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Contemporary Challenges Facing the Federal Structure of India

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ABSTRACT

Winston Churchill once in his speech at the London's Constitutional Club in 1931 said, "India is no more a political personality than Europe, it is a geographical term and is no more a united nation than the equator." This was the popular perception of colonial India. It was fragmented, divided on communal, regional and monarchical lines. It was unfathomable for the western leaders to imagine such diverse regions coming together in future to form a nation united under one flag. But this was possible due to the shape that our constitutional makers gave to our constitution. It was accepted by them that pragmatic federalism is necessary for achieving a federal balance and will necessitate joint wisdom from the federal government and states. Still Indian polity has repeatedly faced multiple challenges to its federal structure, which has strained centre state relations from time to time. Some of the contemporary challenges to the federal structure of India are discussed herewith.

I. COVID 19 PANDEMIC

The crisis of novel Coronavirus or Covid-19 pandemic has hit the whole world in a drastic manner. Similarly, in India, the pandemic has hit the country hard both economically and socially. Even after concerted efforts of various governments of the Union and the States, the pandemic has hit the working poor in the country's biggest cities, such as the average daily wage earners. Because of the total national lockdown done by the central government for more than 2 months, these people have not only lost their jobs and livelihood, they were forced to migrate from the city as they ran out of food and rent in most cities. These migrant workers, many of them, walked miles and miles to their village in the hope of having some kind of sustenance. Many defied this lockdown in desperation to return home, even to the extent of suffering injuries and losing their lives. When the migration became inevitable, the government started trains for such migrants to go back home, but they were not enough in capacity to assist the mass migration.

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One of the main cause of disagreement between the states and the central government was that the lockdown was done in a unilateral way by the central governments without the consultation with the states. The states were of the opinion that the central government issued lockdown orders and guidelines without taking the ground situation of various states into consideration or giving them time to prepare. This mass migration has also shown that there is hardly any sync between various states governments and the central governments and it was not handled in a proper manner to assist the people who wanted to go back to their home.

Under the Epidemic Diseases Act of 1897 and the Disaster Management Act of 2005, the central government gave orders and directions to the states to implement a lockdown. The central government did not use the emergency provisions provided in the constitution rather these two laws were deemed sufficient by them to tackle the situation. Article 256 and 257 of the Constitution further empowers the union executives to carry out their executive orders without state machinery impeding them. Various States governments took to action in their own way following the directives from the centre to tackle the pandemic, but the question of concurrence between the Union and the states still haunted the public at large as there was major confusion as to the application and implementation of the rules by the various states. States like Assam, Odisha and some others were able to tackle it well but most of the other states were not able to cope up with the situation in the same way. Worst hit were states like Maharashtra, Kerala, Uttar Pradesh among others.

Most experts were of the opinion that there should have been an interstate coordination meeting of all state heads and top executives at the very initial stage, when the pandemic reports started coming from the world. There should have been a strategic plan in place before time rather than a knee jerk reaction as it impacted billions of lives across the country. Unfortunately, this did not take place and two months later the results are in front of us, with many lives lost not only to the virus but due to migration too. Further the shortage of medical supplies, staff and PPE kits did not make the matter any better as state hospitals were not equipped to tackle the situation aptly. Even the medical staff and other government personnel from police to bankers, suffered infections due to this reason. Lack of coordination between the centre and the States or trust deficit of many opposition state ruled governments with the central government also hampered the efforts to control the pandemic situation.

As stated in Article 39(a) and (e), the government is required to take action so that citizens have the right to proper sustainable livelihood so are not compelled by financial constraints to engage in occupations that are unsuited for their skills and abilities. The government ordered various organization to not cut wages of their employees during this lockdown or to fire them

but that did not happen in most of the cases and people lost their lives and livelihoods. This forced mass migration which added to the pressure of tackling the corona virus.

Now the challenge before the government is not only to contain this spread of virus in the cities but even rural areas where this migration is ending. Many states like Karnataka, Bihar, etc. refused to accept movement of migrants into their states initially due to the fear of spread of the virus further in their state. The result of this was the suffering brought upon the migrants who were left stranded. The visuals of Anand Vihar Bus Station were for everyone to see where thousands of migrant workers lay stranded waiting for a means to go back to their villages. Similar scenes of desperation were seen at other cities including Mumbai.

Many NGOs and other social help groups are trying to help cope up with this situation by providing food and clothing to these migrant workers and the way forward in this case would be that the State and Central Governments need to take help of these organisation as well as create their own make shift shelter camps to accommodate these migrant workers. To provide them with food, clothing and medicines, because if this mass migration continues it will even spread the virus further and make the situation worse in the rural areas which are even less equipped to tackle the pandemic at this scale.

