinations of all these forms, such as local informal branches of national organizations. Locally, women form groups or clubs based on credit programs, community improvement groups (often based on local governance institutions such as the panchayats), and other forms of association, such as nongovernmental organizations (NGOs)²³

Gopika Solanki points out that women's groups form diverse networks that correspond with and span the territorial boundaries of the federation and beyond. She observes,

...The Indian women's movement have formed multi-state, issue-based networks and/or developed area-based networks by taking up local issues and coordinating with other groups across the jurisdiction of single or multiple States and beyond the boundaries of the nation state.²⁴

Since 1980s, the National Conference of Women's Movement has been organized by autonomous women's organizations in cooperation with the women's wings of the left parties across India, and this conference is hosted by different states every two to three years. The focal point of the conference is usually an issue of vital importance to women's groups in the state in which the Conference is held.²⁵

In a more recent analysis of the women's movements, Anupama Roy observes that autonomy became the major objective and feature of the women's movement in the 1970s and 1980s.²⁶ During this period both mass based and affiliated women's organizations as well as the autonomous women's groups revitalized the struggle for women's rights.²⁷ The headquarters of most national-level women's organizations were housed in Delhi, including the AIWC, Young Christian Women's Association (YWCA), All India Democratic Women's Association (AIDWA), NFIW, and Mahila Dakshita Samiti (MDS). However, by the 1990s, "there has been a proliferation of autonomous organizations running on funds from government and international bodies".²⁸ It is baffling how these organizations can be autonomous if they run on funds from governmental and international bodies!²⁹ But she makes sense further down the line when she refers to the observation of Menon³⁰ who decries the trend of "NGO-ization of the women's movement" pushing them into "rethinking autonomy in their search for radical political alliances and solidarity." Roy herself sensibly attributes this trend to "the liberalization of the economy and the abdication of 'social' responsibilities by the state to NGOs."³¹ The recent success in 2015 of "Pombilai Orumai" in Kerala, a mobilization of women labour in tea estates that happened in defiance of existing left labour unions followed by a statewide strike which led to the acceptance of gender specific demand may be the harbinger of a new micro level mobilization of women at the lowest level. The women's (largely Dalit) consolidation here initially in Munnar has undermined the three agencies involved in the stir: the state, the trade unions and the plantation management. The absence of the state and the gender blindness of trade unions and managements may have to contend with other such mobilization.

Asymmetrical Federalism

Like any other federal system, India has certain de facto asymmetrical federal features in terms of differences of size, population, wealth and influence among the federating states. Apparently, India also has several traits of de jure or constitutional asymmetries with regard to special position, powers, and protection enjoyed by the states of Jammu and Kashmir (article 370 of the Indian constitution), Nagaland (article 371 A), Sikkim (article 371 F), and Mizoram (article 371 G). Similarly, the fifth and the sixth schedules of the constitution contain certain special provisions for administration and protection of scheduled areas and scheduled tribes in any state (fifth schedule) and in the states of Assam, Meghalaya, Tripura, and Mizoram (sixth schedule). The implication of this is that Indian Parliamentary Acts relating to other states do not automatically apply to other states of Jammu and Kashmir, Nagaland and Mizoram in certain matters unless endorsed by the legislatures of these states. The extraordinary matters relate to any item in the union and concurrent lists in the seventh schedule in case of Jammu and Kashmir in compliance of the Instrument of Accession (1947) in case of Jammu and Kashmir; the exceptional matters concern religious and social practices of Nagas and Mizos, their customary law, and ownership and transfer of land resources. The special provision for Sikkim specify that the legislative assembly of the state has a constitutionally guaranteed size of not less than 30 members, and pre-accession treaties are excluded from the jurisdiction of the Supreme Court or any other courts. The Governor of Sikkim under the direction of the President of India has been assigned with “special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population” of the state. Moreover, “special responsibilities” are given to the Governors of the concerned states in tribal affairs and welfare to which the fifth and sixth schedules of the constitution relate. The fifth and sixth schedules also establish advisory or law making institutions of governance for tribal communities and tribal regions.

