Federalism in India: A Critical Appraisal

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Abstract
This article describes the features of India’s federal system and process, and seeks to explain their effectiveness in terms of their symbiosis with the projects of nation-building and state-formation in India. This is done through a presentation of the basic structure of federalism in India and its political constraints. Federalism, along with parliamentarism, is axial principle of Government in India. Indian federalism is not a static entity. It has been evolving over the years form a predominantly parliamentary system. The flexibility of the federal process has made it possible for the state in India to accommodate ethno national movements in the form of new regions, thus gradually increasing both the number of states and the governability of the union. In this article we examine federal Process in India, structure, asymmetric federalism, and the interaction between globalization and India’s federal system, in the context of the country’s past decade of economic reform.

Keywords: Federalism, Asymmetric federalism, Indian federal system

Introduction
Federalism is a form of government in which the sovereign authority of political power is divided between the various units. This form of government is also called "federation" or a "federal state" in the common parlance. These units are Centre, state and panchayat or the municipalities. The centre also is called union. Framed by the Constitution of 1950, Indian federalism serves the second largest population in the world, comprising an unparalleled multiplicity of cultures, religions, languages, and ethnicities. The original federal design of 1950 drew its structure from the British Government of India Act, 1935, and its inspiration from the idea of centralized planned development. But there was vast difference between administering a colony- albeit the “jewel in the crown”1 in a vast sprawling empire and creating a federation to bring diverse people together with a vision of social justice for all. Anxious that this new “idea of India”2 should not fall apart, the 1950 constitution gave extensive powers to the Union legislature and executive to keep the nation together, underpinning a degree of dominance for the Union government, centred in New Delhi, which went well beyond the imperatives of economic planning.

Federalism is a basic feature of the Constitution of India in which the Union of India is permanent and indestructible. Both the Centre and the States are co-operating and coordinating institutions having independence and ought to exercise their respective powers with mutual adjustment, respect, understanding and accommodation. Tension and conflict of the interests of the Centre and the respective units is an integral part of federalism. Prevention as well as amelioration of conflicts is necessary. Thus, the Indian federalism was devised with a strong Centre. Federalism with a strong Centre was inevitable as the framers of the Indian Constitution were aware that there were economic disparities as several areas of India were economically as well as industrially far behind in comparison to others. The nation was committed to a socio economic revolution not only to secure the basic needs of the common man and economic unity of the country but also to bring about a fundamental change in the structure of Indian society in accordance with the egalitarian principles. With these considerations in mind the Constitution makers devised the Indian federation with a strong Union.

Federal Process in India: Phase of Development
The framers of the Indian Constitution were keen on federalism as a functional instrument for the creation of an Indian nation and a strong, cohesive state. The leading politicians of the immediate post-Independence state were besieged by threats to India’s security both from outside and inside, and faced the challenge of development through having perceived and chosen centralized economic planning as an optimal method by which to reach that objective. Thus, both for constitutional and political reasons, the institutionalization of a strong federalism in the Indian system appear to have been seriously compromised from the outset. Nonetheless, the political process has been able to adapt to this design and in many, though not all, cases mollify it when necessary to safeguard regional interests.

The first phase of federalisation of the political process extended from the time of Independence to the mid-1960s, Prime Minister Jawaharlal Nehru took democracy seriously enough to face the enormously expanded Indian electorate (in 1951, in the first general election held both to the national parliament and the provincial assemblies), providing for full and free participation in the election. He took the chief ministers (all of whom, with rare exceptions, were members of the Indian National Congress (INC), the party of which he was for part of this period the President and, of all this period, leader of the parliamentary party) seriously enough to write to each of them every month in an effort to keep them informed of the state of the nation and the world, and to solicit their opinion in an attempt to build a national con-
sensus. The INC, which had already embraced the federal principle back in the 1920s by organizing itself on the basis of Provincial congress committees based on linguistic regions, institutionalized the principle of consultation, accommodation and consensus through a delicate balancing of the factions with the ‘Congress System’ (Kothari 1970). It also practised the co-optation of local and regional leaders in the national power structure, and the system of sending out Congress ‘observers’ from the Centre to mediate between warring factions in the provinces, thus simultaneously ensuring the legitimacy of the provincial power structure in running its own affairs as well as the role of Central mediation.

The second phase of the development of Indian federalism began with the fourth general elections (1967), which drastically reduced the overwhelming strength of the congress party in the national Parliament to a simple majority and saw nearly half the states moving out of Congress control and into the hands of opposition parties or coalitions, and led to a radical change in the nature of centre-state relations. No longer could an imperious Congress Prime Minister afford to ‘dictate’ benevolently to a loyal Congress Chief Minister. However, even as the tone became more contentious, the essential principles of accommodation and consultation held between the crucial 1967-69 periods of transition. The congress dominated Centre began cohabiting with opposition parties at the regional level. The balance was lost once the Congress party split (1969), and Prime Minister Indira Gandhi took to the strategy of radical rhetoric and strong centralization of power structure. Although the framers of the Indian Constitution were far-sighted enough to opt for a federal set-up, they were not entirely uninfluenced by the then national mood. The word ‘federal’, therefore, is not even mentioned in the Constitution.

