

Sharing Powers Among Indian Federalism

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ABSTRACT

The Constitution of India has provisions for sharing powers among different units of governments situated in a vertical order, the Union, the State governments and the local governments. The scope and limits of powers of each of these units of governments is defined in terms of federalism and decentralization. The basic provisions regarding the distribution of powers between the Central and Provincial (state) governments are present in Part XI (Article 246) of the Constitution of India. The Constituent Assembly followed the system of division of powers as was envisaged in the Government of India Act of 1935 regarding the provisions about division of power in India. The items that can be legislated by the Union government, the State governments and jointly both by the Union government and State governments are mentioned in the lists known as List I- Union List, List II- State List and List III- Concurrent List. The present paper is an attempt to unravel the constitutional model of federal arrangements as networks of relationships weaved around and running across three points, Centre, State and institutions of local- self government. It is hereby argued that Constitution of India does provide for the Union having exclusive and special relationship with some states with a view to promote and to accommodate ethno- cultural perspective within the mould and measures of Indian federalism.

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INTRODUCTION

In federal polities, powers and authority are distributed among the different competing units on the basis of territorial import of concerned subjects, its community implications and manageability in cost-benefit terms. Adding consideration is given to the recurring imperatives of constitutional goals and ideals, maintenance of national unity and changing equation of state- society relationships. Therefore power distribution is always content and context specific. One also finds differential loading of competence in different arena of power- sharing arrangements. There is no universal yardstick of federal power distribution. Federal government is assigned three functions viz regulatory, distributive and standardization and harmonization. Federal government has regulatory power over those subjects that have interregional or trans-regional and national implications. Usually the federal government regulates issues like environment and pollution, major health issues, besides exclusive or minimally shared competence over subjects like defence, foreign policy, currency, communication and national economic development. Distributive function covers mainly economic issues like national resource distribution and maintenance of interregional economic balance. Harmonization function refers to the setting up of the norms and standard in those areas, which require growth of common national outlook and policy

uniformity on such item liker higher and technical education, industrial norms and major public welfare issues. On the other hand, federal units or regional governments are assigned exclusive jurisdiction over such items which are exclusively local and are of community importance. Generally regional governments have competence over law and order, local resource mobilization and economic development, primary health and education, selective vocational and technical education, community related identity issues and so on. It is within this broader framework of federal understanding that one can better approach and analyze Indian federalism.

LITERATURE REVIEW

Division of Power: Theoretical and Conceptual Background

Division of power is conceptually linked with the history of the evolution of modern nation- state and its administrative aspect. It was basically inscribed in the idea of separation of power. Jean Bodin was the first modern writer to demand a separation of power. In his book *The Spirit of the Laws*, Montesquieu (1748) enunciated and explained his theory of Separation of Powers. Later on the British jurist Blackstone and the founding fathers of the American constitution, particularly Madison, Hamilton and Jefferson extended their full support to the theory of Separation of Powers. They regarded Separation of Powers essential for protecting the liberty of the people.

In practical terms, the federating states enter an agreement and create a national state and the instruments in the form of laws by which their relations are governed. The exact line which is drawn to separate the matters of common concern to the whole federation varies according to the views of those who enter into the agreement as regards the relative functions of the federating states and the national government. It also depends upon the view adopted by the federating states as to what matters in their actual circumstances, geographical, economic, social or what really matters of common concern are. But once it is demarcated and fixed by the federating agreement, its maintenance is of the essence of federalism.

The scheme of distribution of powers in each federation was determined by the peculiar political conditions under which it came into existence. In the United States of America when the sovereign states proposed to federate they were anxious not to surrender an unlimited area of power to the new national government. Thus they were reluctant to leave the residue powers to it. Hence there is only one list containing the powers of the national government and the residue remains with the units. When the Canadian federation was formed, the Canadians had before them the example of the working of the American Constitution, the American constitution suggested that the Unions must have more powers. Therefore, the scheme of distribution of powers adopted in the Canadian Constitution is different. The matters with respect to which the national government and provinces are competent to legislate are enumerated in two sections, leaving the residual powers to the Dominion Parliament. The makers of the Australian constitution were mostly influenced by the American constitution. They also adopted only one list which enumerated the powers surrendered by the states to the national government, the residue remaining to the states. The distribution of powers of each federation reflects in the nature and character of the policy agreed upon by those who were responsible for drawing upon the constitution. Whatever may be the variations in the details of the distribution of legislative powers, one fact which is common to all federations is that there is a distribution of legislative powers and this distribution determines the distribution of executive authority.

Indian Federal Structure

The constitution sets up a parliamentary federal government. The form of government at both levels is parliamentary in the sense that the executive is responsible to an elected legislature. The Union Parliament consists of a popularly elected Lok Sabha and indirectly Rajya Sabha which is a federal second chamber whose electorate includes the elected members of state legislatures. Some state legislatures are bicameral while others are unicameral by choice.