The laws of the Parliament do not automatically apply to the state of Jammu and Kashmir and the state legislature has the power to make laws with respect to any matter other than defence, foreign affairs, finance and communication. The

property laws of Jammu and Kashmir forbid outsiders to buy property in Jammu and Kashmir. Raja argues that the laws are silent on the subject of citizenship of women who marry outsiders.³² In *Prakash vs. Sahani* case (1965), the high court of Jammu and Kashmir ruled that women acquire the domicile and nationality of their husband³³. In another case in 2002, the high court overturned its earlier judgment and ruled that determination of nationality by marriage is an outdated practice³⁴. In March 2004, a bill titled 'J and K Women's Permanent Resident (Disqualification) Bill' was laid in state legislature of Jammu and Kashmir. The Bill laid down that women would lose the permanent citizenship of Jammu and Kashmir in the event of marriage with a person who is not a permanent resident of Jammu and Kashmir. The bill was passed in the lower house but before it could get passed by upper house, it attracted controversy³⁵. The national parties, Congress and BJP opposed the bill and women groups campaigned against bill. As a result the bill lapsed. Another effort to pass the bill was made in 2010 was unsuccessful³⁶. Jasbir Singh and AnupamaVohra argue that the bill seeks to protect the distinct identity of Jammu and Kashmir at the cost of creating a 'gendered hierarchy of citizens'³⁷.

Similar problem exists in Nigeria as states in Nigeria have developed the concept of "indigenesness" and people have to have certificates of indigenesness to get many benefits of citizenship within states. One fallout of this is that a woman who marries someone from another state, and moves to her husband's place of residence will find herself non-indigenous there and may be deprived of some benefits of citizenship and she may even lose her indigenous status in her home state.³⁸

The retention in erstwhile Portuguese colonies viz the state of Goa, and the Union Territories of Dadra & Nagar Haveli, Daman & Diu of certain aspects of the Portuguese civil law is another interesting example. When Goa, became a part of Indian territory in 1961, Civil laws such as laws relating to Common property, family laws were based on the Portuguese Civil Code of 1860. These laws were common for all religious communities. The Parliament of India enacted Goa, Daman and Diu Administration Act which held that the Portuguese civil laws will prevail until repealed by an act of Parliament These laws have played out in different directions some empowering and some not.

The family under the Portuguese Civil code was termed the “COMMUNIAO DOS BENS” , wherein each spouse had equal rights in the property of the other as their separate properties became a “communion of assets”, lost their separate character. This law led to gender justice as it entailed registration of marriages and by overriding title, an equal share in marital property. Thus no sale purchase or charge on the property can be created unless both spouses consent/ sign the document; theoretically even rent agreements are to be signed by both spouses, though in practice this is sometimes ignored. Similarly incomes arising from the properties belong to both the spouses in the ratio 50-50. The Bombay High Court on 22 April, 1993 in its interpretation of the COMMUNIAO DOS BENS in an income tax Judgment (Commissioner Of Income-Tax vs Modu Timblo (Individual) (1994 206 ITR 647 Bom) held that all incomes from business carried out from such assets held 50-50 belonged not to the respective spouses but to the Communiao (and were to be taxed as a ‘Body of Individual). However, the Union Parliament based on the large scale petitioning by Goan women groups retrospectively amended The Income tax 1961 through the Finance Act 1994, whereby Section 5a was introduced all incomes other than those for salary, are to be apportioned on a 50-50 basis between the spouses. This included professional earnings of all type whether as a doctor, engineer or as an artist apply uniformly to all state citizens and are uniformly accepted by all communities in these territories. In fact regardless of the pressure of the Muslim clergy ever since the Shah Bano controversy in 1985-86 or even in the triple talak controversy now; Muslims in Goa and the other territories continue to follow the Code.

Registration of all marriages is essential in Goa while Catholics continue the advantage of solemnizing their marriages in the Church after declaring their intent at the office of the civil registrar for others only the registered marriage at the office of the Civil Registrar is recognized and often entered to before the religious ceremonies. Inheritance rules between siblings also clearly demarcate that they inherit equal shares regardless of their sex. These laws sometimes come in conflict with other Indian civil laws which are based on a non Iberian paradigm such as the Company’s Act or Transfer or Property Act where moveable properties such as shares are often transferred without the consent of spouses even where such transfers are illegal as per the Civil Code but ‘regular’ under other legislation. The

confusion often gets compounded by the fact that till the authoritative English translation of the Portuguese Civil Code was completed and included in the Goa Succession, Special Notaries and Inventory Proceedings Act 2012.

