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REINFORCING ENVIRONMENTAL AND EDUCATIONAL FEDERALISM

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Abstract

The Indian model of federalism might be quite possibly one of the most intriguing typology with regards to the world, described for what it's worth by a paradox, in the first place: that of being a "centralized federalism."

Keeping the 'federal principle' in mind, its normative and positive consequences of the shared role of national and state governments in controlling environmental problems; and issues in higher education.

The paper features the various examples of Indian government's reaction molded by different political variables over the long haul. It attempts to provide suggestions for reinforcing federal India's administrative plan connecting it with environmental problems and higher educational issues. With the aim of doing so it thereby creates a temporal framework in the talk on Indian federalism by illustrating two very peculiar yet noteworthy issues of present-day India.

Keywords: Union (central) government, state governments, higher education, Constitution of India, Planning Commission, Finance Commission, fiscal policy, environmental federalism

Introduction

Federalism is a mode of government that combines a general government (the central or "federal" government) with regional governments (provincial, state, cantonal, territorial, or other sub-unit governments) in a single political system, dividing the powers between the two.

Federalism comes from the word 'FOEDUS' which means a treaty, solemnly enacted, which established friendship, peace and alliance between two states in perpetuity.¹ D.C. Miller used this word to describe system of holy and enduring conscience between God and man which lay at the very foundation. Similarly, Herman Finer suggests that "A Federal state is one in which part of authority and power is vested in local area while another is vested in central institution deliberately constituted by association of local areas".

K.C. Wheare describes that, in a federal system the governmental power are divided between the government for whole country and one for the constituent units, in such a way that each government is legally independent within its own spheres². Wheare enumerated five important principles of Federalism they are as below –

1. Dual Government – There are two or more levels of government. Different tiers govern the same citizen but each has its own jurisdiction in specific matter.
2. Supremacy of the constitution – The existence and authority of each of the tier of government are constitutionally guaranteed. The jurisdiction of each are specified in the constitution.
3. Written constitution – In order to have a federal system of government it is essential to have a written constitution in which every aspects required, is present and drafted.
4. Independence of Judiciary – Courts have the power to interpret the constitution and power of different level of the government.
5. Rigid constitution – The process of amending the constitution should not be quick and easy. The fundamental provision of constitution cannot be unilaterally changed by one level of government such changes required consent of both level of government.

Political scientist, Philip Mahwood, has argued that in culturally diverse, developing countries like India, federalism is chosen not merely for administrative requirements but for the very

¹ Oxford classical dictionary

² Wheare, K C. 1963. 'Federal Government'

survival of the nation.³

Federalism is part of the basic structure of the Indian constitution which cannot be altered or destroyed through constitutional amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court.

ENVIRONMENTAL PROBLEMS

Environmental federalism is considered to be the study of how transfer of payments, competencies, fiscal instruments, and grants are located across different layers of administration and how they add in controlling environmental problems.

Environment does not feature in the Indian Constitution as a separate entry under the schedule demarcating legislative rights. However, environment protection is clearly provided for in the Indian Constitution as a directive principle of state policy and judicial interpretation over the years has further strengthened this mandate⁴.

Environmental problems are not restricted to one place and its effects are intended to grow geographically. It requires not just the local government but the intervention of state and central government.

The need was of proper examination of relevant jurisdictions for better implementation of plans. Centre to take up plans over problems which have 'spill-over effect' and over different jurisdictions boundaries. State and local government to make implementation plans.

Since the Indian constitution came into being there was a constant need for a decentralized approach in dealing with the environmental problems. The 73rd and 74th amendments also paved way for it. India's national environmental policy of 2006 brought forth principle of decentralization that is to transfer power to state and local bodies and to empower them of having root level jurisdiction at which the problems arise and the legislations cannot focus upon.

³ Philip Mawhood, "The Politics of Survival: Federal States in the Third World", *International Political Science Review*, Vol 5(4), (1984): 521-531.

⁴ K. R. Sudhamam, "Has Niti Aayog pushed fiscal federalism forward", Deccan Herald, June 3, 2018.