Article 1 (1) of our Constitution says- “India, that is Bharat, shall be a union of States,” Dr. B.R. Ambedkar said in the Constituent Assembly that the word ‘union’ instead of the word ‘federal’ is used for two definite advantages, viz. (a) that Indian federation is not the result of an agreement by the units, and (b) that the component units have no freedom to secede from it. Dr. D.D. Basu believes that the difficulty of any treatment of federalism is that there is no agreed definition of a federal state. A liberal attitude towards the question of federalism is, therefore, inevitable particularly in view of the fact that recent experiments in the world of constitution making are departing more and more from the pure type of either a unitary or a federal system. Hence, Dr. Basu is of the opinion that the question whether a state is federal or unitary is one of degrees and the answer will depend upon “how many federal features it possesses.”

The classical case of federalism of Dr. K.C. Wheare, it should be noted, has undergone a serious transformation owing to significant changes in social, political and economic conditions. It is for this reason that a modern federal system is said to fall “somewhere between a unitary government and a loose association of sovereign states.” That is, it has developed a difference of kind with a confederal model; it has brought about a Unitarian system. A federal system involves certain essential characteristics and they are very much present in the Indian Constitution.

1. In the first place, federalism stands for the supremacy of a written and a rigid constitution. It is very clearly laid down in the Constitution that no organ of state can transgress its area of authority. It is rigid so far as the amendment of federal is concerned.
2. In the second place, federalism involves division of power between the Centre and States. In India there are three lists—Union, State and Concurrent—the Centre shall have an overriding authority in matters of items contained in concurrent list. The residuary powers are given to the Centre. The Union list includes defence, railways, airways, foreign policy, post and telegraph, currency, war and peace etc.

3. Another requirement is the existence of an independent judiciary to act as the guardian of the Constitution. The Indian constitution provides for the Supreme Court with its original jurisdiction to settle the disputes between the Centre and the States and the States interests. It has the word to interpret the constitution and its verdict is final.

4. Bicameral legislature: the Indian Parliament has two Houses, with the Upper House Known as the Rajya Sabha and the Lower House being known as the Lok Sabha.

India’s system of government is divided between the Central level and the federal units (currently twenty-eight states and seven Union territories, including the National Capital Territory of Delhi). The Constitution of India provides for a relatively clear vertical division of powers between the Central legislature (referred to in Indian usage as the Union government) and the state legislatures, both constituted through direct elections, respectively, in the Seventh Schedule. The Union controls the ‘Union list’, consisting of areas that involve inter-state relations, national security, and foreign affairs. Subjects of primary interest to the regions, called the ‘State list,’ encompassing law and order, culture and education, are under the jurisdiction of the state. The ‘Concurrent list’ holds subjects of overlapping interest, like land reform laws or issues relating to cultural or religious minorities, where both Centre and state can make laws with the understanding that in case of conflict, the Central laws will take precedence. Subjects not specifically mentioned in the Constitution, called the residuary subjects, come under Central legislation. Each list also mentions how the two governments can raise income through taxation. In case of a Conflict of jurisdiction, the Centre or the state can move the Supreme Court to have the point of law authoritatively interpreted.

A number of formally constituted organizational units execute the responsibilities allocated to them under this constitutional framework, sharing power over the affairs of a political territory in two senses, namely having joint or competing powers over the same matters on the one hand, and having separate powers over separate matters on the other. Ideal typically, in a multi-level system of government such as a federal political system, the sharing of powers of this kind can be conceived of as involving three types of sharing (in the sense of separation, but also fusion): vertical power-sharing, horizontal power-sharing and transversal power-sharing. The term vertical power-sharing describes the allocation of certain issue areas and competences in decision making to be handled by either the Central, sub-national or the local level of government, denoting the division aspect of the allocation of powers, rather than the fusion aspect. The term horizontal power-sharing describes the sharing of competence at the Central and the sub-national levels between the branches of government, denoting the fusion as well as the separation-aspect of sharing mechanisms, as well as the sharing of powers between sub units in a federal political system in its separation and fusion variants. By transversal power-sharing is meant, among other things, a structural and processual sharing of powers between levels of government, such that it involves, in addition to the superior level unit, one or more or all lower-level units (such as the states in the Indian case) in its fusion-variant. The non-hierarchical and informal modes of joining levels and units through coordination mechanisms are part of the phenomenon that has been described in another regional context as ‘political interlocking’ in cooperative federalism.13

At the Union level, a tripartite sharing out of power, referred to here as a horizontal allocation of powers, allocates different functions of government to the executive (President and Council of Ministers/Prime Minister), the legislative (Union Parliament, consisting of Lok Sabha and Rajya Sabha), and the judicial branches of government (Supreme court of India), although there is significant overlap in personnel between the legislative and the executive Minister and all other ministers must be members of either House of Parliament or lose their office after a period of six months (Article 75, Constitution of India). This division is mirrored to some extent at the state level with the institutions of chief ministers and their cabinets, state legislatures (unicameral in most, bicameral in some states) and the respective high courts, (although high courts apply Union, as well as state laws, and their organization is highly centralized).