The civil laws also include the laws relating to private and common property in this connection the Institution of the *Comunidade* is of importance. The *Comunidades* of Goa are unique a form of land association where, unlike in the erstwhile British territories, land-ownership of common property assets was held collectively (though sometimes originally controlled by hereditary village chiefs/founders) where the *Comunidade* included were members of the community or those who had “shares” in the property. Later some *comunidade* were represented by an attorney, a representative often elected. Thus while some private property existed all common property, wetlands and forest lands had some sort of community ownership which are believed to be the Portuguese codification in 1526 of the then existing *gaunkari* system of property relationships. Members of the *comunidades* are *gaonkars* and *accionistas*, and are entitled to a dividend by the *comunidade* for being members of the community or holders of *acções* or shares *comunidades*. Nearly 70% of the land in Goa is owned by the 223 *Comunidade*. These bodies are reduced in stature and role and are now mere societies of rights-holders who are members by birth. Post liberation of Goa and their being subject to laws that pertain to the rest of India (where land is usually either privately owned or, as in the case of most forest government owned) has changed their scope and status. The village development activities, which were once the preserve of the *comunidades* or more specifically the *gaunkaris*, became entrusted to the gram panchayat, rendering the *gaunkaris* non-functional.

After Portuguese rule ended in Goa in 1961, the developmental activities of the *Comunidade*, often controlled by the upper castes *Gaunkaris*, are taken over by the gram panchayats and the state government has Government has assumed control over *Comunidades* depriving them their right to self-governance.³⁹ The Agricultural Tenancy Act 1964⁴⁰ also extended land ownership rights to the lease holders of the *Comunidade* which in turn has led to large chunks reaching private ownership. The state too has acquired land from the *comunidade* for developmental work. While gram Panchayats have female participation the intervention

of the state government has altered the organic relation women communities had with the *Comunidade*.

The Naga Mother's Association and the Meira Pelpbhi of Manipur are two women organisations that have contented with the Asymmetrical Federal Structure of the two states of North Eastern India. The Naga Mothers Association founded by Neidonou Angami has largely been influential in diffusing of inter governmental differences and effecting a more gender sensitive and participative planning and planning framework. The 'Shed No More Blood' campaign, which led to an interface with various Naga underground groups and played an important role in ensuring trust-building meetings between the the government and the underground leaders so as to initiate rapprochement. The 'Journey of Conscience', a Naga Mother initiative, had the Naga Youth interact with civil society groups and officials in Delhi to sustain social capital for their local requirements and unique needs. Meira Peibhi on the other hand has while highlighting atrocities and human rights violation has largely related to the rubric of self determination and autonomy voices that need to be accommodated through a sensitive gendered multi level devolution.

The debate on asymmetrical federalism in India has till now ignored the impact of asymmetrical federalism on women's politics. Asymmetrical federal relationships reflect the importance of 'incongruent' territorially-based identities or nationalisms in one or several regions.⁴⁰ Sawer and Vickers point out that the salience of territorially –based identities has an important impact on women's politics. The more the salience of territory, the harder it becomes to insert gender as a political variable into federal political discourses.⁴¹

Cooperative Federalism in a Gendered perspective : The National Mission for Empowerment of Women (NMEW)

The Establishment of a “National Mission for socio-economic empowerment of Women” (NMEW) was recommended in 2010 by the Committee of Governors (CoG) which was set up “to study and recommend strategies for speedy socio-economic empowerment of women”⁴²This was set into during the financial year 2011-12 as a Centrally Sponsored Scheme in April 2011. The focus at this point was to ensure convergence of efforts in the course of inter-sectoral work by different ministries and programmes and with the Ministry of Women and Child Development (MWCD) as the nodal agency to coordinate a largely central scheme. However, during the 12th Plan period in line with the restructuring of Centrally Sponsored Schemes (CSS), NMEW was approved for continuation as a sub-scheme of the Umbrella Scheme for Protection and Development of Women. This revised NMEW Scheme in its current form aims at leveraging the NDA-2’s ‘mantra’ of Cooperative federalism for the stated purpose of achieving holistic empowerment of women through convergence of schemes/programmes of different Ministries/Department of Government of India as well as of State Governments. Domain experts from local, state and central government levels as well as from the civil society especially those linked with the implementation and monitoring of new initiatives such as the Beti Bachao Beti Padhao (BBBP Scheme), One Stop Centres, Women Helpline etc. are involved in providing technical support to Ministry of Women and Child Development. is being provided by domain experts who are involved in and also facilitates convergence of schemes/programmes of different Ministries/Departments with focus on women.The scheme is directed towards strengthening the conceptual and programmatic basis of women centric schemes/programmes implemented by the MWCD, other Ministries and State Government through the new mechanism of convergence. Training & Capacity Building to augment and reinforce identifying and elaborating, gender issues, build an appropriate Resource Pool (trainers) at the National and State levels so as to bridge gaps between knowledge and practice.