Our governments have the expertise to carry out this exercise as they have done in various previous situations like organizing the large Kumbh Mela and making make shift camps. There will be shortage of time and efforts, but this will be the time that India truly embraces its federal character and shows cooperative federalism and collaborate together, both state and the centre to tackle this situation.

II. KASHMIR AND THE ABROGATION OF ARTICLE 370

State of Jammu and Kashmir, and especially Kashmir, has been a long-standing issue in Indian and world Politics. Recently the Central government revoked the Indian Constitution's guarantee of a special status for Jammu and Kashmir state since its beginning and abrogated Article 370 of the Constitution unilaterally without engaging with the legislature of that State. There were polarised views on both side as this was not only a political issue in the country but an emotional one too for many in the country. Although this was in the manifesto of the ruling party for more than a decade, the way it was done, shocked and surprised many.

The move was heavily criticised by many, obviously in the State of Jammu and Kashmir, but also by other opposition parties and scholars in the country, as being extra constitutional and striking at the very fabric of the federal structure in India. The Central government obviously defended itself and its move by saying that this was a long pending issue and that Article 370

was a temporary provision. They also argued that after this, Kashmir will truly be integrated into India and the development it has been lacking or has not reached the State for years was due to this Article and special status and by the abrogation of the same the State will now prosper and the social standards of the State will improve in many ways.

Without getting into the political narratives on both side and treating this solely as legal issue concerning the federal structure of the country, this move seems to be hitting hard at the federal structure that is a part of the Constitution's core aspect. Because not only was the special status of the State taken away unilaterally without engaging with the state legislature, it was subsequently divided into two union territories, Jammu & Kashmir and Ladakh, by the central government. This just validated the point that has been made by scholars of constitutional law for the longest time that Indian federalism is a sham and it's in practice a Unitary structure with some federal features. Although this is not the case in reality but this move of the central government surely did support that view. Not only did the centre took a unilateral step challenging the federal structure it took away the Status of Jammu and Kashmir being a State and converted it into 2 Union territories. One cannot stop wondering if this is what our constitutional framers intended when they gave Indian Constitution a strong centre. Was it their intent at the time of framing these provisions was that if someday there is a brute majority at the centre it can take unilateral decisions and dissolve the federal nature of our country, or did they miss in their foresight or such a situation or possibly, they never thought that such a situation could even arise?

It needs to be understood that increasing centralization of power does not enhance wellbeing, India would not have seen the growing trend of distress migration from rural to urban areas. The true value of a state is determined by how well it promotes human and ecological thriving, as well as how the inhabitants of that region live in peace and harmony with the rest of the country. This unilateral action not only challenged the federal structure of the constitution but it also challenged its spirit where justice, equality and liberty has been given paramount importance. The house arrests and detentions of the elected leaders of the legislature of the State and Jammu and Kashmir with the reason of maintaining law and order was not only extra judicial or unconstitutional, it broke the relationship of a state with the centre as it did not engage with the elected legislature of that state. Central government in its defence stated that as the assembly was dissolved and the State was under President rule, they could legally do it, but it was not in the true nature of a federal character.

The argument for and against such a move can be debated on an emotional level, but there is no ambiguity when it comes to the constitutional and legal illegalities in it. If a state is just on

paper and its land and if the constitution is just a law to be twisted and turned in order to find a loophole to do things extra constitutionally, this move will stand validated. But if a state or a region is its people and its civil society then it is imperative on the Centre to take utmost care and at the minimum a consultation and informing the residents of the State of its actions before taking such action.

III. GST AND FEDERALISM

If we go into the history of fiscal federalism in India we find that even before Independence in that time British India, the Montague-Chelmsford Report that came out at the time considered fiscal federalism in India as a distant prospect. At the time of the framing of the constitution, instead of providing an equitable procedure enshrined as a constitutional guarantee, ensuring equitable distribution of tax to the states by the centre, we see that there were no concrete steps taken to evolve an equitable procedure for devolution of tax revenue of the Union. Although, there have been efforts made in the past like, the Sarkaria Commission recommendations, 10th Finance Commission, the Punchii Commission, all of which aimed at greater financial independence for the States but they didn't turn out to be satisfactory enough. Therefore, it is not a surprise that we see fiscal federalism in trouble in India repeatedly and being one of the oldest and main cause of disagreement between the Centre and the States for the longest time.

Article 280 of the Indian constitution lays down the provision to set up a Finance commission to offer recommendations to President on the allocation of revenue between central government and state governments. The 10th Finance commission report noted, "*When the emphasis is on social justice, there is no escape from realignment of resources in favour of States, because services and programmes which are at the core of a more equitable social order come within the purview of the States under the Constitution.*" This led to the Constitution (Eightieth Amendment) Act, 2000 before which only a few Central taxes formed the divisible tax pool that was to be shared between the Union and the States. This constitution amendment enabled the states to get a share of all Union taxes and duties, but the percentage share was still to be decided by the Finance Commission. Now the Constitution (One Hundred and First Amendment) Act, 2016, which introduced GST in India, has made the earlier amendment ineffective and has thus become the latest bone of contention and challenge to the federal scheme of things.