The head of the federal state is President of India indirectly elected by the elected members of the Rajya Sabha and the State Legislative Assemblies. The head of the provincial state is Governor appointed by the union executive. Both these functionaries are nominal or constitutional heads with ceremonial functions and some discretionary powers relating to the appointment of the Prime Minister or Chief Minister only when there is no clear majority for a party or a coalition of parties. The Prime Minister and the Chief Ministers of states with their respective cabinets are the real executive authorities at the union and state levels. There is a common integrated hierarchy of federal judiciary appointed by the union executive and removable by the President on resolution passed by both houses of the Parliament by a majority of the membership present and two thirds majority present and voting in each house (Article 124[2] and [4]).

A unique feature of the Indian federal system is the All- India Services which are presently there in number, Indian Administrative Service, Indian police Service and Indian forest Service. These are besides the central services and state services. All- India Services are recruited by an independent Union public Service Commission, trained in central academics; receive in-service training in state governments. However they are allocated to state governments where they mostly serve but occasionally are loaned to the centre on deputation.

A set of other important agencies in the federal system are the Election Commission of India (Article 324) that conducts union and state elections and a Comptroller and Auditor General of India (Article 148) who audits the account of both the union and state governments and a Union Finance Commission (Article 280) appointed every five years for recommending principles and patterns of revenue sharing under the provisions of the constitution.

The third tier of the Indian political federal system is the local- self governing institutions in rural and urban areas. They fall within the jurisdiction of states but the 73rd and 74th Amendment Acts have constitutionally entrenched them in the form of model acts providing for devolution of subjects that the state legislatures are prompted to adopt.

METHOD

This research adopts a qualitative descriptive approach with the aim of providing a detailed and comprehensive description of the facts and characteristics related to the problem being explained. Qualitative descriptive research is a process that systematically describes or explains conditions, background and facts with good explanations and relevant data. In this research, data collection methods and tools were used which included interviews and observation. To maintain data validity, a cross check technique is carried out which involves verification from various sources and techniques, such as the source triangle and the technical triangle. In this research, data analysis was carried out through three interconnected activities, namely data reduction, data visualization, and data validation as evidence used to formulate conclusions.

Distribution of Competence in Indian Federal Polity

The 1935 Act divided legislative powers between the provincial and central legislatures and within their defined sphere, the provinces were autonomous units of administration with restricted powers. To this extent, the government of India assumed the role of a federal government vis-à-vis the provincial governments, although without the princely states. The arrangement came to an end with the Second World War. India achieved independence on August 15, 1947. The constitution was adopted by the Constituent Assembly on November 26, 1949 and came into force on January 26, 1950. The constitution envisaged a strong centre. The 14 states and six union territories were divided according to the historical context in which they were governed and administered.

In 1955 a “States Reorganization Commission” was established. It was proposed that there shall be a territorial re- organization based on the following principles; preservation and strengthening of the unity and security of India, linguistic and cultural homogeneity, and financial, economic and administrative considerations. This linguistic factor, as language corresponds with socio- cultural identity, was uppermost in determining the re-organization of the constituent units. It was thought that the resulting 1956 States Reorganization Act, which reorganized the states primarily on the basis of the languages spoken in the area, might provide the solution to multifarious problems like economic inequalities, lopsided development and the domination of certain castes or classes.

At the time the constitution was written the predominant concern of the founding fathers was preservation of the unity and integrity of India, which had more than 600 varied princely states plus the provinces of British India at the time of independence. Constitution declares India as a Union of States and it envisaged a strong centre. Dr. B.R.Ambedkar, the architect of the Indian constitution, said that the use of words “Union” was deliberate. The drafting committee wanted to make it clear that although India was to be a federation, it was not the result of an agreement initiated by the constituent states.

The basic provisions of the distribution of powers between the central and provincial (state) governments are present in Part XI (Articles 246) of the constitution. This part is divided into two chapters-legislative relations and administrative relations. Indian constitution has followed a system in which there are two lists of legislative powers, one for the centre and the other for state. The residue is left for the centre. This system is similar to the one in the Constitution of Canada. Following the Constitution of Australia, an additional list has been included in the constitution of India, namely, the Concurrent List. The Constituent assembly of India followed the system of division of powers as was envisaged in the Government of India Act 1935 regarding the provisions about divisions of power in India. The items that can be legislated by the union government, state government and jointly both by the union government and state governments are mentioned in the lists known as List- Union list, List II- State List and List III-Concurrent List.

The Union List

The Union List is the longest of the three lists and includes items such as defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter- state trade and commerce, banking insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of government accounts, constitution and organization of Supreme Court, High Courts and Union Public Service Commission, income tax,

customs duties, corporation tax, taxes on capital value of assets, estate duties, terminal taxes and so on. Parliament has exclusive powers of legislation about items mentioned in the Union List.