Federalism does not only promote cooperation between different levels of govern-

ment but may also promote competition among states especially in the era of globalization. Some states may encourage investment by making “business-friendly” laws – including fewer rights for workers, lower taxes for business and less regulation. This would result in less safety protection for workers, less anti-discrimination law, less maternity leave for women, less publicly funded education and health and less control over child labour. This kind of policies will tend to hurt the least skilled and poorest workers and women constitute majority of these workers. Alternatively, a state might want to attract good workers – by providing a better environment, better schools for their children etc. But this initiative would benefit the well qualified workers and men constitute majority of these workers. Most women might be among the less well qualified workers and may be qualified women may also be less able to travel to a new state for a new job because of her familial responsibilities imposed by patriarchal structure⁴³.

Forum Shopping by Women's Organizations

The multi-level structure under federalism gives the opportunity to women's organizations to indulge in 'forum-shopping'. Marian Sawer argued in context of Australia that the multiple access points provided by the feral structure benefitted those struggling for gender reforms as the reformers could shift their focus from one level to another when faced with a blockage.⁴⁴ Bashevkin has pointed out one of the advantages of federal structure is that it provide opportunities for 'venue-shopping'⁴⁵. It was due to the presence of federal structure in U.S. and Canada that gender reforms were possible even during 'conservative times' and the lack of federal structure in U.K. stalled gender reforms during Thatcher's regime.⁴⁶ The choices made by women's organizations depend on their experience with, and understanding of, government and politics on multiple levels, and their perceptions about the possibility of access and influence.⁴⁷ In India, the women's organizations exist both at the level of states and at national level and from time to time engaged with both the central government and state governments.

Many proponents of federalism value its scope for policy innovation and experimentation. When Committee on CEDAW, questioned representatives of Switzerland, on the advantages of federalism for women, they emphasized that federalism

has been good for women because often new ideas originate at the local level. They pointed that even the right to vote to women was granted in some cantons before it was introduced at the national level.⁴⁸

The policies can initially be tested at the provincial level where the risks are smaller and then applied to the national level. For example, Nari Adalats, a policy innovation developed in Gujarat, have been replicated in Andhra Pradesh, Karantaka and Uttar Pradesh.⁴⁹

Intergovernmental Relations and Policy Making

Sawer and Vickers point out that whether inter-governmental relations advance or neglect women's interests depend upon who is behind the doors as intergovernmental relations are generally supposed to be held behind the doors.⁵⁰ Vickers has pointed that since intergovernmental relations took place in open and competitive atmosphere in Canada in 1970s, they facilitated gender reforms and promoted women's interests.⁵¹ On the other hand, Grace claims that in the present context intergovernmental relations are carried out in 'private elite-accommodation sessions' ignoring gender-analysis of the issues at stake.⁵²

Intergovernmental relations have rather been a fragile feature of Indian federalism in absolute as well as comparative terms. It has been argued by many observers that the forms of intergovernmental relations are either occasionally used or extraordinarily dominated by the Centre. As compared to intergovernmental relations in Canada, the Indian scene appears to be somewhat clandestine.

The Indian federal system comprises of both formal and informal relations between the executives of the various jurisdictions. The most formal mechanism is the Inter-State Council (ISC) set up belatedly in 1990 under Article 263 of the Constitution. The ISC includes the executive heads of the two orders of the Government, viz., the Prime Minister and pertinent Union Ministers and the Chief Ministers and the important Ministers in States. A slightly less formal institution is the National Development Council (NDC) established in 1952 by a Cabinet resolution with the same membership as that of the ISC. Other formal organizations are the Zonal Councils set up under an Act of the Parliament (1956) com-

prising the Home Minister of India and Chief Ministers of States in a region. The most significant informal forums are the ad hoc conferences attended by the Prime Minister and Chief Ministers, and ministers from the two levels of Governments. These forums play crucial role in intergovernmental negotiations, policy-making and policy harmonization.