Another set of units, such as the Finance Commission, the Inter-state council, the Inter-state tribunals, the National development Council, and a number of informal for a serve as bridging mechanisms between the levels of government and between states, thus enabling transversal as well as horizontal power sharing. The Inter-state council, which was set up for the first time in accordance with Article 263 in 1990, is a body that aims, despite not having legislative or administrative powers, at enabling consultation between governments at the state and the Union levels. It is constituted according to the Presidential order of 1990, under which it was set up by the Prime Minister, Chief Ministers of states and those Union territories which have legislative assemblies, gover-
nors of states under President’s rule and eight Union cabinet Ministers. Although its primary function to date has been the debate on reforming centre-state relations, the Inter-state Council also functions as an important policy forum for informal discussions on other political issues affecting the states.

The assignment of tax powers in India is based on a principle of separation, i.e., tax categories are exclusively assigned either to the centre or to the states. Most broad-based (in principle though not in practice) taxes have been assigned to the centre, including taxes on income and wealth from non-agricultural sources, corporation tax, taxes on production (excluding those on alcoholic liquors) and customs duty. A long list of taxes is assigned to the states. However, only the tax on the sale and purchase of goods has been significant for state revenues. This narrow effective tax base is largely a result of political economy factors that have eroded or prevented the use of taxes on agricultural land or incomes by state governments. The centre has also been assigned all residual powers, which implies that taxes not mentioned in any of the lists automatically fall into its domain.

The tax assignment system has some notable anomalies. The separation of income tax powers between the centre and states based on whether the source of income is agriculture or non-agriculture has opened up avenues for both avoidance and evasion of the personal income tax. Second, even though in a legal sense taxes on production (central manufacturing excises) and sale (state sales taxes) are separate, they tax the same base, causing overlapping and leaving less tax room to the latter. Finally, the states are allowed to levy taxes on the sale and purchase of goods (entry 54 in the State list) but not services. This, besides providing avenues for tax evasion and avoidance, has also posed problems in designing and implementing a comprehensive value added tax (VAT), as discussed further in Section 5.

In addition, since many of the Indian states are quite large in terms of population (with the largest dozen being comparable in population to larger European countries), devolution of powers to the states without any further decentralization below that level may still represent a relatively centralized federation. In practice, devolution of economic and political power to both the states and to local government bodies has arguably been weak as compared to other federal systems, since both constitutional assignments and the subsequent exercise of legislative powers have tended to be in the direction of greater centralization. Centralization has also been reflected in bureaucratic and judicial institutions and their interactions with the legislative/executive branch of government, as we elaborate below.

The primary expression of statutory constitutional authority in India comes through directly elected parliament-style governments at the national and state level, as well as nascent directly elected government bodies at various local levels. In legislatures at each level, there is the usual playing out of bargaining among individuals, factions and parties, as analyzed theoretically by authors such as Baron and Ferejohn (1989) and Inman and Rubinfeld (1997). Regional and personal factions have always been important in Indian politics, but the main spoils have typically been control of various ministries, rather than provisions attached to specific pieces of legislation. There have been some ideological factors at work in Indian politics (various shades of socialism, for example), but they are often dominated by material interests.

To the extent that the essence of federalism is based on representative democratic politics at the subnational level, the role of political parties in the interactions between central and state level politics is a crucial aspect of federal structures. To illustrate, consider the extreme case where government powers are notionally decentralized, with all residual powers assigned to the state level, but the national and all state governments are controlled by a single, rigidly hierarchical political party. Here the outcome will effectively be the same as in a centralized, unitary system, since decisions are made at the top of the political hierarchy. For example, during the Nehru era, the Prime Minister’s personal authority and prestige were combined with almost complete legislative control of the centre and the states by the Congress Party led by Nehru. In such circumstances, issues of centre-state relations were often played out within the ranks of the Congress party.

Over time, Indian political parties have embodied varying degrees of centralization, including the regional political bosses of the earlier Congress party, the tightly controlled personalized approach characteristic of the later Congress under Indira Gandhi, the more institutionalized hierarchy of the BJP.

More recently, following a provision in Article 263 of the Constitution, and recommendations of the Administrative Reforms Commission in 1969 and the Sarkaria Commission on Centre-State Relations in 1988, the Inter-State Council (ISC) was created in 1990, and has become a forum where some political and economic issues of joint concern can be collectively discussed and possibly resolved. The ISC includes the Prime Minister, state Chief Ministers, and several central cabinet ministers as members. While the ISC is merely advisory, and has been viewed as weak – especially since central governing coalitions give regional parties more direct say in policy (Majeed, 2002) – it has formalized collective discussion and approval of several important matters im-
pining on India’s federal arrangements, including tax sharing and inter-state water disputes. Another, similar, body is older than the ISC, but narrower in scope. The National Development Council (NDC) serves as a forum for bargaining over five year plan allocations (see below). The NDC is chaired by the Prime Minister, and its members include all cabinet ministers at the centre, Chief Ministers of the states, and members of the Planning Commission.

