

Co-Operative Federalism is the Way Forward

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Let me begin by saying that we often make or create confusion between what is federalism and what is decentralisation and I have seen quite a number of studies where the two terms have been used interchangeably. To me it appears that federalism has to be defined separately from decentralisation. Federalism is the coming together of equal partners who come with a common goal and share powers and jurisdictions. In the case of decentralisation, it is one superior entity which is partly decentralising its powers to the units below and there is a spirit of condescension, in this you know, I will give only this much and not more. And Shri N.K. Singh in particular will remember representing Bihar as he does in the Rajya Sabha on the question of special category states. It's up to the Government of India to give it or not to give it. So it is not an equal partnership and therefore this unequal balance very well describes the scene as it obtains.

Now the second point is that our Constitution, our polity, is markedly and decidedly non-federal. The first Article of the Constitution talks about India that is Bharat being a Union of States. It is not a federation of states. It is described as the Union of states and there are a number of articles in the Constitution which emphasise the overwhelming character, the unitary character of our polity. Article 3 gives the power to the Parliament of India to create a new state, to bifurcate states, to change the boundary of states, to change the name of a state. Now can you do it in a federation of states? This is a power which gives pre-eminence to the Centre, to the Union, through its Parliament. Then there are other articles of the Constitution which are clearly unitary in nature: Article 248 with regard to residuary powers of legislation; Article 249, power of Parliament to legislate with respect to a matter in the state list in national interest; Article 257(2), giving directions to a state; Article 271, surcharge on certain duties and taxes not to be shared with the states. And two former revenue secretaries here will agree with me that this is a typical tactic which is adopted by the Government of India when you don't want to share something with the states, so you don't impose a new tax, you impose a surcharge because that money is wholly yours. Then Article 280, Finance Commission, I am referring to it because Finance Commission is appointed by the Government of India. It consults the states, but the states have no role in the appointment of the Chairman of the Finance Commission and the members of the Finance Commission. And finally, Article 356 which as we all know relates to President's rule.

Now when the Constitution was framed and given to the people of this country in 1950, all this was very well, because we had challenges and those challenges had to be met and therefore we created a Union of States and not a Federation of States because India had to remain united. Over a period of time, as these threats and dangers have receded and as NK said regional parties have emerged, states have decided to assert

themselves. The same Constitution is today being interpreted by the states in a different light and thus there is a pressure on the central government. This makes the central government cede more and more powers and jurisdiction to the state government, and therefore we are, despite provisions of the Constitution, progressing towards federalism where the states are demanding to become equal partners with a union government.

I referred to the Finance Commission. Take the case of the Planning Commission. The Planning Commission as we all know is not a constitutional body. It has been created by an executive order of the union government and it has continued all these years through decades without any statutory or constitutional position and we are all aware of the very important role that the Planning Commission plays in the devolution of funds from the centre to the states. Now I'll have a little more to say on this later but as far as devolution is concerned, I am not talking of other informal arrangements which the finance ministry may make from time to time to help a state.

Under our system, the devolution of funds to the states takes place through the Finance Commission award and through the Planning Commission allocations. And again as NK said there is the National Development Council which is a body of the Planning Commission presided over by the Prime Minister who is the Chair of the Planning Commission and presides over the meetings of the National Development Council. It remains a matter of opinion about the kind of role that the NDC plays or can play. But in the Constitution there is a very important body called the Interstate Council. The Interstate Council is truly a constitutional body where the centre and the states are supposed to come together and discuss issues of mutual interest and then take a decision based on consensus between the centre and states and its not merely fiscal, it encompasses a whole range of issues and that's the reason why perhaps it has been located in the Ministry of Home Affairs and not with the Ministry of Finance.