Despite the fact that strengthening of inter-governmental relations is necessary for the smooth functioning of cooperative federalism, it may have negative consequences for women's politics since intergovernmental decision-making generally takes place behind closed doors and thus may not be accessible for women's organizations.

Distribution of Powers

Gray argues that since women are politically marginalized and under-represented they require governments to work on their behalf which is easier if power is centrally located and therefore jurisdictional fragmentation in terms of distribution of powers works against the interests of women.⁵³ Many feminist scholars believe that devolving social services to local governments is a way of shedding responsibility for care work. The experience of women's politics in a federal structure is affected by whether specific powers, such as social policies, welfare programmes or family law are assigned to federal or state governments and women's activism may be prompted by proposed shifts and responsibilities.⁵⁴ In India, constitutional demarcation of jurisdictions of Union and State Governments is carried out in three lists, namely, Union, State, and Concurrent. This division is based on the principles of exclusivity and concurrency. The principle of exclusivity states that whichever level of Government can handle a particular subject more effectively is granted that subject, whereas concurrency indicates that the subjects in the twilight zone are assigned to both levels of Governments with the laws made by the Parliament to prevail over those made by State legislatures in cases of disagreement. The original Constitution comprised 97 items in the Union List, 66 in the State List and 47 in the Concurrent List. However, between 1950–2001, a total of 27 changes were brought about by constitutional amendments: 9 in the Union List, 11 in the State List and 7 in the Concurrent List. Four out of 9 changes in the Union List have

expanded the executive, cultural and coercive powers of the Union vis-à-vis States (e.g. Sixth Amendment 1956 added a new tax to the Union List, namely, on sale and purchase of goods other than newspapers of the scope of inter-state trade and commerce). The above changes are reflected in the other Lists as the items gained by other lists were lost by the State List.⁵⁵

It is important to note that the Concurrent List has not lost any item; it has only added (e.g. 42nd Amendment, 1976 added four new items to this list, namely, administration of justice in a State and formation of lower courts, forests, education, and population control and family planning).⁵⁶

Most of the issues with important implications for women's politics are provided in the Concurrent list, such as social security, education, welfare of labour and maternity benefits, economic and social planning, marriage and divorce and issues pertaining to family, population control and family planning. This means that there can be different laws on these issues operating in different states unless they conflict with central laws. Most feminists around the world believe that important areas such as social welfare and family law should be in the hands of central governments to ensure uniform social and economic rights. Mriam Shah while addressing the implications of distribution of powers in Canada has pointed out that centralization of human rights protections such as in Canadian federation can facilitate equal citizenship both for women and sexual minorities.⁵⁷

There is also issue of overlapping powers and concerns. For example, in Australia, though the national government regulates marriage and divorce, but some other family concerns were dealt with by the states. This creates confusions, for instance, if there is a "dispute between a couple who are not married, but have children, matters about the children are dealt with by national law, but their property is a matter for state law – so the couple may have to go to two sets of courts." In the event of separation of parents, decision on where children will live is for national law and courts. But if the children have been abused by their parents, decisions about where they live are for the state law and courts because criminal law falls under the state list.⁵⁸

In Canada, the Supreme Court declared that provincial law prohibiting abortions outside hospital in Quebec as void because these were concerns related to criminal law which was the subject for the national government, not provincial. This implied that a woman could not get the benefit of a more liberal law in her own province. In one of the cases, a woman in Quebec wanted to avail the benefits of pregnancy law in Quebec law because that law was more favourable than federal law. But the company in which was working was a federal company and the Supreme Court held that only the federal law applied to the company. This judgment was criticised for depriving women of their preferred identity as citizens of Quebec. Women outside Quebec, however, had applauded the decision reached by the Supreme Court since they were afraid that if provincial laws were upheld, women's fates would become dependent on the willingness or ability of the particular province in which they lived to provide benefits for women.⁵⁹

