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IMPACT OF GLOBALISATION ON INDIAN FEDERALISM

- Debasrita Choudhury

Abstract

The Indian federalism is cooperative in nature where central and sub-central governments work together to achieve sustainable goals. Globalization has led to increased decentralization of government powers and responsibilities, but the idea of a sovereign state began to dissipate. Globalization opened India to the world, affecting trade, agriculture, public policy, and every sphere of life, significantly impacting various aspects of the nation, including politics, administration, economy, health, and environment. Decentralisation ideals in the Indian Constitution were implemented to handle the rapid changes of the rapidly globalizing economy. The Indian economy and governance have faced challenges due to globalisation, with states adopting short-sighted policies to attract foreign investment. The Planning Commission played a key role in liberalisation, regulating economic and financial relations between the centre and states. India's federalism has faced challenges such as financial disparity between states due to historical, geographic, and political factors. Post-independence, the Centre took on a stronger role in providing equitable measures to states lagging behind. However, globalisation changed this for the worse, emphasizing further decentralisation and an atmosphere of competition. The states started competing amongst each other to attract foreign revenue, leading to increased inequality in state incomes and divides in infrastructural development. Further globalisation has caused a vacuum of legitimacy concerns, as nations as units of governing municipal law are losing their sovereignty. The rise of civil society organizations, such as NGOs, has also contributed to the parallel and horizontal structures of democratic governance in India. The Supreme Court has redefined its role as an adjudicator and governance institution in the realm of privatisation and development policies, creating 'asymmetrical rights terrains' where rights of certain interests and stakeholders are privileged above others. Globalisation is essential, but at the rudimentary level, a nation must balance national or public interest with the fundamental rights of citizens.

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Introduction

Globalisation as a mere idea developed in India under the auspices of Rajiv Gandhi. The predominant developments of the last few decades, such as, the rise of federalism, liberalisation of economies, globalising trends attest to the fact that the world is becoming one global village. For better or for worse, globalisation has brought the world closer together, with deep impact on administrative, cultural, fiscal structure of sovereign nations. While the attraction of economic liberalisation and influx of foreign capital is prevalent, the federal structure of countries, especially of sub central governments is at peril. Indian federalism is a 'holding together' kind where the states are bound by a strong central presence. It is federal with unitary features. Globalisation is further pushing for more decentralisation and devolution of power.

Research problem

In the era of globalisation, federalism hangs in the balance, as countries delve into the dichotomy of increased decentralisation on one side and asserting a strong central power on the other. The question arises on how to deal with the multifaceted issues of an eagerly globalising nation which has a unique federal nature.

Research questions

1. *Whether globalisation has harshly impacted federalism in India causing detrimental effects?*
2. *Whether increasing decentralisation of financial, legislative, executive powers to sub central units of government threatening the sovereign identity of the country vis a vis the global scenario?*
3. *Whether the way forward ought to be a step back towards regulations and attempts at centralising certain aspects of governance?*

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Objectives

The objectives of this study are –

- To trace globalisation and federalism parallelly and understand impact of the former on the latter
- To ascertain the fiscal relations of central and subcentral governments in the backdrop of globalisation
- To understand whether India's unique federalism has moved from a cooperative model to a competitive one
- To acknowledge areas such as political reform, environment, fundamental rights etc that have been impacted as a result of the synergy between globalisation and federalism

Hypothesis

Looking at it from a broad point of view, globalisation has been a detriment to federal structure of India. The problem that federalism faces at large is predominantly in the fiscal sector, followed by administrative, executive, legislative power divisions between centre and states. Globalisation is pushing India towards competitive federalism.

Methodology

This is a purely doctrinal form of research consisting of primary and secondary sources of data.

Primary sources include statutes, court cases, committee reports, and research papers.

Secondary sources include articles, books, reviews, newspapers etc.

