
INDIA, THAT IS BHARAT: SHALL BE A UNION OF STATES?

Understanding & Rejuvenating the Federal Compact of the Indian Constitution

ARIN KUMAR SHUKLA | B.A. POLITICAL SCIENCE(H) 3RD YEAR | DESHBANDHU COLLEGE

Email Id - arinkumarshukla@gmail.com

INTRODUCTION : THE QUESTION OF FEDERALISM

Those who adore lurking in the splendid halls of world history, would perhaps agree that the subject of their admiration is occasionally scary and often dim-lit. Early decades of the twentieth century represents such an era, for these were the times when man suffered the carnage and ruination inflicted by the two World Wars. Their ramifications were calamitous for no belligerent nation won as substantially as the other lost, while blood and melancholy emerged victorious over those who perished and lived alike. It was this somber hour when India awoke to "...light and freedom" - redeeming the destiny of the nation and its people. This redeemed pledge finds its finest expression in the Constitution which the Indian people drafted, accepted, enacted and gave to themselves. While the Indian Constitution has been widely appreciated as an exemplary hallmark for preserving the dignity of individual through fundamental rights justiciable through the highest court of law; it has not been highlighted for the structure and design of its federal set-up.

At the moment when freedom finally knocked the door of the Indian people, they stood not as one people, for despite their unity in nationalistic spirit, they stood divided into two sovereign nations following an eerie and ghastly partition. What remained in the domini-

on of India was prorated politically into eleven British Indian Provinces, six Chief Commissioner's Provinces and about 565 Princely States under suzerainty of the British Crown. It was the iron-clad will and grit of Sardar Vallabhbhai Patel, the inaugural Deputy-Prime Minister of the Indian Dominion, who, through the policy of blood and iron, united these numerous entities to form the Indian Republic.

This led to theorists such as Paul Brass to argue about the constitution that it was "...born more in fear and trepidation than in hope and inspiration." An expected sense of anxiety prevailed amongst the leaders of national movement with regards to accreditation of vast powers in provincial governments and it was in this context that demands for a stronger centre was envisioned. The linguistic and cultural diversity of the Indian nation worked as a double edged sword in a manner. An extremely unitary state would have been an injustice to the people, for such a state would have been hardly anything disparate from the oppressive colonial regime of yore. But on the other hand, a federation proper would have been a treacherous affair at the time, for if all states were given autonomy to frame their own constitutions and executive provisions - balkanisation of the subcontinent would have been almost imminent. These thoughts occupied the minds of the members of the Constituent Assembly, as they undertook the

task of determining the fate of the infant republic.

FEDERALISM IN INDIA : CONSIDERATIONS OF CONSTITUENT ASSEMBLY

It can be said that the contemporary idea of federalism, with all its interpretations and iterations has emerged as a principle of government and administration at the dusk of the eighteenth century, when the thirteen British settler colonies of North America had their first tryst with federalism when they established the United States of America with the adoption of the US Constitution in 1789. This constitution sought to strike a balance between the concentration of power in the federation and its constituent units - giving birth to the notion of federalism, defined by its principal tenets - written constitution; vertical distribution of legislative, executive, and financial authority; and an independent judiciary for interpretation of laws and adjudication of cases of conflict. One century and a half later, the Constituent Assembly of India was fraught with questions of similar tune, but of immense magnitude. Nidhi Sharma in her article 'The Quasi-Federal Constitution?' quotes assembly debates in this regard, drawing attention to the fact that eminent members such as Prof. K.T. Shah not just raised questions regarding absence of the term 'federal' anywhere in the draft constitution, but that he went as far as moving an amendment in the Article 1 to be read as "India shall be a secular, federal, socialist Union of States." Though the amendment was carried by the assembly, still this instance substantiates the absence of unanimous consensus amongst the founding fathers as far as the debate of federalism is concerned; though it must be stated that there existed a wide affirmation to the version proposed by Dr. B.R. Ambedkar in the draft constitution placed forth the assembly.

Prof. K.C. Wheare has proposed to test the federal character of a Constitution on the basis of two primary principles - first, theoretical conceptualisation of a federal constitution; and second, pragmatic establishment of a federal government. While he characterised the Indian Constitution as 'Quasi-Federal' in the light of unitary tendencies interspersed in the supreme law of the land, he did subscribe to the fact that the Constitution has been successful in establishing a federal government in the country. A proximate survey of the Constitution of India would reveal that whenever our founding fathers stood at the crossroads of two extremes, more often than not - they tended to choose the middle path - the Madhya Marga of Buddha, or the Golden Mean of Aristotle.



