Federalism in India: Emerging Trends and the Future Outlook

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I

The federal system of government conceived by the founding fathers of the American Constitution was designed to bring political stability to an “inchoate assemblage of thirteen proud and quarrelling sovereignties.” The Constitution in all its provisions “looked to an indestructible union composed of indestructible states.” Although this basic objective has been achieved over the last 200 years though not without civil war, the nature of American federalism today is far more complex than that. The American federalism today faces a situation in which each level of government from local to federal, has become involved in practically every nondefence activity of government, from consumer protection to highways and environmental protection. Thus despite the rivalries between cities, states and the federal centre that still exist, in federal systems there is close partnership with reference to the problems that neither of the three levels of governments can solve alone.

Federal experiments in other parts of the world have also undergone changes similar to that of the United States. The Indian political system, which unlike the United States originated as an administrative rather than a contractual federation has also passed through its various phases of federal policy from its quasi-federal character to a stage of cooperation and competition in its centre-state relations, and then to a stage of extreme centralization.

This is not the place to enumerate the various provisions of the Indian Constitution which gives the Centre, a dominant position over its constituent units and which had led Wheare to remark that “India is a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles.” These are too well known. The paramount position of the Centre in India is not only underscored by the constitutional division of powers but also unlike that of the United States by the power of the federal legislature to create new states, to alter the boundaries of the existing states, and even to abolish a state by ordinary legislative procedure, without recourse to constitutional amendment. The unique feature of the

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Indian federalism which distinguishes it from the American system has been Parliament's power to make laws for the whole or any part of the territory of India with respect to any of the matter enumerated in the State List during the proclamation of emergency. The Indian Constitution vested the Union Government with such formidable powers that not only in times of war or during emergency, but even in times of peace it could, if it so wished, superintend, direct and control the activities of state governments. In fact in an emergency the Government of India takes on a unitary form.1

The dual role of the Governor of a state, as its constitutional head as well as an agent of the Union Government, his power to declare a breakdown of constitutional machinery of the state leading to its supercession by the Union Government, and the latter's constitutional powers to give such directions to a state government as may be necessary to ensure compliance with the laws made by Parliament have further strengthened the dominant position of the Union vis-a-vis the states. Apart from unequal representation of the states in the Rajya Sabha a number of other provisions further reveal the constitutional imbalance between the Union and the states such as the amending process of the Indian Constitution, the single judiciary system, the all-India services, the single Election Commission and the provisions for reservation of certain state bills for Presidential assent. Similarly the criteria of distribution of revenue resources are especially under criticism in the union-state relations in India. The Union's resources as specified in the Constitution are considerably larger than those of the states. Resources collected by the Centre are allocated in part to the states on the basis of recommendations of a Finance Commission constituted every five years by the President of India. The states are not only open to Union interventions but are also further dependent upon it for grants-in-aid.2

However, despite these unified tendencies the Centre is heavily dependent upon the states for implementation of its policies. At times this has led many state governments to successfully defy the directives of the Union. A classic example of the persistent defiance of the Union's directive by the state governments has been their refusal to levy taxes on agricultural income which the Centre has recommended many times and has also been recently supported by the proposal of the Raj Committee. This has led many scholars to characterise India as an example of cooperative federalism. The inter-dependence of the Centre and states in India is responsible for a dual process of centralisation and decentralisation—centralisation in response to the exigencies of national planning, and decentralisation as a result of

2. Articles 280, 353, 358 and 359.
Centre's dependence upon the states for administration of its programme. However, the existence of certain informal factors like the Congress dominance in almost all parts of the country for over three decades, the realities of social and economic policies being dominated by the existence of a Planning Commission, the increased solidarity of linguistic states, and the emergence of new regionally-based state leadership, (before the declaration of emergency) have led some other scholars like Morris Jones to contend that Indian federalism was a political bargaining process between the central and state leaders—one in which experiments, cooperation, persuasion and conciliation could describe both the generally accepted norms and the usual procedure pattern of inter-governmental relations.  