State List

The State list includes public order, police, administration of justice, prisons, local government, public health and sanitation, education, agriculture, animal husbandry, water supplies and irrigation, land rights, forests, fisheries, money- lending, state public service commission, land revenue, tax on agricultural income, taxes on lands and buildings, estate duty, taxes on electricity, taxes on vehicles, taxes on luxuries etc. The selection of these items is based on local interest and it envisages the possibility of diversity of treatment with respect to different items in different states.

Concurrent List

Concurrent List contains the items with respect to which uniformity of legislation throughout the Union is desirable but not essential. As such they are placed under the jurisdiction of both the Union and the states. The list includes items as marriage and divorce, transfer of property other than agricultural land, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, security, labor welfare, electricity, newspapers, books and printing presses, stamp duties etc. The Parliament of India and state legislatures have concurrent powers of legislation over the items included in this list. Once Parliament enacts a law on an item in this list, the parliamentary law shall prevail over any state law on an item.

Residuary Powers

Residuary powers of legislation lies with the union government. The states have been demanding sharing of residuary power of legislation with the union government. In the United States of America and Australia, these powers are given to the states. Article 248 says that Parliament has exclusive power to make any law with respect to any matter not enumerated in any one of the three lists. After an in depth examination of issues, the Sarkaria Commission recommended that residuary powers with regard to taxation should continue to remain with Parliament, but other remaining matters should be transferred to concurrent list where the states would have equal legislative competence with the centre. The council modified this recommendation to transfer all residuary powers including taxation to the concurrent list.

It was the considered view of the Sarkaria Commission that the enforcement of the union laws particularly those relating to the concurrent sphere, is secured through the machinery of the states. Coordination of policy and action in all areas of concurrent or overlapping jurisdiction through a process of mutual consultation and cooperation is a prerequisite of smooth and harmonious working of the federal system. To secure uniformity on the basic issues of national policy with respect to the subject of a proposed legislation, consultation may be carried out with the state governments individually and collectively at the forum of Inter State Council. Accepting this recommendation, the Council has laid down that except in an emergent situation, there should be prior consultation with the state governments regarding legislation in respect to subject enumerated in the concurrent list. The Council issued necessary instruction to all ministries and departments of government of India to comply with this recommendation.

Administrative and Financial Distribution of Powers

Constitution of India emphasizes that there should be administrative cooperation between the union and states. According to Article 261, full faith and credit shall be given to public acts, records and judicial proceedings of the union and states in all parts of India. The manner in which these acts and records will be provided and their effect determined will be provided by Parliamentary enactments. According to Article 262, which deals with waters of inter- state rivers and river valleys, Parliament may by law provide for adjudication of any dispute or complaint with respect to the use, distribution or control or the waters of any inter- state river or river- valley.

The constitution also contains provisions about financial relations between the union and state governments for raising enough funds. Article 292 authorizes the union government to borrow upon the security of the Consolidated Funds of India within the limits which may be fixed by Parliamentary law from time to time. Article 293 fixes territorial limits on the borrowing of states. They cannot borrow from outside India. The states can borrow within the territory of India upon security of the Consolidated Funds of the state. The limits of borrowing may be fixed by the legislature of such state by law. Article 285 exempts the property of the union from all taxes imposed by a state or by any authority within a state unless Parliament by law provided otherwise. During the proclamation of financial emergency, the President can suspend the provisions relating to the division of taxes between the union and the state and grants- in- aid to the states.

The financial relations between the union and states are based on the principle of sharing and equitable distribution of resources. The centre and the states have been assigned certain items to impose and levy taxes. There is no concurrent power to either of the units of the federation to impose and levy taxes. Provisions have also been made to extend financial help in the form of grants and loans to the states. The amount of grants-in-aid is decided by Parliament. Furthermore any development project initiated by the state with the prior approval of the centre for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the scheduled areas has to be funded by the centre as grants-in-aid charged on the Consolidated Fund of India.

In the distribution of financial competencies, each unit has been assigned some exclusive taxes. The list of exclusive taxes to the union includes taxes on income other than agricultural income, duties of customs including export duties, excise duties, corporation tax, taxes on the capital value of assets, taxes on the capital of companies, state duty, terminal taxes on the inter-state movement of the goods, taxes on the sale and purchase of goods made during transshipment, taxes on the sale and purchase of newspapers and on advertisement published therein, consignment tax and stamp duties, besides collection of fees in respect of the matters in the union list but excluding the court fees. Similarly exclusive taxes given to the states include land revenue, stamp duty, succession and state duty, income tax on agricultural land, taxes on the mineral rights, excise duties, professional taxes, service taxes, toll taxes and sales tax.

Conclusion:

Federalism is an axial principle of government in India. Federalism is predicated on decentralization of political power. Federalism has shown enough resilience to adapt and to accommodate structurally and politically the various pressures of federalization. The federal democracy in India has decentralized itself to the level of village self- governance. It is a fact that federalism in India is publicly perceived as instrument of people's empowerment. In the arena of union- state relationships one finds almost total

unanimity among political parties and the units of federation to follow the recommendations of Sarkaria Commission in building a cooperative- collaborative model of Indian federalism.

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