Sharing of power in Indian federal system is biased towards the centre. Environment is one such matter in which only the parliament have the residue powers to make laws. The shared power between centre and state with respect to environment and natural resources are defined in states ownership of natural resources and public land along with legislative powers under article 246 read with list 1 and 2 of schedule 7.

Article 48A was added to part 4 of the constitution by way of 42nd amendment. It created duty for the state to protect and improve environment and safeguard forest and wildlife of the country.

The DPSP along with judicial interpretation over the years have strengthened the environmental protection. There are three main routes for environmental protection⁵:

- By applying a broader approach with regard to the judicial interpretations and including within the ambit of article 21 the right to a wholesome environment.
- By strengthening legislations in respect of international development.
- By enacting laws which will directly or indirectly affect or have implications on the natural environment example forest wildlife etc.

Therefore environment in general is a residuary subject, land and water are the state subjects and forest and wildlife are the concurrent subjects.

Initially wildlife and forest were under the state list. At time of emergency they were shifted to concurrent list by the 42nd amendment. The state's control over forests has been controlled since the amendment and enactment of forest conservation act.

T.N. Godavaram vs. Union of India⁶

The state needs permission from centre before diversion of forest lands for non-forest activity. This is an example where centre's exercises its control over the state even for minor activities.

There is a mutual dependency between the centre and state for effective devolution of environmental problems. Federal government depends on state or local government for implementations and the state government depends on the federal government for institutional and

⁵ Ajay Kumar Singh, "An emerging national federalism", in *The Union and the States: A Symposium on the changing federal dynamics in India*, ed. Yamini Aiyer & Louis Tillin, Seminar, May 2019.

⁶ (1997) 2 SCC 267

financial aid. The institutions mainly at the central level are established to govern matters of environment and natural resources which are an example of centre's dominance on the matter.

Forest

Indian forest work governed under forest act of 1927 before independence which focused on exploitation of the forest. Post independence forest conservation and protection act 1986 was formed which shifted the focus on conservation and protection of Indian forest.

Compensatory afforestation is one of the most important conditions stipulated by the Central Government at the behest of the Supreme Court for diversion of forestland for non-forest activities⁷. A 2004 GoI notification provided for creation of a Compensatory Afforestation Fund and that the monies received in CAMPA (Compensatory Afforestation management and Planning Authority) from a State or the Union Territory shall be used only in that particular State or the Union Territory. The Supreme Court in its judgement dated September 2005, it directed „that ordinarily expenditure shall be incurred in the particular State or Union Territory but leaving it to the discretion of the CAMPA to also incur expenditure in other State or Union Territory.

Land

Land is a State subject and rights in and over land and land tenures, land improvement are within the State's⁸ jurisdiction and for acquisition and requisitioning of property, both the parliament and legislature of states have the power to legislate and devolution of power with respect to land improvement are with panchayats as per the 11th schedule.

Water

Matters related to water are dealt in both the list. The state list has entry 17 which covers water supplies irrigation canals drainage etc. where the entry 56 of list 1 deals with inter-state river valley accept. State body maps out the outline to conduct and guide programs on water control and prevention⁹ whereas the central body has the supervisory role overstate bodies to ensure coordinated action among them.

⁷ Niranjana Sahoo, "COVID-19 and cooperative federalism in India: So far, so good", ORF Expert Speak, 30 April 2020

⁸ Entry 18, List II, Schedule VII, Constitution of India

⁹ Section. 16 of Water Act.

The Water (Prevention and Control of Pollution) Act, 1974. It vests the authority in Central and State Pollution Control Boards to establish and enforce effluent standards in mines and processing plants. Similar to the Water Act, the Air Act, 1981 provides for the prevention, control and abatement of air pollution.

The State boards are assigned functions of conducting comprehensive programs of pollution control in the state. The State boards not only lay down effluent discharge standards but are also responsible for complete monitoring of compliance of such standards. They may also evolve economical and reliable methods of treatment of sewage and trade effluents.¹⁰

Biodiversity

The National Biodiversity Authority grants approval to use genetic resources and the associated knowledge for commercial utilization by foreign nationals and entities. The State Biodiversity boards grant similar approvals to domestic entities.