II

Scholars have identified three distinct phases in the development of Indian federalism since Independence, each shaped by the political forces at work at different stages. The first phase, 1947-65 era, was marked by Nehru's undisputed sway over the country's affairs on the one hand and strong reaction to the earlier attempts of the colonial power to encourage divisive forces on the other. The second phase, 1965-71 period, was characterised first by the changes at the top and, later, by the pattern of multi-party government in the states, and the third phase, the post-1971 stage, till the declaration of emergency in 1975, features a new semblance of stability under Indira Gandhi's dominating influence. It is in this phase that the issue of greater state autonomy was vehemently advocated by the leaders of the non-Congress governments particularly in the States of Jammu & Kashmir and Tamil Nadu. This period has also witnessed growing controversy over the stationing of the Central Reserve Police forces in the states. The non-Congress governments in West Bengal and Kerala objected to the Centre's right to send central forces to protect the offices, communications and other installations in the states on the ground that it violated the states' right to maintain law and order. This phase has produced the greatest tensions and conflicts in the centre-state relations in India. To these three phases can be added, the fourth one—the nineteen months of emergency period during 1975-77—when the increasing demand of state autonomy was not only shelved in the background, but the very federal character of the system had undergone complete alteration. The advent of the Janata Party at the Centre in the post-emergency era with its commitment to the process of devolution and decentralisation in policy-making

have led many observers to believe that a reverse process of federalization may now be set in motion.

A comparative analysis of several federal systems has demonstrated that the attitudes toward, as well as institutional forms of, a federal system slowly change under the impact of (a) charismatic leaders and political movements; (b) interests vested in the continuation or alteration of given orientations; (c) new economic, social and international realities; (d) the decline of legislative assemblies as rule initiators and rule makers and the shift of rule initiation and rule making towards the national executive and national bureaucracy (the federal nature of a political system is usually more clearly expressed in the legislature, especially, its federal upper chamber, than in the national executive), and (e) functional interest organized on a national, non-federal basis. The enforcement of emergency in India in June 1975 has brought in its trail a configuration of all these factors, which has not only accelerated the process of defederalization as against the earlier demands of increased state autonomy, but has also led to a complete subversion of the federal elements and the erosion of all democratic norms in the system.

Till the time the party in power had not resorted to an authoritarian method of suppression of all political competition, theoretically one would have hoped that with the passage of time the power imbalance between the Centre and the states in the Seventh Schedule of the Constitution might have automatically found a more balanced fulcrum to rotate. But the unchallengeable monopolistic position of the party in power and its underlying desire to keep itself in authority for ever had belied all such expectations. The ‘emergency’ provided its leadership with a cover to further increase the constitutional imbalance in such a way as to reduce the states to a perpetual status of magnified municipalities.

The Constitution (Forty-second Amendment) Act, 1976, has substantially altered the original federal character of the Indian system. A new addition in respect of fundamental duties as part IV-A of the Constitution prescribes the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India. The amendment has also modified articles 352 and 353 to enable the President to make a proclamation of emergency in respect of a part of the country or to restrict a proclamation of emergency made in respect of the country as a whole or to a part of the country. This has unquestionably reaffirmed the intent of the Constitution-makers to establish a lasting Union in which the states will have no right to secede.

Other significant changes have occurred in the Seventh Schedule which have affected the original distribution of powers between the Centre and the states. The entries or subjects transferred from the State List to the Concurrent List include, (a) administration of justice; constitution and organisation of all courts except the Supreme and the High Courts; (b) education; (c) weights and measures; (d) forests; and (e) protection of wild animals and birds. Taxes on advertisements, broadcast by radio or television were also excluded from the purview of entry 55 of the State List.