Now as I was telling you, long years of single party rule both at the centre level as well as the states level led to a situation where we had almost the dictatorship of the centre operating at the state level also. But things started changing from 1967 when the first non-Congress governments were elected in some of the states and they started asserting themselves and today the situation is dramatically changed. Now there are apart from devolution as I said, a number of issues, where the centre has to necessarily work with the state governments. We are all aware of the fact that the state governments' accounts, except for Jammu & Kashmir, are maintained with the Reserve Bank of India. They are allowed certain overdraft facilities and it used to be a very live issue some years ago where the states were always hand to mouth and they would go to the Reserve Bank of India or come to the Ministry of Finance to enable them to draw more than what their limit of overdraft with the RBI was, but now the situation has changed. The fiscal deficit of the states today is much better than of the central government and this is thanks largely to the Fiscal Responsibility and Budget Management Act that was passed by Parliament when we were in government, implemented by this government, and then through the Finance Commission we persuaded the states to adopt similar legislations. I dare say that the states have done

much better in observing the tenets of this Act than the Government of India has done. We have thrown it out of the window, that's another matter.

But take for instance the case of Agriculture Produce Marketing Committees (APMCs), which is a very major issue in our agriculture because if something militates against making India a common market, it is the APMCs and you cannot abolish it because it is a state legislation, so you have to work with the states to moderate it or get it abolished. I remember we had started a number of discussions in the Interstate Council sub-committee with the state governments on the question of abolition of APMCs without much success. Here I will recall an incident where we were discussing the VAT with the state finance ministers and I think the finance secretary in that meeting of the Government of India dared to suggest that the states should abolish the tax on the trade of grains, food grains which will help reduce prices. The finance minister of Haryana lost his temper so badly that one thought that he might even assault the finance secretary of the Government of India. He had to be restrained and as you know, the finance secretary had only made a suggestion.

There is another issue - Essential Commodities Act, which the states implement. Now you change section 7 of the Essential Commodities Act as we did but you have to carry conviction with the state governments because they are the ones who have to implement the provisions of this Act. I remember a series of discussions which I had with the state governments before we were able to amend section 7 of the Essential Commodities Act with regard to storage, hoarding, unfair trade practices etc.

But the most important issue today of course between the centre and the states is the Goods and Services Tax. Earlier it was the Value Added Tax and I can tell you from personal experience that when I started the process of introduction of the Value Added Tax, we had already done it at the central level through CENVAT and this had to be now implemented at the state level and the states sales tax had to be replaced by VAT. We had long meetings with the state finance ministers, and again claim credit for the fact that I created a body at that point of time which has survived the test of time and has today become a very important organ of centre state co-operation and that is the Empowered Group of State Finance Ministers, not a constitutional body, but a body which is playing a very important role today.

And I remember in those discussions, we were only acting as facilitators, getting the states together to sit down, discuss what the VAT should be like, what the legislation should be like, what the rules should be like and it was after very detailed and long meetings that some kind of a consensus was worked out between the centre and the states with regard to VAT which has been now implemented. But I remember for instance the representatives of the Government of Pondicherry came to me and they said that this was against the assurance that Pandit Nehru had given to Pondicherry, you can't impose VAT. I said we are not imposing VAT, we are persuading you to adopt VAT. And VAT is a system of taxation which can unravel very quickly if all the states do not simultaneously join it. Fortunately, VAT has happened - value added tax has happened in our country, and now we are moving to the Goods and Services Tax.

The Goods and Services Tax (GST) has many complexities and this is the first attempt which is being made to change a very important part of our Constitution. I don't know ultimately whether some Supreme Court judge will say this is part of the basic structure of the Constitution and strike it down. I don't really know. I am very seriously making this point because there are, as we are aware the Union List, the State List and then the Concurrent list and powers of taxation have been directly given to the states under the State List. Now what we are trying to do is to change all that and have one tax which is the GST, common to the centre and to the states. It is complex because we are taking away most of the powers of the state governments and introducing a system which will be very complex to operate. It can operate only if we have a first rate information technology platform otherwise the kind of problems that let's say NK Singh encountered as revenue secretary with regard to set-offs, you know, refunds with regard to Central VAT. These are issues which will arise and can completely debilitate GST if we don't have a very efficient system of information searing. But GST is something which has created fright among the state governments and they are demanding that we should have some powers still left to impose taxes they wish without reference to the central government.