The biological diversity act 2002 was enacted in furtherance of abiding by the objectives of the Convention on Biological Diversity 1993, to which India is a signatory. Created three tier system which comprises of national biodiversity authority be at the top state biodiversity board and biodiversity management committee¹¹. There they are interested entrusted for protection of biological diversity and intellectual property associated with them.

HIGHER EDUCATION

The relationship between education and federalism goes back to the colonial period when the Sadler Commission in 1917 made education as state subject while allowing central government considerable coordination powers. After India became independent, the constitution framers continued to keep education under the domain of state governments, while vesting the Union government with major responsibilities to ensure equity and standard in education.

The game changer was the 42nd amendment to the constitution in 1976 which dramatically altered the balance in favour of the Union government.the 42nd Amendment moved education to

¹⁰ Section. 17 of Water Act.

¹¹A.K. Singh, Union Model of Indian Federalism. (New Delhi: CFS & Manak Publications, 2009).

Concurrent list. The implication of this change was that it made education a “joint responsibility”¹² whereby both Union and states became “equal partners”. The trends of centralization in education were furthered by the passage of the National Policy of Education (NPE) in 1986.

In 1947 education was a state subject. In 1948 university education committee was appointed which suggested making education a concurrent subject. The recommendations were not accepted but entries in list one were made which gave for reaching powers to the centre.

- Entry 63-66 dealt with the problems of higher education. The most significant of these was entry 66 because it dealt with coordination and determination of standards of institutions in higher education. Through this the centre got over all power with respect to higher education. The UGC act AICTE along with other central coordinating bodies’ derived mandate from entry 66.
- Entry 25 of list III is with regard to technical medical education etc.
- After 42nd amendment in 1976 education was made a concurrent subject. Union government role in suggestion suggesting free and compulsory education on their account of cost and significance is provided in article 45.
- Article 46 provides for equal educational opportunities between different geographical areas and different sections of the society.
- Article 350A ensures safeguard of cultural interest of the minority groups it also ensures provisions of adequate facilities to receive primary education through their mother tongue at least.

A strong hold by the union over educational sector was established when economic and social planning was made a concurrent subject. It directly and indirectly had an impression of control over the educational sectors¹³.

The three ways in which union government intervene in education are:

1. Central sector in education

Central universities and schools are a part of this. NCERT, CBSE, UGC are under the jurisdiction of union in every aspect.

¹² Mitra and Pehl, “Federalism”, 43-55.

¹³ Ashutosh Varshney, “How has Indian Federalism done,” 43-46

2. Centrally sponsored sector

Union government assumes responsibility of planning development design funding and the state government is responsible for the implementation and execution of such universities.

Examples are promotion of sanskrit and hindi in non hindi speaking states. Educational tours etc.

3. Centrally assisted sector

The unions though actively interested are submerged in the state plans. Financial responsibilities are shared among the union and the state. Examples are enrollment of handicapped students in integrated school.

However recently the distinctions between centrally sponsored; and centrally assisted sectors are dimmed and they are together referred to as a centrally sponsored schemes. Important examples of this are sarv shiksha abhiyan, mid day meal, rashtriya madhyamik shiksha abhiyan, rashtriya uchchar shiksha abhiyan, scholarship schemes etc.

Initially unions aim was to establish high quality central institutions like IITs, IIMs etc. Its aim was to establish regulatory and funding bodies to ensure quality coordination planning and standards. They were well funded universities and did not have the burden of affiliated colleges; whereas the state focused on expanding access to education rather than on maintaining the quality. Large number of state government and public colleges were established in different states. The constitution provides for reservation quotas to correct historical disadvantage of marginalized groups for greater access to higher education. It also support for the low cutoff of the scores in higher educational related exams.

With respect to the teaching staff; teachers appointed by union have uniform norms and salary prescribed by UGC. In state appointed teachers though have a similar pay scale but the service conditions are regulated by the respective state governments.

Through grant in aid mechanism state government was able to exert more pressure over private college governance appointment fee structure etc. State public universities are influenced by the head of private colleges. Such private colleges receive various kind of development assistance

land at concessional price tax concessions rebate etc. State universities receive development grants from UGC and maintenance grants from state government; whereas central universities are fully funded by UGC.