The next level of governance that embodies aspects of federal structures is the bureaucracy. Just as elected politicians ideally act as agents of their constituents, bureaucrats in turn act as the agents of elected officials. Bureaucrats, as career employees, are partly insulated from political whims and pressures, but ultimately in a democracy must be subordinate to elected representatives. Therefore a unitary, hierarchical bureaucracy cannot by itself negate a federal political structure in the same way that a powerful, centralized, national political party might. However, a centralized bureaucracy can act as the agent of such a political party, against the requirements of a federal system. There are elements of such action in the workings of Indian bureaucracy.

The framers of the Constitution have incorporated certain non-federal features in it such as single citizenship, single judiciary, a strong centre, appointment of the Governor by the President, unequal of representation in the Rajya Sabha and so on. All these indicate a tilt towards strong centre. The states have to work in close cooperation with the centre. The constitution is federal in form but unitary in spirit. The study of Centre-State relationship in legislative, administrative and financial spheres also clearly shows that the Centre is strong eras compared to the states. The Centre has been assigned a dominant role which became necessary keeping in view the assignment system in the constitution and central intrusion into the states’ domains in the working of the federation. Unlike the classical federations like the USA, Indian federation is not an ‘indestructible union of indestructible states’. Only the union is indestructible and the states are not. Article 3 of the Constitution vests the Parliament with powers to constitute new states by separating territories from the existing ones, alter their boundaries, and change their names. The only requirement for this is that the ‘Bill’ for the purpose will have to be placed in the Parliament on there commendation of the President and after it has been referred to the relevant state legislature for ascertaining their views (their approval is not necessary). The federation is not founded on the principle of equality between the union and states either. The central government in India has the powers, and it actually does invade the legislative and executive domains of the states (Chanda, 1965; Rao and Sen, 1996; Rao and Singh, 2000).

The distribution of power between the centre and states on the one hand and the treatment of different states on the other in the Indian constitution owe much to historical and political factors. Although the Cabinet Mission sent by the British Government in 1946 saw no virtue in partitioning undivided India into two different independent nations, it also recommended that the independent country should be governed by a federal constitution with the central government dealing with only foreign affairs, defence and communications, remaining vested with two groups of provinces, one predominantly Hindu, and the other predominantly Muslim. However, the insistence of the Muslim League to have a separate nation for the Muslims led to the formation of Pakistan comprising Muslim majority regions of the north-west part of the subcontinent and eastern part of Bengal. In the event, it was no longer necessary to create a weak federal government. Instead, the founding fathers of the constitution decided to have a federation with a strong central government to hold together the diverse economic, linguistic, and cultural entities and to avoid fissiparous tendencies. Centralisation was also found desirable to unify the country, comprising regions directly ruled by the British and 216 princely states and territories.

Asymmetries in the Federal Structure

“Asymmetric federalism” is understood to mean federalism based on unequal powers and relationships in political, administrative and fiscal arrangements spheres between the units constituting a federation. Asymmetry in the arrangements in a federation can be viewed in both vertical (between central and states) and horizon-
Asymmetric arrangement in Indian federalism has a long history and goes back to the way in which the British unified the country under their rule and later the way in which the territories under the direct control of the British and various principalities were integrated in the Indian union. While the territories ruled directly by the British were easily integrated into the Union, the treaties of accession signed by individual rulers covered the integration of different principalities. The provinces ruled directly by the British had a modicum of autonomy and rudimentary form of parliamentary government as the British loosened the grip gradually from 1919 onwards. The Constitution that was adopted in 1951 it classified the states into four categories. The provinces directly ruled by the British were classified as Part ‘A’ states. The princely states which had a relationship with the Government of India based on individual treaties signed were classified as Part ‘B’ states. These included the states of Hyderabad, Mysore, Jammu and Kashmir and 5 newly joined unions of princely states. In the case of Jammu and Kashmir, the powers special powers were given in the terms of accession. The remaining princely states acceding to the union were grouped under Part ‘C’ states. Finally, the territories ruled by other foreign powers gaining independence (French and Portuguese) and areas not covered in the above three categories were brought under the direct control of the union to form Part ‘D’ states or Union Territories. Thus, the Union of India in 1947 began with a major asymmetry between British India and the princely states and even among the latter, the terms of accession differed depending on the bargaining strength. In almost all cases, the princely states surrendered whatever notional sovereignty they had to the new country of India, in exchange for guaranteed revenue stream: their “privy purses”. The nature of this bargain was clear – security and money in exchange for giving up authority or residual control rights. This is close to the standard view of federation as a political bargain, with the difference that the successors of the British in India, the Indian National Congress, were in an extremely strong bargaining position, even relative to the coalition of the princes. This was illustrated in the case of the exceptions to voluntary accession, such as Hyderabad, where military force (the authority over which was also inherited from the British) ensured integration into the new union.

In a multi-cultural nation like India, federalism ironically appears to be looked upon both as a bogy and as a saviour. This is particularly true of what is called “asymmetrical federalism”, which means a federation in which some of the federating units are accorded weightage under imperatives of compelling historical or cultural factors that create a desire for special or distinct constitutional recognition of their difference in relation to others. Indian federation is based on four kinds of asymmetries. First, there is a universal asymmetry affecting all units. For example, States in India are represented in the Rajya Sabha not on the footing of formal equality as in the United States of America but on the basis of their population (Articles 3[1] and 80[2] read with the fourth schedule). Thus, the State of Uttar Pradesh has 31 seats whereas States of North-East (like Meghalaya, Mizoram, Manipur) and Pondicherry, Goa have just one seat each in the Rajya Sabha.

