

NEEDED, GREATER DECENTRALISATION OF POWER

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

Over the course of the last few weeks, as we have found ourselves in the throes of a pandemic, one of the striking features of governance has been the signal role played by State Chief Ministers across India. Even before the Union government invoked the Disaster Management Act, 2005, many State governments triggered the [Epidemic Diseases Act, 1897](#), and installed a series of measures to combat what was then an oncoming onslaught of [COVID-19](#). These actions have not always been perfect. Some of them have even disproportionately trenched upon basic civil liberties. But, by and large, they have been tailored to the reality faced on the ground by the respective governments. States such as Maharashtra, Kerala, Tamil Nadu, Rajasthan, and Karnataka have shaped their policies to address their direct, local concerns. They have communicated these decisions to the public with clarity and consideration, helping, in the process, to lay out a broad framework for the nation. In doing so, they have acted not merely as “laboratories of democracy”, to paraphrase the former U.S. Supreme Court Justice Louis Brandeis, but also as founts of reasoned authority.

Equally, though, as much as State governments have taken up positions of leadership, they have repeatedly found themselves throttled by the limitations of the extant federal arrangement. Yamini Aiyar and Mekhala Krishnamurthy of the Centre for Policy Research have pointed out at least three specific limitations. One, the inability of States to access funds and thereby structure their own welfare packages. Two, the curbs imposed by a public finance management system that is mired in officialdom. This has prevented States from easily and swiftly making payments for the purchase of health-care apparatus such as ventilators and personal protective equipment. Three, the colossal disruption of supply chains not only of essential goods and services but also of other systems of production and distribution, which has placed States in a position of grave economic uncertainty. As Ms. Aiyar and Ms. Krishnamurthy argue, these limitations demonstrate an urgent need to decentralise administration, where States — and local bodies acting through such governments — are allowed greater managerial freedom. Under such a model, the Union government will command less but coordinate more.

There are varying accounts of what Indian federalism truly demands. But what is manifest from a reading of the Constitution is that it creates two distinct levels of government: one at the Centre and the other at each of the States. The Seventh Schedule to the Constitution divides responsibilities between these two layers. The Union government is tasked with matters of national importance, such as foreign affairs, defence, and airways. But the responsibilities vested with the States are no less important. Issues concerning public health and sanitation, agriculture, public order, and police, among other things, have each been assigned to State governments. In these domains, the States’ power is plenary. This federal architecture is fortified by a bicameral Parliament. Significantly, this bicameralism is not achieved through a simple demarcation of two separate houses, but through a creation of two distinct chambers that choose their members differently: a House of the People [Lok Sabha] comprising directly elected representatives and a Council of States [Rajya Sabha] comprising members elected by the legislatures of the States.

In formulating this scheme of equal partnership, the framers were also conscious of a need to make States financially autonomous. To that end, when they divided the power to tax between the two layers of government they took care to ensure that the authority of the Union and the States did not overlap. Therefore, while the Centre, for example, was accorded the power to tax all income other than agricultural income and to levy indirect taxes in the form of customs and

excise duties, the sole power to tax the sale of goods and the entry of goods into a State was vested in the State governments. The underlying rationale was simple: States had to be guaranteed fiscal dominion to enable them to mould their policies according to the needs of their people.

Despite this plainly drawn arrangement, the history of our constitutional practice has been something of a paradox. It is invariably at the level of the States that real development has fructified, but the Union has repeatedly displayed a desire to treat States, as the Supreme Court said in [S.R. Bommai v. Union of India](#), as mere “appendages of the Centre”. Time and again, efforts have been made to centralise financial and administrative power, to take away from the States their ability to act independently and freely.

As Christophe Jaffrelot and Sanskruthi Kalyankar have shown, as Chief Minister of Gujarat, Narendra Modi rallied against these attempts. So much so that an undertaking to decentralise power and steer a new era of Centre-State cooperation became a leitmotif of the Bharatiya Janata Party’s campaign for the 2014 elections. Among other things, in its manifesto, the party promised to create a “Team India” that will “not be limited to the Prime Minister led team sitting in Delhi,” but that “will also include Chief Ministers and other functionaries as equal partners”; to place “centre-state relations on an even keel”; and to “ensure fiscal autonomy of the States”.

Some efforts have no doubt been made to this end. But they have been ostensible, at best. Consider the widely hailed decision to accept the 14th Finance Commission’s recommendation for an increase in the share of the States in total tax revenues from 32% to 42%. While, in theory, this ought to have enabled the States to significantly increase their own spending, in reality, as a paper authored by Amar Nath H.K. and Alka Singh of the National Institute of Public Finance and Policy suggests, this has not happened. Gains made by the States, as the paper underlines, have been entirely offset by a simultaneous decline in share of grants and by a concomitant increase in the States’ own contribution towards expenditures on centrally sponsored schemes.

Other measures have proved still more destructive. Notably, the creation of a Goods and Services Tax regime, which far from achieving its core purpose of uniformity has rendered nugatory the internal sovereignty vested in the States. By striking at the Constitution’s federal edifice, it has made the very survival of the States dependent on the grace of the Union. The tension today is so palpable that a number of States are reported to have written to the Union Finance Ministry highlighting that more than four months’ worth of Goods and Services Tax compensation to the States — reportedly totalling about a sum of 40,000 crore — remains unreleased.

The Union government’s centralising instinct, though, has not been restricted to matters of finance. It has also introduced a slew of legislation as money bills, in a bid to bypass the Rajya Sabha’s sanction, even though these laws scarcely fit the constitutional definition. Similarly, the role of the Governors has been weaponised to consolidate political power. But perhaps most egregious among the moves made is the gutting of Article 370 and the division of Jammu and Kashmir into two Union Territories without securing consent from the State Legislative Assembly.

To be sure, this impulse to appropriate authority is not in any way unique to the Bharatiya Janata Party’s command. Congress-led governments of the past have also been susceptible to such motives. But perhaps a crisis of the kind that COVID-19 has wrought will show us that India needs greater decentralisation of power; that administration through a single central executive unit is unsuited to its diverse and heterogeneous polity. We cannot continue to regard the intricate niceties of our federal structure as a nettlesome trifle. In seeing it thus, we are reducing

the promise of Article 1 of the Constitution, of an India that is a Union of States, to an illusory dream.

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