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1. Premise: Backdrop of Federalism

The history of India, as well as most countries around the globe, bears witness to the changing patterns of government structure in consonance with contemporary socio-political landscape. The grassroot level of administrative unit in India is its villages. Certain amount of local self government has always existed at the village structure with the headman of the village acting as the primary source of dispute resolution. If we consider this historically, India had features of federalism prevalent since the times of Maurya and Gupta empires. The Mughals believed in partially de-centralised administration, with eminent example being Sher Shah and Akbar (12 provinces of Akbar). So did the British in the colonial era. Lord Mayo's recommendations, and later Lord Ripon's resolution cemented the ideas of grassroot level self governance in the country. This was due to the fact that curbing voices of dissent, going to wars, fear of power being usurped demands a strong centralised administration, however, post Sepoy Mutiny in 1857, the Britishers thought it fit to decentralise some level of power to the subjects being colonised. The Government of India Act 1919, and Government of India Act, 1935 attest to the same.

The trend for concrete federal systems emerged later when devolution of powers was convenient, especially after the breakdown of overtly centralised state machinery of the Soviet Union. From authoritarian regimes, countries were shifting towards more democratised ones. Decentralisation was the demand of the time, not only in India but worldwide. Most third world countries, recently decolonised, were testing the waters, trying on a middle ground, away from the polarisation and extremities of the developed countries, in spheres encompassing economy, financial relations, international policy, administrative units, government structures etc.

In 1789. With the first written constitution of the world the United States of America began the trend of federalism. Indian Constitution does not mention the word 'federal' but federalism is a part of the basic structure of the Constitution. We have a three tier government structure with centre, states and local governance in villages and municipalities. India is federal with a strong unitary presence. KC Wheare calls it 'quasi federal'. We have a cooperative federalism also known as marble cake federalism where the central and sub

central governments work together to fulfil sustainable goals for the whole nation, and they enjoy 'equal simultaneous and unique powers'¹

On the precipice of globalisation, the trend of decentralising government powers and responsibilities actually increased. Later, the boon itself became a bane as the death of 'statism' brought about significant new threats to federalism. The idea of a sovereign state itself began dissipating.

2. A New World: Initial Changes brought about by Globalisation

Closed off state structures needed a definitive change after the world wars, mostly to prevent an all out, all embroiled state of war, but also to facilitate trade, amicable cross country and international relations etc. Many international organisations such as the United Nations (1945), the World Trade Organisation (1995), World Bank (1944) began to come up. Post cold war, after the proxy wars ended and the strictly centralized Soviet Union crumbled, the world was ready for a long lasting change, one that would ensure peace, albeit an uneasy one. Economics, scientific inventions, trade, education needed a better century to flourish than the war stricken last one. The American war on Iraq further impacted the global economy adversely, inflicting financial crisis on several sovereigns including India which resulted in the policies of liberalisation and globalising the domestic economy in 1991.

In the decades subsequent to independence, India had much issues to resolve. On one hand it had a full fledged discrepancies of a newly formed federalism to handle, on the other, it had to bear the pangs of changes ushered in as a byproduct of opening its doors to the world. Further there were issues at the regional level where pluralism and multiculturalism as evident of its diversity began to stir up problems in its unity. The reorganisation and redrawing borders of sub central unit states on the basis of language, granting protection and constitutionally sanctioned rights to minority communities by providing direct affirmative action, and struggles for autonomy in fissiparous states of Kashmir and of the North east prevalent to this date, are some of them.

¹Union of India Vs Mohit Minerals, 2022 SCC OnLine SC 657

At this juncture globalisation opened up India to the world, the exposure increased, it impacted trade, agriculture, public policy and every sphere of life. From price of consumer goods to national policy making and implementation changed. The world is becoming one global village, the internet has brought us closer together, removing the impediments of time and costs of communication. What happens in one corner of the world affects each of the rest. 'Our Common Future'² stipulates the world to bear responsibilities together to attain sustainable, far reaching goals of development with inter generational equity.