Second, there are specific asymmetries with regard to administration of tribal areas, intra-state regional disparities, law and order situation and fixation of number of seats in legislative assemblies in relation to states of Maharashtra, Gujarat, Assam, Manipur, Andhra Pradesh, Sikkim, Arunachal Pradesh and Goa (Articles 371, 371 B, 371C, 371D, 371E, 371F, 371H, 371I). Article 371 provides that the Governor of Maharashtra or Gujarat would have a “special responsibility” for the establishment of separate development boards for certain backward regions of these States with equitable allocation of development funds and provision of facilities for technical education, vocational training and employment opportunities. Article 371B and C empower the President of India to ensure the setting up of a committee of the Legislative Assembly in the States of Assam and Manipur consisting of Members elected for tribal/hill areas to look after the welfare of those communities. Article 371D and E enjoin upon the President of India to ensure “equitable opportunities and facilities” for the people in different regions of Andhra Pradesh in respect of public employment and education and the establishment of a Central university in the State. Article 371F and I guarantee that the Legislative Assembly of Sikkim and Goa “shall consist of not less than thirty members”. The former Article also places on the governors of the State certain “special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of population” of the State. Article 371H “gives responsibility with respect to law and order” in Arunachal Pradesh and empowers the incumbent, i.e. the Governor to act in his “individual judgement: after consulting the council of Ministers.

The third kind of asymmetry in Indian federalism relates to a special kind of federating units that are called the Union Territories (UTs). The seven UTs have been created on various points in time. The reasons for their creation were varied. These areas were either too small to be States or too difficult to merge with a neighbouring State on account of cultural differences, inter-state disputes, the specific needs of the National Capital Territory, or their far-flung isolated location on the coasts. Originally, they were all administered directly by the Union through a centrally appointed administrator. None of these has a legislature but all are represented by at least on seat in the Lower House of the Parliament. The Parliament can either extend the jurisdiction of a neighbouring State to
Kashmir signed the Instrument of Accession to India to from Pakistan, asked for military assistance from India. to exercise the first option, but under a veiled aggression Crown and was granted the option to stay independent or Kashmir was freed from the paramount of the British Parliament, the Princely State of Jammu and Kashmir. Article 370 of the constitution of Union, and any other matter “with the concurrence of the Lieutenant Governor. This is presumably in view of the fact that Delhi is the National Capital Territory. The legislature of Delhi enjoys only concurrent jurisdiction. In case of conflict in regard to laws made by it and those made by the Parliament of India, the latter prevails. Pondicherry is represented by one seat each in the Lok Sabha and the Rajya Sabha. Delhi has seven Lok Sabha and three Rajya Sabha seats. Despite being called a State, Delhi is really a semi-state as some vital subjects like land, police and civil services are vested in the Union government. The Government of Delhi enjoys only concurrent jurisdiction in other subjects. Hence, there has been a long-standing demand of full statehood for Delhi. In case of Pondicherry, land, police and civil services are under the jurisdiction of the State Government.

There are special asymmetries relating to the States of Jammu and Kashmir, Nagaland and Mizoram (Article 370, 371A and 371G). The greatest degree of asymmetry in the Indian constitution concerns the State of Jammu and Kashmir. Article 370 of the constitution of India contains what it calls “Temporary Provisions” which provides that the legislative powers of the Parliament of India shall “correspond to matters specified in the Instrument of Accession” of the State to the Indian Union, and any other matter “with the concurrence of the Government of the State”. Here, it may be recalled that under the Independence of India Act, 1947 passed by the British Parliament, the Princely State of Jammu and Kashmir was freed from the paramount of the British Crown and was granted the option to stay independent or to join India or Pakistan. The Dogra Hindu Maharaja Hari Singh of this predominantly Muslim state decided to exercise the first option, but under a veiled aggression from Pakistan, asked for military assistance from India. Lord Mountbatten, who was still the Governor General of India, opined that India could not send its troops to a foreign State. Thereupon, the Government of Jammu and Kashmir signed the Instrument of Accession to India to clear the way for India’s military intervention in the situation. However, before India could liberate the entire territory occupied by Pakistani raiders, the United Nations managed to declare a ceasefire. The special status given to this State in the Indian constitution owes its existence to this peculiar circumstance of its integration to the Union of India. Since its accession, the state has been increasingly integrated with the Indian federation. This is the only State of India which has its own constitution framed in 1956 by the Constituent assembly of Jammu and Kashmir convened for this purpose in November 1951. The most notable feature that marks the relationship of Jammu and Kashmir with the Union of India is that an Act of the Parliament does not automatically apply to this State unless and until it is endorsed by the State legislature.

