

REFLECTIONS ON THE 'QUASI-FEDERAL' DEMOCRACY

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

Events coinciding with the jubilee of India's Independence draw attention to the federal structure of India's Constitution, which is a democratic imperative of multi-cultural India, where the constituent units of the sovereign state are based on language, against competing identities such as caste, tribe or religion. This built-in structural potential for conflict within and among the units, and that between them and the sovereign state, need imaginative federal craftsmanship and sensitive political management. The ability of the Indian Constitution to keep its wide-ranging diversity within one sovereign state, with a formal democratic framework is noteworthy. Possibly, with universal adult suffrage and free institutions of justice and governance it is nearly impossible to polarise its wide-ranging diversity within any single divisive identity, even Hindutva; so that, despite its operational flaws, the democratic structure and national integrity are dialectically interlinked. But its operational fault lines are increasingly denting liberal institutions, undermining the federal democratic structure as recent events have underscored.

First, the tempestuous Parliament session, where the Rajya Sabha Chairperson broke down (in August 2021), unable to conduct proceedings despite the use of marshals; yet, the House passed a record number of Bills amidst a record number of adjournments. Second, cross-border police firing by one constituent State against another, inflicting fatalities, which also resulted in retaliatory action in the form of an embargo on goods trade and travel links with its land-locked neighbour.

The upcoming crisis in Indian federalism

Such unfamiliar events of federal democracy are recurrent in India, except their present manifest intensity. Legislative disruption was described by a Union Law Minister (while in Opposition) as a 'legitimate democratic right, and duty'. In the 1960s, the Troika around Lohia claimed its right to enter Parliament on the Janata's shoulders to exit on the Marshals; posters with labels such as 'CIA Agent' were displayed during debates; 'suitcases' were transferred publicly to save the government; occasionally, "Honorable Members" emerged from debates with injuries. This time, in the "federal chamber", "Honorable Members" and Marshals are in physical contact — both claiming 'casualties' — official papers vandalised and chairpersons immobilised. Even inter-State conflict has assumed a new dimension.

Such empirical realities have led scholars to conceptualise India's "Post-colonial democracy", and federalism, differently from their liberal role-models. Rajni Kothari's "one party dominance" model of the "Congress system" has now been replaced by the Bharatiya Janata Party; Myrdall's "soft state" is reincarnated in the Pegasus era with fake videos and new instruments of mass distraction and coercion. Galbraith's "functioning anarchy", now has greater criminalisation in India's democracy, which includes over 30% legislators with criminal records, and courtrooms turning into gang war zones; it is now more anarchic, but still functioning, bypassing any "Dangerous Decade" or a "1984".

Federal theorist K.C. Wheare analyses India's "centralized state with some federal features" as "quasi-federal". He underscores the structural faultlines of Indian federalism not simply as operational. So, while many democratic distortions are amenable to mitigation by institutional professionalism, Indian federalism, to be democratically federal, needs institutional amendment

despite being a “basic structure”. Wheare’s argument merits consideration.

Clash of cultures in a federation

Democratic federalism presupposes institutions to ensure equality between and among the units and the Centre so that they coordinate with each other, and are subordinate to the sovereign constitution — their disputes adjudicated by an independent judiciary with impeccable professional and moral credibility. But India’s federal structure is constitutionally hamstrung by deficits on all these counts, and operationally impaired by the institutional dents in the overall democratic process. Like popular voting behaviour, institutional preferences are based either on ethnic or kinship network, or like anti-incumbency, as the perceived lesser evil, on individual role-models: T.N. Seshan for the Election Commission of India, J.F. Ribeiro for the police or Justices Chandrachud or Nariman for the judiciary.

India’s federal structure, underpinned on the colonial ‘1935 Act’ which initiated ‘provincial autonomy’, attempted democratising it by: renaming “Provinces” to autonomous “States”; transferring all “Reserved Powers” to popular governance; constitutionally dividing powers between the two tiers; inserting federalism in the Preamble, and Parts 3 and 4 containing citizens’ “Fundamental Rights” and “Directive Principles”; but nothing about States’ rights, not even their territorial boundaries. This has enabled the Centre to unilaterally alter State boundaries and create new States. The Indian Constitution itself has been amended 105 times in 70 years compared with 27 times in over 250 years in the United States.

Explained | India's asymmetric federalism

With ‘nation-building’ as priority, the constitutional division of power and resources remains heavily skewed in favour of the Centre; along with “Residual”, “Concurrent” and “Implied” powers, it compromises on the elementary federal principle of equality among them, operationally reinforced by extra-constitutional accretion. While the judiciary is empowered to adjudicate on their conflicts, with higher judicial appointments (an estimated 41% lying vacant), promotion and transfers becoming a central prerogative, their operations are becoming increasingly controversial.

The story is not different for the “all India services”, including the State cadres. What is operationally most distorted is the role of Governors: appointed by the Centre, it is political patronage, transforming this constitutional authority of a federal “link” to one of a central “agent” in the States. Thus, the critical instruments of national governance have been either assigned or appropriated by the Centre, with the States left with politically controversial subjects such as law and order and land reforms. Thus, most of India’s federal conflicts are structural, reinforced by operational abuses.

Yet, there is no federal chamber to politically resolve conflicts. The Rajya Sabha indirectly represents the States whose legislators elect it, but continue even after the electors are outvoted or dismissed; with no residential qualification, this House is a major source of political and financial patronage for all political parties, at the cost of the people of the State they “represent”.

The Indian Constitution’s unitary tilt

Possibly, this explains its continuity. Constituting roughly half the Lok Sabha, proportionately, it reinforces the representative deficit of Parliament, which, through the Westminster system of ‘winner-take-all’, continues to elect majority parties and governments with a minority of electoral votes. The second chamber is not empowered to neutralise the demographic weight of the populous States with larger representation in the popular chamber; it cannot veto its legislations,

unlike the U.S. Senate. It can only delay, which explains the disruptions. Joint sessions to resolve their differences are as predictable and comical as the “voice votes” in the Houses. India’s bicameral legislature, without ensuring a Federal Chamber, lives up to the usual criticism: “when the second chamber agrees with the first, it is superfluous, when it disagrees, it is pernicious”.

Historically, party compositions decide when they agree or disagree. Whenever any party with a massive majority in any state finds itself marginalised in the central legislature, it disrupts proceedings, just as popular issues not reflected in legislative proceedings provoke undemocratic expressions and reciprocal repression. Such examples abound in India’s “quasi-federal” democracy till now.

Spirit of federalism lies in consultation

Empirical and scholarly evidence suggest Wheare’s prefix about federalism arguably applies to other constitutional goals (largely operationally), while the federal flaws are structural, reinforcing conflicts and violence, endemic in the distorted democratic process. It is a threat to national security by incubating regional cultural challenges to national sovereignty, and reciprocal repression. We might learn from the mistakes of neighbouring Sri Lanka and Pakistan rather than be condemned to relive them. India’s national security deserves a functional democratic federal alternative to its dysfunctional “quasi-federal” structure, which is neither federal nor democratic but a constitutional “basic structure”.

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