Certain factors shed light on the relationship between globalisation and Indian federalism.

- ❖ What started out as decentralisation ideals enshrined in the Constitution of the country came into practical effect with the advent of globalisation. Decentralisation was the need of the time to handle the onslaught of changes of a rapidly globalising economy. In **legislative and financial areas**, the states had more control than the Centre. The centre further delegated administrative powers as well.
- ❖ Even a terrific and well rounded policy may seem sound in theory, on paper. But its subsequent implementation and following up on discrepancies are the only things that decide on its feasibility and viability. With the onset of globalised economy, the focus was more on execution of a plan than its formulation. And **effective execution** is evaluated best at the **grassroot level**, where it can be observed and measured. Hence power decentralisation and devolution was essential to ensure the same.
- ❖ Since its nascent stages, federalism came into play from the initial days post independence. However, for a period of time due to political clashes, a sense of competitiveness arose between centre and states. But Indian federalism found its way to be cooperative in nature rather than competitive. During the period of clashes and confrontation, there was no uniformity in the policies and agenda pushed by the centre and the states. This problem was solved towards the beginning of the 90s by globalisation. The objectives and policies were converged and there began implementation of uniform policies. This unification further helped in attracting as well as ease of handling **foreign investment**.
- ❖ No economic or cultural development can flourish without sustained political stability and long periods of peace. **Stabilising economy** has been a priority since 1991. The

²Brundtland Report, 1987, "What is needed now is a new era of economic growth – growth that is forceful and at the same time socially and environmentally sustainable."

amount of times state emergency under Article 356, till date around 126 times used, has also reduced drastically to facilitate progress. Both centre and sub central tiers of government has been working together to attaining these goals.

- ❖ As stated above, globalisation puts emphasis on development at the most grassroots level, in a way which is how it should be. Everyone has a right to development. Progress should not trickle down with the centre reaping the most benefits out of it, and the spillover effect reaching the masses. Rather development should stem from the most unitary level, and automatically in synergy reach the centre. Concepts like **New Localism, Peoples' Empowerment** emerged during this time.
- ❖ More than three decades have passed since the initiation of liberalisation. Indian economy and governance went through its own ups and downs in consonance with it. In the beginning when these economic and social changes owing to globalisation were in their nascent stages, the Indian states were competing with each other to attract foreign investment. They started adopting short sighted non feasible policies like lowering tax rates, but in time realisation dawned that these short term measures are detrimental in nature and harming the economy. So the states reverted to improve and effect **lasting change in infrastructure**. It is the only way to make sure development and progress prevails over a long time.
- ❖ **Planning Commission**, established in 1950, played a key role in liberalisation. This is the forbearer of five year plans in the country. The changes in economic and financial relations between centre and states used to be regulated by it as well. In pre-globalisation era, the states, especially those under the rule of opposition political parties, on several occasions accused the centre of misuse of Planning Commission to further their own ends. But currently both centre and states jointly work together to reap the benefits of globalisation. The Planning Commission has been abolished now, replaced by an apex public policy think tank called the **NITI Aayog** (National Institution for Transforming India) from 2015 onwards. It furthers cooperative federalism by including states in policy making.

3. Impact of Globalisation on Federalism:

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There is general consensus regarding the merits of globalisation outdoing its demerits. In the recent past, there has been influx of foreign exchange, modernisation of economic models and policy approach. But the adverse impacts would include the increasing decline of sovereignty and nations, giving direct power to decentralised forms of government. This downward percolating power is in contravention to India's federal structure which shares power at three tiers of government, but ultimately holds strong unitary features. The impact of globalisation and response of Indian federalism can be looked at from three perspectives.