Similarly, Article’s 371A and G provide that a parliamenary statute to be extended to the States of Nagaland and Mizoram requires the consent of the legislatures of these States, if the law convened relates to religious and social practices of Nagas and Mizos, Naga and Mizo customary law and procedures, administration of civil and criminal justice affecting Naga and Mizo customary law and ownership and transfer of land resources of these States. The Nagaland Article also stipulates that the Government of Nagaland shall have “special responsibility” with respect to law and order so long as the “internal disturbances” in the Naga Hills Tuensang area immediately before the formation of that State continue.

The process of administrative reorganization of India focused on the creation of new boundaries based on the main principle of language. Typically, separate religious, caste, ethnic or tribal identities within these boundaries were not the basis for further divisions. One major exception to this has been the north-eastern part of India, where there is a distinct difference in ethnicity from the rest of India, and several strong divisions based not only on language, but also on culture and other traditions (“tribal”, if one wishes to use that term). This part of India contains the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura. Of these, only Assam has a population comparable to other typical Indian states. Most of these states were upgraded from the status of Union Territories, this recategorization giving them, at one level, a political status equivalent to that of larger states such as Bihar, Madhya Pradesh, and Uttar Pradesh. Each state carries equal weight in mustering the 50 percent of states required to ratify an amendment to the constitution. Furthermore, there are various clauses in Article 371 which accord special powers to north-eastern states. These provisions have been introduced through amendments, typically at the time of conversion of a union territory to a state, or in the case of Sikkim, after its accession to India. The safeguards provided to these states through
these special provisions include respect for customary laws, religious and restrictions on the migration of non-residents to the state. State legislatures are typically given final control over changes in these provisions. Thus, there are various provisions in the Indian Constitution to protect group rights, and to compensate for initial inequalities in the social system. Thus the constitution, while recognizing the idea of fundamental human rights at the individual level, does not assume an idealized initial condition of equality, either in pure economic terms or otherwise. Thus there are allowances for separate laws to govern different religious groups, and there are provisions for various kinds of “affirmative action” for extremely disadvantaged groups. The first kind of provision simply respects diversity (though this can create issues of unequal treatment across subgroups, e.g., women in two different religious groups). The second attempts to correct for specific inequities, recognizing that legislative equal treatment from very unequal initial conditions would not achieve desired equity goals. Conceptually, at this level of ethical or normative judgement, there is no difference between these provisions and the ones for the indigenous residents of north eastern states, except that the latter happen to be geographically concentrated into reasonable administrative units. If that is the case, then the relationship to federalism is not essential.

Indian Federalism in the Age of Globalization

In India, globalization has produced paradoxical results in the sense that while it has allowed more autonomy of action in favour of the state to reap the benefits of globalization, this has at the same time prepared the long-term basis of crisis in Indian federalism itself. First, the political autonomy of the liberal democratic states has been compromised in favour of the market. Second, the states have been engaged in fierce competition among themselves for foreign direct investment and SEZ models of development giving rise to a new division among the states such as forward and backward states, inter-jurisdictional competition in place of inter-state cooperation, and weakening loyalty to the “union”. Third, with the weakening of the welfare state, the newly created conflicts out of disparity in regional development, and widening inequalities following globalization remain unmitigated. Fourth, with the political autonomy of the liberal democratic state compromised in favour of the market, local governance is more and more exposed to direct penetration by global and corporate power structures. Finally, the gradual withdrawal of the very meagre welfare measures, and the relative absence of any social security, or safety nets, have meant that there is mass protest against globalization led by various forms of grass-roots political activism. This cuts into the very democratic basis of legitimacy of the party (ies) in power in the states.

Although it is commonly believed that globalization started in India from the early 1990s, the process had had its beginnings in the mid-1960s when LalBahadurShastri, then the Prime Minister of India (1964-66), set in motion a process of liberalisation so much so that in the initial approach paper on the Fourth Five-Year Plan it was stated: “within the broad framework of control in strategic areas, there is an advantage in allowing the market much fuller play”.

India’s liberalisation until the end of the 1960s took a variety of forms: 16 items were decontrolled in 1963; cement was decontrolled in 1966, and cotton in 1967; controls on investment were liberalized, and several industries were also decontrolled. However, the process of India’s liberalisation has since been slow and halting, and passed through phases, and even during the Emergency (1975-77) regime of authoritarianism and excessive state control, the process of liberalization, paradoxically enough, was broadened and accelerated! Hardgrave and Kochanek have noted: During the emergency, the government tried to further liberalize the industrial licensing policies, relax price controls, and provide tax incentives for industrial investment in an effort to accelerate the rate of economic growth.

What remained basically a guarded process of liberalization until the early 1990s became ever since a combined process of liberalization, privatization and globalization. The so-called ‘structural reforms’, as is heard a lot these days, encompass the combination: ‘decontrol and deregulation of industry, changes in monetary and fiscal policy, liberalization of trade policy, changes in foreign exchange regulations, encouragement of foreign direct investment, financial sector reforms, promotion of private foreign investment in infrastructure, partial privatization of public sector units, and the promise to enact labour reforms, and an exit policy that allows bankrupt private sector firms to go out of business.”