In addition the Union List has also been amended to give authority to the Union Government to deploy any armed forces of the Union or any other forces subject to the control of the Union or any contingent or unit thereof in any part of India in aid of the civil powers for the maintenance of law and order.

Perhaps the most controversial change has been to make the administration of justice and the organisation of courts other than the Supreme Court and the High Courts a concurrent subject. This has given authority to the Union Government to regulate the judicial process in a 'uniform' manner. Article 368 has also been amended to lay down that no amendment to the Constitution including the provisions of part III on fundamental rights made under article 368 shall be called in question except on the ground that it has not been made in accordance with the provisions of the Constitution.

A great controversy surrounds the question whether the Supreme Court be debarred from its power of judicial review of any constitutional amendment. The theory of federal or quasi-federal system makes it specifically clear that any dispute between the Centre and the states over any changes in the original clause of the contract must be subject to an impartial judicial scrutiny. The Forty-second Amendment has conclusively proved once again that the nature of federalism in India is not contractual but administrative. Even the essence of Indian administrative federalism is not of cooperation but that of dictation. The total effect of the Forty-second Amendment had been an erosion of the role of the Indian Supreme Court as the guardian and arbiter of the Constitution. Such a role of the judiciary has not only lent resilience to the federal systems of the United States and other countries, but has also enabled them to keep pace with the changing forces of federalization.

Another constitutional issue in India relates to the office of the President. In a federal system the head of the state is supposedly neutral, non-partisan, and is expected to act as an impartial arbiter of the states' as well as the Union's rights. Since 1960s the office of the Indian President has been politicized. The process was complete after the 1969 Congress-split and
the enactment of the Forty-second Amendment which legally bound the President to the advice of the leader of the majority party. Paradoxically enough, the same provision was invoked by the new government after the Sixth General Elections (committed to the repeal of the Forty-second Amendment) for their own political purposes. In the United States, the states have important responsibilities for conducting the election of the President and Vice-President, primarily by choosing the electors. The power of state parties is further strengthened by the institution of the electoral college in combination with the party conventions where the state party bosses play the decisive role of king-makers. In India, despite the theoretical provisions of the states' involvement in the election of the President, and unlike the American system of nomination at open party conventions, the nomination of candidates for the office of presidency had so far depended upon the top leadership of the party in power at the Union level. This trend seems to have been reversed for a while in the recent election of the first ever consensus and unanimously elected President in India. One can only hope that the new government would be able to act up to its promise of repealing the Forty-second Amendment as a first step in the depoliticization of the office of the President—which is not only a symbol of unity of the constituent units, but is also looked upon by them as the defender of their individual identity and aspirations.

In the Seventh Schedule "economic and social planning" is mentioned in item 20 of the Concurrent List with common Union and states' jurisdictions. The almost universal acceptance of the role of the national governments as economic planners and often the owners of means of production, job provider, and social engineer, have endowed them with formidable tax revenues to enable them to initiate, finance, organise, direct, establish and own projects that are well beyond the financial and technological means of territorial communities. The Indian system could not also escape the unitary effects of a centralised economic policy system.

One of the consequences of economic planning in India has been the increasing consciousness among the states about their position of helplessness and perpetual dependence on the bounties distributed by the Union Government. This has also resulted in what some scholars have pointed out as centre-baiting and aggressive demands of greater state autonomy. In the peculiar Indian context an overview of financial-cum-planning issues has brought to the fore the controversial role of the Planning Commission and the National Development Council in attempting to reconcile conflicting claims of inter-state and intra-state distribution of resources.

The forces of centralized dominance in this context has been operative even before the emergency. The State List originally included three subjects, industry, trade and commerce, and the production, supply and distribution of goods, while the Union List included only industries declared by Parliament by law to be necessary for the purpose of defence or for the preparation of war or industries declared by Parliament by law to be expedient in the public interest. The way in which this allocation of subjects has worked out in practice has upset the balance of federal structure in the country. A well-known political leader has sarcastically commented that Parliament has used its power, "to hold that the public interest demands that among the industries which it should control are the production of articles of vital and strategic importance such as razor blades, gum boots, cosmetics and toilet requisites".  