This fact stands true, perhaps to the best measure, when concerning the structure of federalism envisioned by them. Indian Federalism was envisioned to absorb the best practices from around the world, yet not to reflect any of them in totem, establishing a distinct identity for itself. The structure of federalism envisioned by them. Indian Federalism was envisioned to absorb the best practices from around the world, yet not to reflect any of them in totem, establishing a distinct identity for itself.

NEW FEDERAL COMPACT : TRANSFORMING CENTRE - STATE DYNAMICS

The Indian Constitution outlines the structural apparatus of both the union and the states, in addition to charting out the constitutional principles for the operation of centre-state relations in accordance with the spirit of the document. Drawing inspiration from the Canadian constitution, the seventh schedule of the Indian Constitution provides for distinct lists for union and state legislative subjects, bifurcating legislative responsibilities in interest of the ideal federal governance. The seventh schedule also features another list - the Concurrent List- on matters which may be legislated by either the Union or the States, drawing this provision from the constitution of the Commonwealth of Australia. At the commencement of the constitution, the union, states and the concurrent list contained ninety-seven, sixty-six, and forty-seven subjects respectively. It has been observed that the concurrent list has been utilised by successive governments at New Delhi to gradually encroach into the legislative realm of the States. It must be noted that the Union laws supersede and eclipse the laws made by the states on subjects mentioned in the concurrent list, unless the state law has received prior consent of the President under article 201.

The 42nd Constitutional Amendment Act, 1976, enacted while internal emergency was in operation, transferred five key state subjects to concurrent lists - Education, Forests, Protection of Wild Animals and Birds, Weights and Measures, and Administration of Justice - into the concurrent list. The 101st Constitutional Amendment Act, which enabled the provisions for the introduction of a nationwide Goods and Services Tax (GST), significantly altered taxation related entries of the State List. As a consequence of such altercations, the State List has been diminished to sixtyone subjects at present - limiting the scope of legislation possible at sub-national level based on the considerations specific to the state, necessitating further constitutional safeguards. Another significant issue which has been highlighted many-a-times as a bone of contention between the Union and the States is the institution of the Governor. There is no denial to the fact that the office of Governor of the state was a colonial innovation, and enjoyed wide executive and legislative powers in the provinces as per the provisions etched down in the Government of India Act, 1935. In post-independence era, the institution of Governor was reworked by the Constituent Assembly to serve dual purposes - as constitutional head of constituent state; and as the representative of the Union for the state - functions which have been seen to be increasingly irreconcilable with the passage of time. While our founding fathers had imagined the institution to be a cordial link in the centre-state relations, it has been observed over decades that the Governors have gradually turned into political agents of the government at power in the centre. Successive governments have found the office of Governors, with vast discretionary powers conferred on it by the Constitution, to be the most potent weapon to target state governments belonging to the adverse political disposition.

Supreme Court's judgement in the S.R. Bommai vs Union of India has only blunted this weapon, but it needs to be ensured that constitutional ailments are dealt with constitutional remedies rather than the want of judicial intervention in every instance. It must be noted that the office of President has, in contrast to the Governor, retained its dignity and has commanded the utmost respect - perhaps due to the fact that it is an elected office, and is elected through such a process which envisages the most pristine form of federalism in India. This procedure provided by the Constitution must be extended to Governorship - making the office elective through a vote conducted amongst MLAs and representatives of local governments - in a manner similar to that of the President. It will provide for, without violating the neutrality and dignity accorded to the office, a sense of accountability and connection to the state and its people.

LOCAL SELF-GOVERNMENTS : ENVISIONING FOUNDATIONAL FEDERALISM

While in the global context, federalism is often defined as the relationship between the national central authority and its constituent provincial units - whereas in India, a nation defined by its diversity and magnitude, governance has always been more proximate and visible. It is to be noted that since the Vedic era, Gram or villages have been the foundational functional units of any political superstructure which has been built upon it. Villages provided the state with land revenue receipts, which when added to the trade levies extracted from the towns, formed the bulwark of the State's financial capabilities. Such politico-economic arrangements in due course produced what Mahatma Gandhi recognised as "Village Republics" - which enjoyed an array of judicial and social functions, often autonomous in nature-

-re. The degree of such socio-political autonomy may have oscillated or fluctuated, what can be said with surety is the fact that these microcosms of India represented the very nucleus of the entire socio-politico-economic superstructure of Indian society at large. It was under colonial regency that villages of India witnessed de-industrialisation of their crafts, and commercialisation of crops - deteriorating their status from self-sustaining units of governance to famine-ridden hubs of extraction of exuberant revenue. On the other hand, new towns emerged around the Indian landscape as bustling centres of trade and commerce - marking the beginning of modern urban governance in India.