Since India is a federation (called a ‘Union of States’, constitutionally speaking), the states are the most significant strategic players in implementing the agenda of globalization. The Indian Constitution entrusts the states with the major tasks of development including infrastructural development. The reforms of the 1990s gave state governments more freedom to make policies independently, and this has extended the impacts of openness and globalization to the sub national level. In particular, while only the national government can determine import duties, state governments now can affect the incentives of foreign capital to enter their jurisdictions. From the perspective of an Indian state, capital from another country or from another state can be viewed through the same lens, and must be treated equally in typical policy environments. The final impacts of the entry of capital on a sub national government will therefore depend also on the internal mobility of capital and labor. Hence, in a federal system, attention must be paid to internal mobility of goods and factors, in addition to
Another federal aspect of India’s reform is that the decade of the 1990s has seen an increase in regional inequality in some dimensions. While inequalities may have widened within states as well (for example, the coastal and urban areas of Maharashtra and Gujarat versus their interior rural regions), the main focus has been and will be on widening disparities across the states themselves. This is natural, given the size and political importance of the states, and the fact that the states are the direct and indirect channels for significant financial transfers from the central government. We also consider whether aspects of economic reform, larger global economic forces, and state-level initial conditions and policy responses are increasing regional inequalities within the country, and whether the mechanisms that exist within India’s federal structures for managing regional inequalities are adequate.

The growing literature on globalization and Indian federalism, mostly written through the standpoint of political economy, suggests that Indian federalism has been drastically changed so that it needs to be redefined. Rudolph and Rudolph (2001)argued that as a result of the impact, the interventionist state in India had given way to a ‘regulatory state’, which again was more suited to a growing multi-party system. Lawrence Saez (2004) does not of course subscribe to the above view because he believes that ‘India’s redefined federal system requires the central government to play a critical role’. He is also not sure that a regulatory state will be able to mitigate the growing competition among the Indian states in the era of globalization. However, he believes that Indian federalism has undergone some major transformation from the intergovernmental co-operation to inter-jurisdictional competition (among the states). The various forms of states’ growing re-assertions have also been noticed by acute observers of Indian politics and federalism since the 1990s. C. P. Bhambri said: The state governments are very important players in the economic development of the country, more pronounced of course since the 1990s. This striking fact has become clear in the 1990s because investors have to contact every state government for launching a project. Since the central state is gradually withdrawing itself from its social responsibilities including welfare-oriented development, most clearly evident, among others, in the shrinkage of the number of centrally-sponsored welfare development schemes, as Bhambri has shown, centre-state relations have taken often peculiar forms. Cajoling, persuading and even bribing often could become tactics resorted to by the Centre for involving the state governments in the process of economic reforms and restructuring. Rao and Singh (2005) have recognized that the states’ role has expanded due to market economy which demands more decentralized levels of governance, but also that all the states are not equally equipped to access the opportunities afforded by the market.

Indian Federalism: A Critical Appraisal

With remarkable prescience, the framers of the Indian constitution have equipped the Indian state to respond to the demands for autonomy through the double mechanism of individual and group rights, as well as the federal construction of political power. During the first phase of India’s constitutional development some of the instruments were useful in empowering political majorities below the level of the national state through the effective enactment of provincial administrations. The second phase of constitutional development through the states reorganization of 1956-7, which created linguistically homogeneous states and counterbalanced the likely chauvinism through the promotion of the tree language formula, requiring the use of Hindi, English, and the regional language, made it possible to institutionalize the multicultural nature of the Indian state, albeit with regional divergences of successes and failures in its implementation. In its third phase, the same process of constitutional development of federalism in the 1990s, India has witnessed the deepening of the principle of power-sharing by the constitutional and statutory powers accorded to village councils after 1993.

One extreme point of view is that India is definitely unfederal. As Prf. K.P. Mukherjee contends that Indian constitution is definitely unfederal or a unitary constitution. Likewise, K. Santhanam has remarked that by means of this provision the fundamental principal that a federation depends upon the territorial integrity of states “seems to have been forgotten.” K.V. Rao observes that the Units are very weak compared with the Centre. According to him, while articles 1 and 2 guarantee the existence of the States, and the this granted by the Constitution itself, the continued existence of the Units, and especially their inclusion in a particular part in the First Schedule, is at the mercy of the Centre, nay, at the mercy of a bare majority of the Parliament (Art. 4).

The other extreme view is of designating India as “extremely federal.” Likewise, C.H. Alexandrowicz opines- “It is undoubtedly a federation in which the attributes of sovereignty are shared between the Centre and the States.”In between these two interpretations, we have a plethora of moderate interpreters. Granville Austin advocates the thesis of “Co-operative federalism.” He believes that the very concept of co-operative federalism implies a strong Centre; provincial governments are largely administrative agencies for central policies. Secondly, Prof. Morris Jones talks of Indian federalism as ‘bargaining federalism’. He says- ‘whereas the em-
phasis in the Constitution is on demarcation, that of political relations is on cooperative bargaining. He points out that the Finance Commission declined in relative importance as compared with the rise of a system of matching grants which are made under Article 282 of the constitution. Hard competitive bargaining keeps on going between the Centre and States of getting these “matching” grants.

The new group of regional leaders of India, drawing on their power bases in the states, often consisting of people from India’s periphery (in terms of religion, elite caste status, or geographic distance from the Centre), are able to generate a different and new construction of the Indian nation-state. In terms of the actual policies of the state, the regionalists are much more willing and (in view of their social base) able to listen to the minorities, to regions with historical grievances, to sections of society that entered post-Independence politics with unsolved, pre-Independence grievances.