The Twenty Point Programme of the Congress government sponsored by its leadership after the declaration of emergency had no economic substance and was, in any case, not a concerted programme or a set of policies for long range socio-economic and national development. Yet in effect it had the tremendous band-wagon impact of concentrating the entire policy-making process at a central focal point in the country. Not only the initiative and direction in matters of public policies—economic, social and political—were completely centralized at New Delhi, but an attempt was also made to incorporate permanent changes in the Constitution, which were to have some far-reaching effects in further tilting the balance of an already imbalanced federal structure in favour of the Centre. Such changes were sought to be made with a view to making the Centre's position more dominant in implementing the so-called 'socialistic' goals in the fields of agriculture, industry, family planning, education and social welfare and for purposes of national uniformity.  

The original plan for changes in the Constitution—contained in the Swaran Singh Committee Report—sought to give the Centre a say in the coordinated development of agriculture and education through the inclusion of these two subjects in the Concurrent List. Later the move in regard to agriculture was given up because of the fear that New Delhi's motives might be misunderstood. Some thought that there was a good case for excluding the policy aspects of not only agriculture but also of irrigation from the exclusive jurisdictions of the states. Only if water supplies, irrigation and canals, drainage and embankments, water storage and water power as it is mentioned in the Constitution had been the joint responsibility of the Centre and the states—it is now a state subject—the staggering losses,
because of the interstate water disputes could have been avoided. Incidentally this is one aspect where even the Document on Centre-State Relations prepared by the Left Front Government of West Bengal led by the Communist Party of India (Marxist) which has otherwise sought to demand greater states' autonomy, has asked for the inclusion of industrial power or irrigation schemes which concern more than one state to be included in the Union List.  

The transfer of "education" and new initiatives on concurrent subjects, ranging from "electricity" to "all-India services" were hailed by some (during the emergency, of course) as steps to aid the judicious management of the country's resources both human and material. Of late, there had been an increasing realisation that water is a national resource and has to be developed for the benefit of the country as a whole. This was evident from the agreements over the sharing of the water of the Krishna and Cauvery. It can, however, be doubted whether the Centre on its own is able to achieve significant results of utilising such resources to the optimum level, but if the transfer to Concurrent List could produce better understanding of these policy problems by the Centre and the states the results produced by those experiments may soften the resistance of the advocates of unimpaired state autonomy. The limited achievements of the emergency period present a very distorted picture for settling such complex policy issues on the directives of the central leadership alone. The present Central Government faces a great challenge in not only providing for a more dynamic, realistic and a systematic policy perspective for sustained economic development, but also in finding an institutional and enduring solution to the most elusive problem of partnership and cooperation between Union, state and local communities in the planning, formulation and implementation of common economic and social development programmes in an environment of democratic and dissenting values.

III

Some of us might still argue the case for centralization in the realm of public policies for solving the formidable socio-economic problems of this vast heterogenous land.  

But in my opinion, if there is any one country which needs a federal structure more than others, it is India with its large area and population and wide diversities of race, religion, language, culture and ways of life. The maintenance of a free and pluralistic society, the formulation and implementation of public policy on a consensual basis can

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only be assured through a genuine devolution of powers and responsibilities to the lowest levels of governmental organization through the establishment of a system based on true federal spirit. Federalism in India has undergone far-reaching changes due to a multiplicity of factors—the informal and deliberate modification in the original distribution of powers; the oneparty dominance system for almost three decades, multiple levels of economic and social development, and the peculiar ethnic, linguistic, cultural, economic and political characteristics of the constituent states. All these have at various times influenced the development of public policies in the background of opposing forces of centralisation and decentralisation. The evolution of federalism in this country cannot be settled for all times to come or to the maximum satisfaction of each of the constituent units involved.