➤ 3.1 Financial Disparity between States

The states in India do not have the same resources or abilities due to several historical, geographic, political reasons. For instance, Bengal, Bombay, Madras presidencies established and governed by the British witnessed early development as a spillover effect of modernisation and comfort for the colonisers' own benefits. However the source may be, but the resultant development was very true. The northern parts of India due to the Ganges river basin and vast rolling plain lands were easily accessible, rather than the hilly rugged topography and forest lands of the north east. South of the Narmada, separated by the hills of central India, the Southern peninsula had its own presidencies and princely states. Apart from the historical reasons, the terrain of lands, the socio political divides prevalent in the same governed a lot on which part of the country could develop more. Post independence when all these parts of the country were integrated, the Centre took on a stronger role and tried to provide equitable measures to states lagging behind.

But globalisation changed it for the worse. Emphasizing on further decentralisation, it weakened the centre and an atmosphere of competition proliferated. The states started competing amongst each other to attract foreign revenue. What started out as a healthy competition soon turned drastic for the lesser developed states. The inequality in state incomes increased. So did the divide in infrastructural development. The deregulation of economy had a skewed impact on the economic development of the country. While it was easier for more developed states to rapidly acquire the means for progress, the less developed ones had to lag behind.

A country is as much progressed as its least progressed region. India is a welfare state, equitable participatory governance is the ethos of our way of life. So, for uniform equitable

development the centre has to be stronger and take up stronger uniform policies as well as affirmative action to ensure the least developed and backward regions are presented with an opportunity for growth.

As of now eleven states in India such as Assam, Nagaland, Himachal Pradesh, Manipur, Meghalaya, Sikkim, Tripura, Arunachal Pradesh, Mizoram, Uttarakhand and Telengana have a Special Category Status (SCS). What the regions like Kashmir had “Special Status” in terms of enhanced political and legislative rights, Special Category Status imparts only on economic and financial benefits to states in need that the centre deems to be backward on account of geographic historical or political reasons. The centre pays most of their funds in centrally sponsored schemes, unspent money in a financial year is carried forward, not lapsed, significant concessions are provided, 30% of gross budget of centre goes to these states.

However, there are also repercussions to the same as other states like Bihar and Odisha are also vying for the same. It puts a strain on centre’s budget and more states are trying to gain similar benefits. The 14th Finance Commission is trying to reduce the same burden.

➤ 3.2 Legitimacy Vacuum

With the mushrooming of transnational and international organisations, the nations as units of governing municipal law are losing their sovereignty. As Holland once said, ‘*international law is the vanishing point of jurisprudence*’ as there are no sovereigns ensuring compliance and each state has independent sovereignty voluntarily entering into agreements. Globalisation has caused further harm to the sovereign status. Hence at the global as well as domestic spheres, there arises a vacuum of legitimacy concerns. To ensure that the nation retains power at least in managing its own affairs, further democratic decentralisation is induced which gives legitimacy to the government at the central level.³

In the year 1993, by the 73^d and 74th Constitutional amendments, India incorporated the local self government at grassroot levels, in the form of Panchayati Raj Institutions for rural areas and Municipalities for urban areas. Devolution and decentralisation got constitutional recognition with these grass root level bodies having their own finances, own elections,

³Amaresh Bagchi, “Globalisation and Federalism: Uneasy Partners?”, Economic and Political Weekly, Vol 43, no 38, 2008, pp 41-48

mildly delegated legislative and executive powers etc. They are primary in ensuring development at source as they are in charge of agriculture, water, electricity, education, housing etc. It reflects the idea of 'think global, but act locally'

➤ 3.3 Rise of Civil Society Organisations

Another challenge faced by the federalism in our country is the rise of civil society organisations. They generally include Non Governmental Organisations (NGOs), professional associations, foundations, independent research institutes, community based organisations, faith based organisations, people's organisations, social movements and labour unions. They may operate at local, national or international levels. Some of these working at both national and international levels that influence the administration in India are Centre for Civil Society, Mazdoor Kisan Shakti Sangathan, ActionAid, United Nations etc. they started out long before independence, most notable ones being Brahmo Samaj led by Raja Ram Mohan Roy, society's by Ishwar Chandra Vidyasagar contributing significantly to emancipate the struggle for widow remarriage and Jyotiba Phule's effort for female education.