While the institutionalisation of Panchayati Raj in India began as early as 1950s in a scattered manner, numerous successive committees were involved in formulation of national policy for the same. Based on the recommendations tendered by L.M. Singhavi Committee, the seventy-third and seventy-fourth amendments of the constitution were approved by the Parliament in 1992, fundamentally establishing local-self governments as a part and parcel of governance infrastructure in India. These amendments provided for Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) as the rural and urban arms of third-tier grassroots governance in India respectively. However, in the public parlance, what should have been perceived as a monumental extension of federalism in India, was degraded into an extension of state government's purview. The eleventh and twelfth schedule to the constitution provides for twenty-nine and eighteen functions accorded to the PRIs and ULBs respectively. While the legislative competence of the Union and the states is clearly demarcated and non-negotiable, the legislative-executive authority of the local governing institutions is voluntary and subject to political will of the state governments. This has in effect degraded these

institutions to subservience of the states lacking legislative authority, fiscal autonomy, and proper democratic decentralisation. In order to discard the flaws of the prevailing system, it is necessary to undertake an overhaul of the constitutional and administrative apparatus. The eleventh and twelfth schedules should be abrogated summarily in favour of a fourth "Local Self-Governments" list in the seventh schedule alongside union, state and concurrent lists. Such a list shall lay down functions of the PRIs and ULBs which will not be voluntary in nature - providing for not just constitutional legitimacy, but rather constitutional authority to these institutions. The third tier of government should be accommodated harmoniously into the federal skeleton of governance in India, for these institutions are not merely the implementational arm of the superior governments, rather they are the first interface of the ordinary citizen's interaction and association with the state. Our constitutional understanding will have to evolve at not only accepting India as the union of constituent states, but also states as a union of smaller self-governing units - a perfect symmetry of constitutional decentralisation meant not to concentrate power but to deliver political justice to its citizens

CONCLUSION : TOWARDS A MORE PERFECT UNION...

The Indian Republic's sojourn of rising from the dismal gallows of colonial subjugation to find its earnest place amongst proud nations in the bright chambers of democracy and liberty has been nothing short of a miracle. India's freedom struggle was not merely a political movement, rather it extended to the socio-economic and moral spheres of public life - effectively weaving India into the threads of nationalistic ideals and perspectives. When the people of India solemnly resolved to consecrate a new political-social-economic or-

-der by giving themselves the Constitution, it was not the culmination of national movement, for the national movement endured thereafter. Mahatma Gandhi, the noble sage who shook the British Empire in the most modest manner, for him Swaraj was not mere political liberty and self-governance, but a larger goal of socio-economic transformation of the Indian milieu. Granville Austin has described the Indian Constitution as "...a document of social revolution", underscoring the higher purpose our founding scripture represents. This social revolution has endured for more than seven decades now and has been a journey defined by its achievements. But as we move forward towards the vision of establishing Viksit Bharat by 2047, it is necessary that we "...redeem our pledge, not wholly or in full measure, but very substantially" as Pandit Nehru had imagined. In order to deliver this social revolution more substantially to its people, the present generation needs to redefine and perhaps restructure the federal compact which was put in place at the head of this pilgrimage. The guiding principle needs to be not deviating from the basic structure our founding fathers envisioned for the country, but to make such a structure more coherent to its contemporary necessities.

Arthashastra - Kautilya's magnum opus on statecraft and political-economy from India's classical age, gives heed to the organic theory of state - imagining the state as the living manifestation of a man. As this great pious nation strides proudly towards the ultimate goal of wiping the last tear from the eye of every man, and as we move forward towards transforming this ancient realm into the citadel of man's progress - we need a state which has a light head and rather firm torso and legs. Further realisation of economic, social and political vision of the constitution would require a well-intentioned restructuring of the

union's federal apparatus. In the destiny of the Indian people, lies the promise of a more perfect union...

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