In terms of budget the relative portions that is the share in GDP plan outlay total budget etc. talk about the priority that union and state government have towards higher education. There is an equal and fluctuating pattern of partnership between state and union government in terms of spending on higher education.

On 30 July, the Union Cabinet led by Prime Minister Narendra Modi approved the new National Education Policy (NEP) 2020¹⁴, paving way for nation-wide sweeping changes in school and higher education sectors. It will replace the 34-year National Policy on Education (NPE). A standout feature of the new policy is that it has taken the 2030 Sustainable Development Goals into account.

Disparity in relation to the amount spent by centre on state level higher education with respect to the massive amount of control it has over them has been observed. Higher education has been a subject of constant push and pull at the hands of central and state governments. The lack of cooperation and understanding is wearing and tearing the system of education. Changing political nature of government at the centre and state levels are adding to the same. A clear pattern which is being shocked out is with respect to shared responsibility which is that the union transferring the power responsibility of developing higher education to the states and the states are for the transferring it to the private forces available in the market.

Conclusion

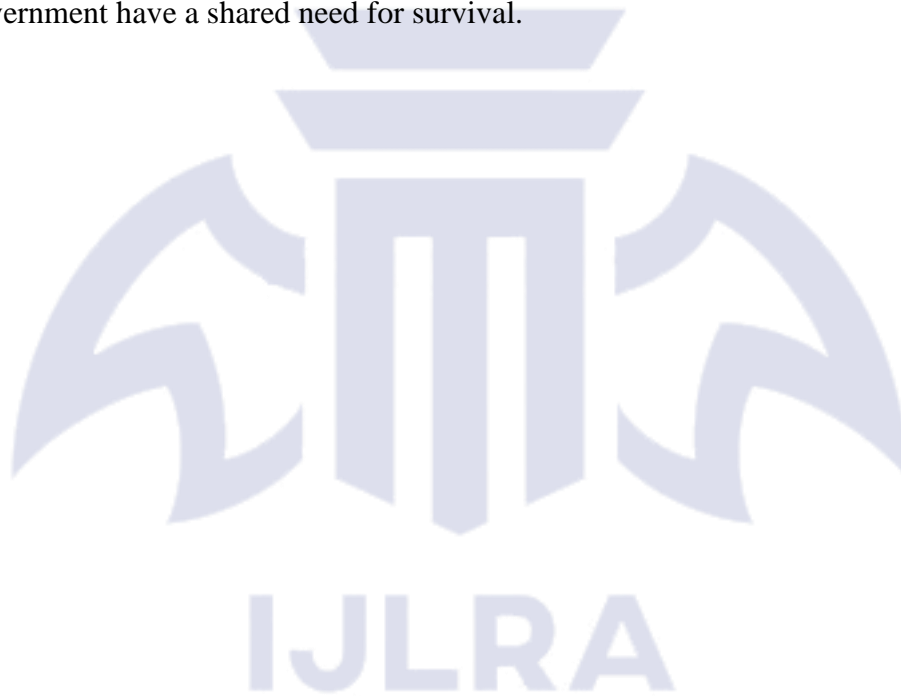
This paper has made two key cases: one, that the intrinsic construction of the Indian polity fortifies the Union government more than the states, and secondly, the attempts of the Centre to politically control the local/ regional political scene effectively serves the Indian federal administrative plan. The assorted territorial goals have figured out how to continually stand up for themselves, bringing about the decentralization of government in India.

¹⁴ Commission on Centre-State relations, Report Volume 1, 2020

In any case, a few changes at the institutional and political level can strengthen and nourish the roots of federalism in India, such as

- appropriate usage of the institutional system of the inter- state Committee should be guaranteed to foster political goodwill between the centre and the states on argumentative policy approach issues.
- the progressive broadening of the financial limit of the states must be lawfully ensured without lessening the centre's portion

The suggestions given by the Punchhi Commission¹⁵ in 2010 are significant for strengthening and reinforcing Indian federalism. Regardless of every one of their tussles, the union government and the state government have a shared need for survival.



¹⁵ Commission on Centre-State relations, Report Volume 1, 2010