The horizontal and vertical expansion of the federal process has brought greater legitimacy to the Indian state and cohesion to the India nation. Rather than grand design, the process has been based on a series of ad hoc decision, based on the perceived benefits of the respective political actors of the day, sometimes against the advice if specialists who have made the conventional arguments based on the imperatives of modernization and the logic of economic viability.

One important weakness of institutional design and the federal process is clearly the lack of effective mechanisms for a coordinated interest aggregation of states versus the Central government. Coordination mechanisms, such as the informal conference of Chief Ministers and to some extent, also the Interstate Council, have largely proven to be limited in their effectiveness. Nevertheless, coordination among Chief Ministers belonging to parties not included in the Central government coalition has taken place, as have collusion and coordination between the Central government and many of those Chief Ministers belonging to parties which support the Central government in the LokSabha. In its own way, therefore, the Indian experience with the unprecedented and unconventional expansion of the federal principle serves to enrich the theory of federalism in confirming or disconfirming received knowledge about the strengths and weaknesses of federal systems the world over.

Notes


3. The phrase “idea of India” is here taken from Sunil Khilnani, the Idea of India (London: Hamish Hamilton, 1997) and draws sustenance from Benedict Anderson, Imagined communities: Reflections on the Origin and spread of Nationalism (London: Verso, 1983). All federations-as, indeed, their units-are “imagined communities,” portraying an “idea,” which, in time, may take root as social reality either to pull a federation together or to divide it.

4. These letters are now available in the form of four volumes (Nehru 1985), which are a veritable treasure trove on the politics of the early post-Independence decades.

5. See Lijphart (1996, pp. 258-68) for a theoretical exploration of this consociational strategy.

6. See the telling quotation by the then president of the BJP, AtalBihari Vajpayee, regarding this strategy of moving towards the middle of the political spectrum for the sake of recruiting coalition partners, quoted in Arora, 2000, p. 206, fn 54.


12. See Appendix for a list and key characteristics of the states. The difference between state and Union Territories is the stronger control exercised by the Union government over the (mostly comparatively
small) Union elected assembly, the executive function is exercised by an appointed Governor and not an elected Chief Minister, as would be the case in the states. Delhi was conferred a special status by the amendment of the Indian constitution in 1991, being jointly administered by the Union, the three local municipal corporations, and the elected NCT government as the National Capital Territory of Delhi. Jammu and Kashmir enjoys a special status among the states in accordance with Article 370 of the Constitution of India, in that it is guaranteed its own constitution, and article 356 regarding the imposition of President’s Rule does not apply to it.

13. Scharpf et al. (1976) has thus described the German political system as one of political interlocking (German: Politikverflechtung) between levels of federal government and separate units at the same level by virtue of more or less non-hierarchical and informal coordinating institutions.


15. These are all single constituency first-past-the-post elections, but with some seats reserved for disadvantaged groups, such as Scheduled Castes (earlier untouchables) at each level.

16. Following Manor (1995), we may characterize the Congress party structure itself as federal in nature at this time. In some respects, however, Nehru’s personal authority after independence allowed him to dominate decision-making, as we have noted above. The pre-independence Congress was actually more decentralized, with provincial units playing a significant role, and provincial leaders being powerful in their own right, with prominent positions in the formal party hierarchy.

17. Saez (2002) provides a detailed history of the conception and creation of the ISC, as well as an assessment of its working to date (Chapter 4). In his conclusion, he characterizes the ISC as ‘a disappointment’ and ‘far from being effective’ (p. 216). While he is right in pointing out the many weaknesses and failures of the ISC, particularly with respect to changing Article 356, or enabling implementation of its many recommendations, we have noted instances of its usefulness in developing agreement on specific institutional reforms that have federalist dimensions. Kapur (2001) provides other examples as well. To understand precisely where the ISC plays a positive role, note that it has not succeeded in implementing its own, independent agenda, but is able to facilitate intergovernmental agreement on issues brought to the table by the centre. In Section 5, we discuss the potential for expanding such a role, contra Saez’s view of the ISC as ‘emblematic of a broader failure of intergovernmental institutions in India’ (p. 216).


20. At independence, of course, this entire region except North Eastern Frontier Area (NEFA) was administratively part of Assam province, and the union territories themselves were created by separation from Assam. Meghalaya was directly carved out of Assam state, while Sikkim was formerly an Indian protectorate. See, for example, Brass (1994) for a chronology.


24. The responses of the states were varied, as were the results. Bajpai and Sachs (1999) provide a detailed survey and scorecard of the efforts and outcomes for 15 major states, arguing that the enthusiastic reformers have done better in terms of human development as well as narrow economic well-being. They treat the states as independent actors (within constraints imposed by the centre), whereas in this paper we emphasize the interactions and overlaps of national and subnational reforms.


References


[17] DeSouza, Peter and Sridharan, Eeds , (2006), India’s Political Parties


[41] Singh M.P. and Anil Mishra eds (2004), Coalition Politics in India.