The amended Constitution has drastically tilted the balance of power regarding initiation and implementation of public policies in favour of the Centre. The exclusive state legislative powers with respect to, (a) public order, police and deployment of security force; (b) administration of justice; (c) forests; (d) protection of wild animals and birds; (e) population and family planning; and (f) education have been severely restricted. The authority and power of the Union with regard to the defence of the integrity and the unity of the country, suppression of anti-national activity, prevention of secession of any part of the national territory have greatly enlarged. The sphere of the states' exclusive jurisdiction has been compressed and that of concurrent power with central preferential legislation has expanded. With these new arrangements India has become a completely centralised quasi-federal state. The amendments have certainly transformed the quasi-federal system of India into a more perfect Union.

Such type of changes (although on a lesser scale) have also been experienced by other federal systems of the world. Even in the United States which is characterised by the existence of three closely inter-related patterns of federal relations, a real federation, administrative federalism and fiscal federalism, the debate on a more perfect Union still goes on. The overlapping of operations is so obvious that there is rarely a programme of arrangements that would fit into any one version of a 'pure' model. Public policies are more likely to combine all three forms of federal relations. Policies such as relating to the removal of poverty and unemployment in India are more likely to succeed, if these are conceived and executed in the perspective of all forms of centre-state relations.

This brief account of the new developments in the Indian context confirms that the Central Government's role in the federal system need not be an expanding one in the face of pressures for decentralisation and the need for consultation, through open and democratic processes, of the communities concerned. The state and local-governments still remain important in the vast arena of policy-making. The new government has a continuing and an unenviable responsibility of undoing the damage done to the cause of federalism during the days of emergency and to at least restore the balance that existed before its imposition. To what extent the conglomeration of diverse ideological forces within the folds of the Janata Party are able to withstand the challenge of undoing the emergency amendments, is only a hypothetical question?

Today, the Janata government at the Centre have to deal with three categories of non-Janata state administration: those led by the Congress in Assam, Andhra Pradesh, Karnataka, Kerala and Maharashtra; regional party regimes in Jammu and Kashmir and Tamil Nadu, and the Left Front government in West Bengal. While Congress governments are naturally apprehensive of attempts to replace them and many view the Centre with suspicion and distrust, the CPI (M) led Government of West Bengal (an ally of the Janata in the Lok Sabha polls, which despite some basic differences is sympathetic to the Janata programmes) has a stake in the continuance of the Janata Government at the Centre.

However, unlike the National Conference and the AIADMK, which are in power in Jammu and Kashmir and Tamil Nadu respectively, the CPI(M) which controls the government in West Bengal cannot be termed as a regional party. It has its supporters almost all over India and has in many places replaced the stronghold of the CPI. The Draft Document circulated by the West Bengal Government, regarding their demand for greater state autonomy has once again brought the centre-state relations into an open controversy, and if one were to go by its key proposal to confine the Central Government's powers merely to foreign relations, defence, communications, currency, economic coordination and related matters, this would have the effect of tilting the balance too much on the side of the states, leading to certain disastrous consequences. One would certainly agree with the spirit behind the document that centre-state relationship need not be framed only in terms of few alternatives, namely strong Centre and weak states. In a genuinely federal structure, both can be simultaneously strong and thrive together, producing a healthier growth of the entire national economy without necessarily creating regional or racial disparity. The scrapping of articles 356 and 357, which has undeniably been misused by the Central Government on several previous occasions might lead to a situation when "the country is likely to witness the rise of local tyrants in
the states," if in the name of decentralisation the Centre is divested of the powers to dismiss state governments. During the emergency and in the days of one-party dominance both at the Centre and the states, it was possible for the Centre to ride roughshod over the states' legitimate powers as well as the citizens' rights. The threat of central encroachment on state autonomy is minimal now that the press is free and the democratic process has been fully restored. There is considerable force in the argument of Prime Minister Morarji Desai that the autonomy of the states has to be ensured not by amending the Constitution but by working it faithfully.