While some of these societies and associations contribute meaningfully to the parallel and horizontal structures of democratic governance, others do the opposite, threatening operation of democracy and integrity.⁴

4. Borrowing by Sub Central levels of Government

According to Article 293 of the Constitution, the executive power of the state government includes the power to borrow from within the Indian territory subject to the security of Consolidated fund of the state. The government of India at the central level, on its authority and on the security of Consolidated fund of India, can give loans to any state or guarantee in respect of loans raised by any state. This is of course subject to limitations and legislations made by parliament. Previously the rule used to be that while the union government can

⁴Barry Friedman, "Federalism's Future in the Global Village", 47 Vanderbilt Law Review 1441 (1994)

borrow money from anywhere, states can only borrow money from within India, as mentioned in the Constitution as well.

However, post globalisation new stipulations emerged. Union cabinet approved new rules to allow financially sound state government entities to borrow directly from other countries which give Official Development Assistance (ODA) for major infrastructure projects. Like all things this has its own merits and demerits. While this would help states in getting funds for their own development rather than waiting for central government to approve funds, its disadvantage would be that states might overuse it and centre should put further control and regulations. In such cases the state government gives a guarantee and the centre provides a counter-guarantee. For example, the Mumbai Metropolitan Region Development Authority, a Maharashtra state government entity is allowed to directly take an ODA loan from the Japan International Cooperation Agency (JICA) for the Rs 17,854 crore Mumbai Trans- Harbour Link project.

Globalisation has been the harbinger of rapid change that has affected the federal character of India but it cannot be criticised altogether. To be part of the changing world, these are inevitable changes that every nation, not just India, has to endure.⁵

5. Globalisation vis a vis Fundamental Rights

Before the impact on federal structure, globalisation has directly or indirectly impacted on several aspects of the country such as polity, administration, economy, health, environment etc. The changes are evident and widespread. If a nation transcendental actor impacts every facet of life, it must have certain impact directly or indirectly on fundamental rights.

The interpretation of core fundamental rights enshrined in Articles 14, 19 and 21 underwent a thorough change in the post emergency era of 1977. Later with the advent of globalisation in 1990s they were being interpreted by courts to accommodate for the country and citizenry to be part of the global landscape. In calibrating the new 'globalisation rights infrastructure'

⁵B.P. Jeevan Reddy (Chairman, Law Commission of India), "Challenges of Diversity and Federalism in an era of Globalisation", International Conference on Federalism Mont-Tremblant, October 1999 Session 2A, CSD Theme Plenary- Social Diversity and Federalism, 1999

and clearer scrutiny of government action while enforcing fundamental rights, there was a wide array of Supreme Court judgements on par with liberalisation of economy. The Supreme Court has fundamentally redefined its own role as an adjudicator and governance institution in the realm of privatisation and development policies. It created the 'asymmetrical rights terrains' where rights of certain interests and stakeholders (including private corporate interests) are privileged above others (labourers, farmers, villagers). Large scale development projects are ushered in rather than focus on infringement of fundamental rights of some parts of the society. The court has deployed fundamental rights as 'structuring principles' to assess legality of government liberalisation and privatisation policies. In *Delhi Science Forum Vs Union of India*⁶ the Court upheld privatisation of the Telecom sector. In *Reliance Energy Ltd. Vs Maharashtra State Road Development Corporation Ltd.*⁷ The court adjudicated a challenge to the Maharashtra state government's floating of global tender for completion of Mumbai Trans Harbour Link. The court interpreted Article 14 as a 'non discrimination' provision and held that it must be read in conjunction with both Articles 21 and 19 of the Constitution.