There are issues between states, there are issues among states and there are issues between the state governments and the Government of India. The former finance minister who now sits in the Rashtrapati Bhavan had introduced the GST Constitutional Amendment Bill in Lok Sabha. The Bill was referred to the Standing Committee on Finance, which I chair. We have sent our report to Parliament and through Parliament to the Government of India, but there have been statements by the Prime Minister and the Finance Minister that there is no way in which GST can be introduced within the life of this Lok Sabha and will probably have to have a look at it subsequently.

But I am on a different point - when I went through the Constitutional Amendment Bill, I noticed two things, one was we were amending, going to amend, the Constitution but the Constitutional Amendment Bill--I don't know whether Sunil Mitra had something, he probably had something to do with it, and he will please pardon me when I say that, the Constitutional Amendment Bill will be an enabling legislation. After which the Government of India will pass its law, the states will pass their laws, and then there will be rules framed - that is the process of legislation. Now the Constitutional Amendment Bill is so detailed that things which should be in the rules have been included, or are sought to be included, in the Constitution Amendment Bill. It will make life so difficult because every time you want to change a little thing you will have to come back to Parliament, go to the state legislatures to amend this part of the Constitution.

So we have made our recommendations, but the second point which I'd like to make is that while the states are afraid of this GST and I have many concerns, nobody is airing the concerns of the Government of India. Nobody, and we have called the stakeholders, we called the Ministry of Finance, called the experts, called the others, nobody is bothered about what is going to happen to the functioning of the Ministry of Finance, and the making of the budget of the Government of India. Because this legislation has,

and when it comes, will have a GST Council presided over by the Finance Minister of India but the deputy chairperson of that body will be a state Finance Minister. Decision will be taken either unanimously depending on what ultimately the Government of India decides or by two-thirds majority. Clearly the states will have a majority in the GST Council, and I was just telling you about surcharge. Can the Finance Minister of India impose a surcharge and get away with it? The GST Council will reject it, the GST council will say whatever you may do, we must have our pound of flesh. How will you prepare the budget, will you take the budget to the GST Council and get it approved - part B of the budget, which deals with taxation. I have a feeling that the Government of India is surrendering far more authority under the GST than the states are, but in the Government of India, nobody seems to be worried so be it, but a future finance minister who takes office after the GST comes into force will encounter all these problems.

Now I refer to the Planning Commission. Planning Commission has emerged has what shall I say a new DAITYA. It is something which the Constitution does not allow. The Planning Commission instead of engaging itself in perspective planning, , long term planning, is today trying to micro manage the states, micro manage the states' finances and states functions. And I remember I had worked in my civil service days as principal secretary to a Bihar chief minister who was one of the brightest politicians I have ever met, Mr. Karpoori Thakur. Mr Thakur came to the Planning Commission for a meeting with the deputy chairperson one day or he probably made this point in the meeting of NDC. He said where are these wise people coming from; these wise people are coming from the states. So when my officer comes and sits in the Yojana Bhawan, he acquires such knowledge and wisdom that he will sit in judgement over the officers who are working at the state level.

And the Government of India, its line ministries which have vested interests have created over period of time a plethora of schemes, centrally sponsored, which are supposed to be implemented by the state governments, and these schemes have varying funding patterns, some 80/20, some 75/25, som 60/40, 30/70, there is no prescribed rule about what the funding pattern of a certain scheme of the Government of India will be. There is no standard rule like the Americans have when they deal with the diplomats, they have a standard procedure, we don't. So what is happening, even after the present finance minister persuaded the Planning Commission and the line ministries to reduce the number of schemes, the total number of schemes which are being run by the Government of India and implemented by the states is 149 or so. You go to any district of this country and ask the District Magistrate, the Deputy Development Commissioner, the Block Development Officer, the Panchayat, the Zila Parishad, about the number of schemes are they implementing. Nobody will be able to count all these schemes because they have lost count. This is one of the worst systems that we have perpetrated in our polity - Government of India's schemes. And therefore in the Parliamentary Finance Committee we have suggested that the total number of schemes run by the Government of India should be reduced to something like 10 or 12.