IV

Striking off the defederalising clauses from the Constitution and also the amendment of the Constitution as suggested by the West Bengal Government seem to be an uphill task in the face of the stark reality of the incapability of the Janata Party to clear-off the voting barrier of the Rajya Sabha. The split in the Congress and the consensus reached in the recent Forty-third Amendment of the Constitution, which has restored the judiciary some of its lost status do give a hope of annulling much of the centralised tendencies. If, assuming that the demands of public policies in India—domestic or international, require a consensual approach of different territorial communities, and the forces of federalisation are to be restored, the government would have to adopt a three-pronged strategy. This would mean, (a) immediate establishment of the Interstate Council under article 263 of the Constitution charged with the duty of (i) inquiring into and advising upon disputes which may have arisen between states; (ii) investigating and discussing subjects in which some or all of the states, or the Union and one or more of the states have common interest; or (iii) making recommendations upon any such subject and in particular, recommendations for the better coordination of policy and action with respect to that subject; (b) initiating the dialogues with the state governments on a continuous basis as to the special needs of any state or states in economic and social reconstruction in the post-emergency era, and (c) finally, the evolution of an institutional system whereby the formulation and implementation of public policies should represent a cooperative venture between different jurisdictional areas. Evolution of cooperative programmes with Janata-led state governments may not be a problem. The Centre can also use the opportunity to evolve similar cooperative, even if in some respects competitive, relations with other state administrations. The emphasis should shift to the role of states in implementing the government's

programme, devolution of power and a mutual give and take at the political level. Devolution of power need not be confined to the state level alone, but should be allowed to be permeated right down to the levels of the local bodies and panchayats. Similarly the states on their part, while demanding a larger share of the government revenues should also exert themselves in resource mobilisation. They should explore the possibility of finding new avenues for raising finances from within themselves. The Raj Committee’s proposal for agricultural income-tax is an instance in point.\(^{13}\)

At the same time it is also important that all political parties—national and regional—should mend their own organizational set-up in such a manner that the issues of local and state concern be solved at those very levels and need not unnecessarily be pushed for decision by the central leadership. This tendency on the part of state leaders in the past has grossly undermined their own autonomy system and has given more opportunities to the central leaders to impose their decisions at the state level.

All this further involves the development of a special type of political culture which one might for want of a better terminology, name as federal culture. Although there is no reliable data as yet that would permit us to assert that there is a measurable thing called a federal or a unitary political culture that may be either expressed or suppressed by a given political system, it could be tentatively argued, that a local, provincial, or regional habit (if discovered and proven) of looking for guidance to the national capital and not questioning its directives constitutes \textit{prima facie} evidence of a unitary rather than a federal political tradition, irrespective of what the system may constitutionally provide. It thus becomes important that the age old tendencies on the part of the state governments and state party leaders to look to New Delhi and to the ruling party high command for decisions in all matters—governmental and organisational, interstate bargains, disputes, formation and composition of state cabinets be—given up. As commented in an editorial, “if the principle of unity in diversity is to be restored to its pristine strength in India, not only must the states recognise the strength that accrues to them from the country’s oneness, the centre for its part must also concede the richness and vibrancy that flow from the sub-cultural differences among its many and varied regions.”\(^{14}\) But such a change would not take place until an all-round development of a spirit of federal comity and federal-spirit amongst the Union and its constituent units emerges.

\(^{13}\) For instance see the editorial, \textit{Hindustan Times}, 20-7-1977.

Indian political modernization appears to have reached a stage where an open, decentralised system will be able to cope with system problems while at the same time push ahead toward economic, social and political modernity. In the ultimate analysis, however, Indian federalism—in the future, as in the past—is likely to remain a flexible, pragmatic and an easily reversible imperfect process.