In *State of Punjab Vs Devans Modern Breweries Ltd.*⁸ The court decided whether state governments were permitted to impose taxes on the sale of liquor and whether such taxes violated rights under Article 301 and Article 19(1)(g). applying the doctrine of *res extra commercium* the Court reaffirmed that right to trade or sell liquor is state's privilege but there is no fundamental right to trade or sell liquor under the said Articles. State can restrict fundamental rights in order to prohibit activities considered immoral, criminal or injurious to public health. Rights based challenges under Articles 19 and 14 cannot be brought against state taxes on liquor. The interface between globalisation and constitutionalism whether from economic or human rights perspectives were debated here, in the backdrop of changing economic scenario.

In *Narmada Bachao Andolan Vs Union of India*⁹ the SC adjudicated legality of actions of Central and State governments relating to environmental clearance and mitigation as well as resettlement of displaced persons due to the construction of the Sardar Sarovar Dam on the

⁶(1996) 2 SCC 405

⁷ (2007) 8 SCC 1, 7-8

⁸ (2004) 11 SCC 26

⁹ (2000) 10 SCC 644

Narmada river. The court endorsed the same strongly, even from constitutional and legal perspectives. The court praised the benefits of the project in terms of national development.¹⁰

6. Harmonisation and Way Forward

Till 1967, even though federal on paper, India had primarily unitary features and government. After that due to political issues, a period of confrontation ensued between centre and states. This came to an end in 1990 with India opening its doors to the rest of the world. We have a country of cooperative federalism mostly due to the change brought about by globalisation.

Indian federalism has always been one upholding values of cooperation, and equitable power and resources allocation between centre and states, as well as between states themselves. A prominent example of this is the implementation of GST. Goods and Services Tax, with four distinct Acts (CGST, SGST, IGST, UTGST) was enforced from the year 2017. The states gave up some specific taxing power they had, losing a part of their individual tax revenue so their could be uniformity in taxation related to inter state trade as well as import export.

The GST (Compensation to States) Act had the purpose of providing the states with some benefits to make good their losses.

The 14th Finance Commission has recommended that the share of states in appropriation of tax revenue should be increased from 32 to 42%. This is a drastic change. Special Category Status (SCS) is to be used sparingly as it proves detrimental to federalism rather than a long standing merit. It puts undue pressure on the central budget.

In the context of globalisation, there has been a steady deregulation which has led to states competing with each other vying for foreign investors. As mentioned before, it has proved rather harmful for 'have-not' states. Regional imbalance and the divide of inequality kept increasing. If equitable allocation and additional help is not provided to backward states, their socio political participation would be lacking, the governance would be of inadequate use. It affects bargaining power of the states, which is harmful on account of both national and international actors. India is committed to the two to three tier federal structure which cannot

¹⁰Eeshan Chaturvedi, "Federalism, Globalisation and the Environment", Times of India, February 13, 2020 (last accessed 10 October 2024)

let this divide become more accentuated. Hence, centrally made uniform laws are needed. Even to combat the rapid decay of sovereignty of states, legislation needs to be made at the central level of government.¹¹

On the question of fundamental rights of citizens getting affected at the cost of development and large scale projects, the Courts in the past three decades have developed their own jurisprudence and rights infrastructure that tends to harmonise both. Sustainable development, a new concept in world environmental jurisprudence aims to balance development goals of nations, keeping in mind that harm done to the environment in the process should be mitigated as much as possible. If a parallel comparison is drawn, at the precipice of globalisation, human rights of citizens need to be balanced against development goals.

7. Conclusion

Globalisation is essential, no one can deny that. But at the rudimentary level, a nation is made up of its citizens, its parts, its sub-central units. To become part of the global scenario, the national or public interest should not be lost in the way. Federalism is affected, the fundamental rights of citizens on account of globalisation. Solution to both of these could be found in some unitary presence at the central level. So, it is better to keep certain unitary features intact as globalisation at a glance is indeed causing harm to the federal structure of the country.

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