You can't have every scheme as a flagship scheme. Sheep rearing is a flagship scheme of the Government of India - and there is one in my constituency where sheep have

long vanished. There are only people, persons, who are running the sheep farm. I mean it's ridiculous in the extreme, and every time nobody is prepared to accept zero budgeting. There is no review in the Planning Commission. Every year we go on sanctioning funds one after the other, and let me also tell you that every year there is a slanging match between the Planning Commission and the Finance Ministry with regards to the gross budgetary support. When Mr. N.K. Singh and Mr. Montek Singh Ahluwalia were in the Finance Ministry, they used to fight alongside me with the Planning Commission to say how GBS should be restricted. When they went to the Planning Commission, they became warriors of the Planning Commission. About how much GBS should be made available and every time it goes to the Prime Minister for arbitration and then he passes the final word. Then once the GBS is decided, then the sectoral allocations are made by the Deputy Chairperson of the Planning Commission, not by the Finance Minister.

So what is the plan allocation for agriculture or rural development or anything which is under plan will be determined by the Planning Commission, and the Deputy Chairperson of Planning Commission and no one defends the allocation of the Planning Commission in the Parliament. This is one of the major lacunas in our system. Once when I told a Deputy Chairperson of the Planning Commission, when I was Finance Minister, in front of the Prime Minister, that I will have to stand up and defend these allocations with which I have nothing to do, and he was not very happy with the remark. So the Planning Commission needs to be restricted, in fact at a seminar in the Stanford University where I had gone, thanks to N.K. Singh, I had made a presentation where I had said that the Planning Commission should become a Perspective Planning and Implementation Commission and they should stop interfering with the state governments in their day to day functioning and whatever be the allocations, you make 100 per cent allocation for these 10-12 flagship schemes and for the rest just transfer the funds to the state governments and let them decide what they want to do. This is the formula that we had followed when we had in our time started the Pradhan Mantri Gram Sadak Yojana - 100 per cent funding, 100 per cent monitoring, otherwise you have no monitoring. I understand that now we have an Independent Evaluation Office, and I wish the head luck because it's a difficult thing that he has taken upon himself. So if there is one body which is the biggest obstacle in the path to federalism in our system, I'll put my finger at the Planning Commission of India.

Now the Government of India is also the banker of last resort. This is the point I was alluding to earlier, that whenever despite all the chant of federalism, that the states, whatever their political complexion may be. The point remains that they come to the Government of India whenever they are in fiscal difficulties and the Government of India has to find the wherewithal to be able to help them. There are instances galore, of how often we have gone out of our way to help state governments and the most, the greatest satisfaction that I derived in my tenure as finance minister was not a letter for appreciation from a BJP ruled state chief minister but from Kerala which was being ruled by the CPM. The then chief minister Mr. E. K. Nayanar wrote a beautiful letter to me appreciating the fact that I had been always ready to help the Kerala government.

Finally I'll end by saying that whatever union federalism, decentralisation, now to the fourth level of our Panchayats that is taking place, is fine. But what we need in future in our polity, what we need truly is co-operative federalism. This co-operative federalism and one example of this is the Empowered Group of State Finance Ministers, where we have co-opted them, where they have started playing a very important role and I think in various other areas where we have to deal closely with the state governments. It will be a useful thing if we created similar bodies for instance why not have a Standing Committee of State Home Ministers to discuss various issues relating to not only law and order but the overall security scenario of this country. We have meetings called by the central ministers but there is no appointed body to be able to fully involve itself with its own secretariat to be able to talk to Government of India on equal terms. So unity of purpose at the state level, a more liberal approach by the Government of India and co-operative federalism, to my mind is the way forward and I hope we'll have the political wisdom to create that kind of a polity in our country in the very nearest future.