Fiscal Federalism

Bolzendahl demonstrates the need for gendering fiscal federalism by pointing out the distinct gender effects of cash transfers and provision of services⁶⁰. While cash transfers are used more by men as opposed to social services which are used by women for care-work.⁶¹

There is recognition at the policy level that Gender Empowerment is predicated on Fiscal decentralization and yet the concomitant gender budgeting especially at the micro-level seems missing. The entropy in the sex ratio especially in the prosperous states may present a case for introducing some weight for social factors such as female sex ratio, especially in the under 6 years bracket and gender child mortality in determining Finance Commission Transfers. However, loading the already weighed 14th Finance Commission dealing with GST, may not be feasible however the inter-governmental fund transfer system may need tweaking in allowing the leveraging of the right to life for India's girl children. If not in the central grants, "gender inequality index" can be considered as part of some discretionary flows. While the Women's Component Plan has been considered in many studies and has been a part of the budgeting,

the actual mutilation for gendered outcomes is not known. Further the general trend for feminization of local government is exemplified in the MOU signed in March 2017 between the Ministry of Panchayati Raj, Government of India and the United Nations Entity of Gender Equality and the Empowerment of Women (UN Women) for a “project to strengthen the capacities of governance institutions to ensure that gender concerns are embedded in the design and implementation of legislation, policies and programmes”.⁶² This feminization of local governance, along with gender based budgeting and actually handling social audit of the funds to women’s groups at the lowest tier of Panchayati Raj Institutions (PRI) may ensure that public expenditure spending is in line with the local needs to the women and going forward gender responsive budgeting is institutionalized.

National Institute of Public Finance and Policy’s (NIFPP) 2003 study on Gender Budgeting⁶³ has pointed towards a “strong need for the gender specific impact of budgetary policies” (NIFPP, 85) too would have salience at the lowest tier of governance.

The Draft National Policy for Women, (2016)⁶⁴ has pointed out the “feminization of agriculture” and the recognition of women as farmers as a reality and that gender equity alone can ensure sustainability of agriculture. This coupled with “Internet of Things” supported micro-agriculture may serve as empowering the lowest tier of government and women. Fiscal Federalism predicated on Gendered perspectives may be the biases for the institutional architecture of gender specific inter- government institutions. (DNP, 8)

Value added Tax (VAT) with its structure of exemptions is often seen to provide marginal groups more room for maneuver. Goods and Services Tax (GST) as a replacement for VAT is being touted on account of the uniformity and convenience but its impact on women may need to be tested given that homogenization is often not gender-neutral as smaller, marginal groups may be disadvantaged and need to be protected.⁶⁵

In a study of the Thirteenth Finance Commission Report from the perspective of feminization of local governance, coupled with a gendered fiscal devolution to the third tier, Lekha S. Chakraborty has argued that it can lead to public expenditure decisions that are responsive to the expressed preferences of women representatives in local bodies. This policy space is opening up at the local level for conducting gender-responsive budgeting.⁶⁶

Analyzing the budget from gendered perspective, Parakh argues that the Union Budget 2015-2016 does not address the concerns of homemakers⁶⁷. There is nothing in the budget to reduce pressure on homemakers by controlling inflation⁶⁸. Parakh argues that the budget in order to qualify as a gender-sensitive budget should have taken care to address maternity medical expenses and provided for rebate on loans for education of women⁶⁹. It is interesting that the investment made under Sukanya Smridhi Scheme which has been launched as a part of Beti Bachao Beti Padhao initiative, exempted from tax. The working women enjoy some benefits such as increase in transport allowance.

Conclusion

This paper looks at the ways in which gender politics in India has to mediate the mesh of multi-layered federal structure which leads to differential impact in its struggles. It attempts at gendering the federalism discourse in India. India is case of asymmetrical Federalism which has helped in accommodation of diversity and thus in strengthening the unity of the state. But it needs to be noted that asymmetrical relations give primacy to the principle of "territorial nationalism" and thus women's issues take a backseat. Similarly intergovernmental relations are important to foster the spirit of cooperative federalism but intergovernmental relations are generally carried out in closed doors and may be inaccessible to women organizations.

This paper points out certain tendencies regarding the impact of federalism on women's politics. These tendencies need to be substantiated by rigorous empirical research. Moreover, as Gray points out any successful generalizing regarding the impact of political architecture requires systematic comparisons between federal and unitary systems.⁷⁰

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