

THE SUSTAINED ATTACK ON FEDERALISM

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

B. Pocker Sahib, a Muslim League member from Kerala in the Constituent Assembly, was prophetic when he outlined his concerns about the possible impact of centralisation of powers. In 1948, he said: "Now after we have won freedom, to do away with Provincial Autonomy and to concentrate all the powers in the Centre really is tantamount to totalitarianism, which certainly ought to be condemned." Today, amid the pandemic, some elements of this statement resonate quite strongly with the States with some of them raising complaints about the Union government's anti-federal moves.

Prior to the pandemic, a series of steps by the Union government undermined the principles of federalism, especially fiscal federalism. This manifested in the increasing monetary share of the States in Centrally Sponsored Schemes (CSS), the terms of reference of the 15th Finance Commission, imposition of demonetisation without adequate consultation with the States, institutionalisation of the Goods and Services Tax (GST), outsourcing of the statutory functions under the Smart Cities Mission, a delay in transfer of GST compensation, 'One Nation One Ration', etc.

Besides tightening the purse strings of States, administrations also witnessed an onslaught on the principles of federalism during the pandemic. States were curtailed in aspects relating to COVID-19 management such as procurement of testing kits, vaccination, the use of the Disaster Management Act, and the unplanned national lockdown. Ironically, Union Ministers used the 'health is a State subject' argument to counter criticism when the second wave caught the government unprepared.

Several other policies initiated by the Union government in the recent past have also led to the weakening of States' autonomy. These include the farm laws; the Banking Regulation (Amendment) Act of 2020; the Government of National Capital Territory Amendment Act, 2021; the Indian Marine Fisheries Bill, 2021; the Draft Electricity (Amendment) Bill, 2020; the Dam Safety Bill, 2019; the National Education Policy of 2020; and the Draft Blue Economy policy. The creation of the Ministry of Co-operation and the Reserve Bank of India directives on cooperatives are being perceived by the States as measures to strangle a sector that is still struggling to recover from the devastation of demonetisation.

These coercive policies, coming on top of the pandemic-induced economic shock, have worsened the fiscal situation of State governments. The impact of COVID-19 on fiscal federalism deserves to be understood in greater detail, and tax collection is a good place to start. Enlarging the non-divisible pool of taxes in the form of cess in petrol tax and instituting the Agriculture Infrastructure and Development Cess have resulted in a situation where the Union continues to exclusively benefit from tax collection. As the economic commentator Vivek Kaul said, the share of non-divisible pool cess and surcharge in total taxes collected by the Union government jumped from 12.67% in 2019-20 to 23.46% in 2020-21. On December 6, 2021, the Union government informed Parliament that its share in the total contribution of the petroleum sector to the exchequer for 2020-21 was 68%, which left only 32% to the States. In 2013-14, the Union:State share was almost 50:50.

The story is the same with GST. During the pandemic, the Union government repeatedly violated the compensation guarantees to the States under the GST regime. Delay in paying the States their due worsened the impact of the economic slowdown. The crisis was aggravated in

July 2020, when the Union government proposed borrowing as an option to address the shortfall in GST compensation. Most States, forced by economic pressure, had to accept the proposal. In effect, this meant that they were not only getting the share of GST collections due to them, but were now forced into debt which they would have to service. The GST compensation period expires in 2022, and despite multiple requests from the States, the deadline has not been extended. The Comptroller and Auditor General found that the Union government, in 2018-19, wrongly retained 47,272 crore of GST compensation cess in the Consolidated Fund of India — money that was supposed to be transferred to the States. It is also pertinent to recollect that the 2021-22 Budget Estimates indicate that the States' share of Union tax has reduced to 30% against the mandated 41% devolution prescribed by the 15th Finance Commission.

Cash-starved States have been seeking non-tax avenues to generate funds to sustain their programmes. And at this point, the Union government issued a clarification that funding to the Chief Minister's Disaster Relief Funds will not be considered as CSR expenditure, unlike the case with PM-CARES. This was followed by decisions like the suspension and transfer of the Member of Parliament Local Area Development (MPLAD) funds to the Consolidated Fund of India. This led to a major crisis situation for most States and resulted in demands for increasing borrowing limits under the Fiscal Responsibility and Budget Management Act (FRBM), from 3% to 5%. The Union government decided to increase FRBM borrowing limits, linking it to the performance of States in fulfilling certain conditions — implementation of the One Nation, One Ration policy, ease of doing business reforms, urban local body/utility reforms and power sector reforms — making it difficult for the States to perceive this as an addressal of their concerns.

These policy misadventures call for research and introspection on federalism. Is it time for another State-centric committee like the Rajamannar Committee to study Union-State relations? States should, as recommended by the National Commission to Review the Working of the Constitution, demand the creation of a formal institutional framework to mandate and facilitate consultation between the Union and the States in the areas of legislation under the Concurrent List. State governments could also consider deploying human resources to support them in preparing responses to the consultations initiated by the Union, especially with a focus on the federalism angle. Instead of reaching out to each other only during crisis situations, Chief Ministers should try to create forums for regular engagement on this issue. Former Kerala Finance Minister Thomas Isaac had rallied Finance Ministers from different States during the initial stages of discussion on the terms of reference of the 15th Finance Commission. Similar efforts are required. This would be crucial in the advocacy of major demands like the extension of GST compensation to 2027 and inclusion of cess in the divisible pool of taxes.

Federal flexibility — or the lack of it — is going to play a crucial role in shaping the future of our democracy. The Union government needs to invest resources towards facilitating effective consultation with States as a part of the lawmaking process. It is critical that the Union establishes a system where citizens and States are treated as partners and not subjects.

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