The GST introduces a dual tax system, in which both the central government and the states have the authority to levy taxes on the provision of goods and services. It has consumed the 8 central taxes and 9 State taxes earlier in effect before this Act came into effect. To mitigate this

loss of revenue to the States, a separate GST (Compensation to States) Act, 2017 was enacted which provided under Section 8 of that Act that, “*The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor-General of India*”². The States started question this provision as what is to be done if the Centre does not release the funds at the conclusion of every two-month period, the situation is dire. Consequently, it is judged necessary, in accordance with Article 279A (11) of the Constitution, that the GST Council which is the body to adjudicate upon such disputes must have a mechanism in place to resolve such conflicts between centre and the states.

There was great opposition by many States against the implementation of GST Act, as they feared loss of revenue. The recent interim report of the 15th Finance Commission, 2020–21, has shown a decline in the divisible pool of central taxes for the States from 42% to 41%. Further the criteria for such allocation has been revised and this recomposition of weights can lead to a decrease in tax share of most southern states has gone down, while that of northern states like Bihar, Punjab, Maharashtra and Gujarat has gone up. This may lead to increase in debt burden of state governments given the overall economic atmosphere and infrastructural spending. Such an increase in the states’ dependency on the centre as well as the inequitable devolution of central taxes are giving rise to concerns regarding the practice of fiscal federalism in India whose goal was to establish a sound finance tax structure and revenue distribution system between the State and the Centre. In times to come this economic interdependence of states with the centre is bound to become the cause of disagreement in the centre-state relations of the Union. It is advisable that the centre engages the States more and more and sit together to formulate a robust revenue distribution framework and strengthen the fiscal federal structure of the country.

IV. CONCLUSION

The Federal structure of the Indian Constitution and its polity, has been for the longest time trying to ride a tricycle, with one wheel spinning the way that it learnt from the Government of India Act, 1935 from where it draws its inspiration in spirit and letter. The other wheel is trying to match the American model of federalism and move in that way by giving wide powers of judicial review and fundamental rights. And the third wheel owes its allegiance to the British Idea of Parliamentary system with a strong Unitary system. It has been tough for it to keep it

balanced but it is still moving and progressing. Without a doubt, federalism is essential and inalienable to the Indian Constitution. Not only to keep it unified but for its polity to make sense in the modern democratic ways.

It has served as a driving force in managing cultural diversities, operands, and open primaries among nations. 'The Critical Problems of the Indian Constitution' by Justice P. B. Mukerjee, published in 1967, said it succinctly: that *“The future of India and her Constitution will depend on how the nation evolves the principles and practice of federalism suited to India whose indispensable requisite has to be unity in diversity, integrity with variety, marked by the wisdom and experience of creating a harmony between the centrifugal and centripetal forces within this sub-continent”*.

Even in the Constituent Assembly, there was a certain political party and its members in brute majority but still they felt a need for devolution and decentralisation of power to a certain extent. It would be unfair to blame the current government for the destruction of the federal structure of the country entirely. In reality its weakness lies inherently in our constitution itself and the strong unitary features provided in it, which at the time, were intended to be used in good faith, but now have become a political tool in the hands of Political parties.

The scenes of elected governments in States being toppled using some constitutional technicality or the other, or when the governor and the President are made to act as mere agents of the ruling party and do things that do not suit the dignity of their chair and position, just so that a political party can gain power in that region, not only destroys the federal fabric of the country but further creates a trust deficit between the centre and the people of that region. In the past emergency provisions and President rule has been highly misused by the ruling party to either gain power in a region or to suppress a voice of criticism against them. A healthy democracy, be it federal or not must have the widest scope for difference of opinion and tolerance and acceptance of the other view point. When things get reduced to mere number game, the moral, social and constitutional fabric of the country suffers.

Most of our parliamentarians say that they follow Gandhian idea of India, but as far as centralisation of power is concerned, we seem to be going the French, Italian and English way during the colonial era. Mahatma Gandhi advocated for grass root democracy and giving power to the lowest of the governance units, straight down to the Gram Panchayats and enabling them to self-govern themselves. Not only we are not aiming to reach that ideal goal, with every passing day, it seems like the Centre in the country is gaining more and more power and the voices of the state in policy making is being hushed.

As final words, the conclusion drawn is that, 'Federalism' is a positive concept for a democracy as it gives power to the lowest level of governance and facilitates participative democracy. It is essential in the constitutional scheme of things in India and should not only be protected but nurtured and matured by the governments at the State and Central level as well as by the judiciary and the civil society. It encompasses a process within itself which enables socio-political cooperation between two distinct of identities through various structural mechanisms of shared rule.
