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Negotiating the Cliff of Federalism**

by

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India between Scylla and Charybdis: Negotiating the Cliff of Federalism¹

Patrick Hönig²

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ABSTRACT:

In the past several years, the South Asian sub-continent has been making headlines for what is seen as the challenge of its multiple 'failing states', while India, the 'anchor state' to which all the dots connect, continues to enjoy the reputation of being the world's largest democracy and a rising giant in Asia. But India, too, has been showing worrisome signs of disintegration. Persistent ethnic strife, regular outbursts of communal violence, a spate of terrorist attacks, a Maoist movement apparently growing in numbers, widespread corruption and crumbling public services are all manifestations of a system under strain. Constitutional experts and political analysts have begun to portray India as an entity with a reasonably functional brain at the centre but weak nerve lanes and sinews to meaningfully connect to the periphery. This paper will argue that India's ambiguous stance on the models of self-rule and shared rule has significantly contributed to a governance crisis severe enough to invite characterizations of India as a 'flailing state'.

INTRODUCTION

When India gained Independence in 1947, few observers believed it would be all smooth sailing for this newly established nation. Too big seemed the regional disparities, too pronounced the social cleavages, too steep the road to 'modernity'. Today, there is a compelling case to be made that India has all the potential of

¹ The paper develops and synthesizes a number of points which the author first raised in 'Between Unity and Diversity in India: An Essay on the Essence of Federalism', *Third Frame: Literature, Culture and Society*, Vol. 1, No. 4, 2008, pp. 38-55 and 'Self-Determination for the People of Jammu and Kashmir: Shifting Paradigms in a Perennial Conflict', in Abdulrahim Vijapur (ed.), *Implementing Human Rights in the Third World*, New Delhi: Manak, 2008, pp. 341-382.

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attaining ‘great power status’ in the multi-polar system of the 21st century. India, home to one sixth of the global population and boasting a rare diversity of ethnic, religious and linguistic groups, is built on democratic institutions, has a vibrant civil society and possesses, despite a temporary backlash from the global financial meltdown, great economic potential, bolstered by a dynamic development of its human capital and technological know-how. It is true that India had its share of separatist movements, but, remaining a democracy throughout (except for a brief spell in the mid-1970s), withstood the pressures from within, not a mean achievement in the eyes of students of comparative politics.

India’s relative success in state-formation is brought into even sharper focus by the predicaments experienced by its neighbours. In a political analysis of the legacy of partition in South Asia, the former US diplomat William Milam (2009: 159 and 240) did not mince words about who is to be held accountable for the region’s ever so slim prospects for peace and prosperity. Pakistan, he claimed, had manoeuvred itself into an “existential crisis”, struggling to find a “formula for governance” and fending off a “challenge to its sovereignty” by religious fundamentalists, while Bangladesh’s future, albeit looking not quite as bleak, was “up for grabs”, due to a lack of law and order, political stability and good governance. India’s other neighbours have not fared much better. Myanmar has been held in the iron grip of a military regime for more than 20 years. Nepal is plagued by the ‘ghosts’ of a decade-long civil war, buckling under ‘agenda overload’ and teetering on the brink of collapse. Sri Lanka may take a generation or two to recover from the shock waves of a war that has destroyed, along with the Liberation Tigers of Tamil Eelam (LTTE), the social fabric of society in the Northeast and East of the island. Even the Maldives, long considered a haven of tranquillity, have of late been reported for an alleged rise in Islamic fundamentalism. In the latest Failed States Index, published jointly by the Fund for Peace and Foreign Policy (2009), India trails its neighbours in nearly all categories of what constitutes a failing or failed state.³ Against that background, it hardly comes as a surprise that India is seen, through the lens of western diplomacy, as an ‘anchor state’, a buffer against regional instability and a guarantor of democracy in a region engulfed in violent conflict.

Of course, the rosy picture that analysts paint of India’s future comes with a few streaks of grey. So is India reminded of the need to make itself less vulnerable against threats to its energy security and develop a comprehensive network of partnerships across the region and the world (Wagner 2006). Equally important, but perhaps less in the public eye, is the need for a renewed focus on governance. Governance in India has for decades been defined over the twin parameters of “predatory identities” and “fear of small numbers” (Appadurai 2007: 49-85), euphemistically transformed into ‘unity in diversity’, a label as conveniently tagged to India as ‘the world’s largest democracy’. However, the way in which Indian officialdom, on the occasion of Bharat’s 60th anniversary in 2007, celebrated the survival of the nation-state ‘in the face of daunting odds’ is indicative of how little coincidental the choice of words has been in the praise of Indian federalism. Unity comes first, diversity follows.⁴ It is in this logic that a succession of laws,

³ The Failed State Index places Afghanistan at 7, Pakistan at 10, Burma at 13, Bangladesh at 19, Sri Lanka at 22, Nepal at 25, Bhutan at 48, the Maldives at 81 and India at 87. The problems arising from ranking states in ‘failed state’ categories will not be discussed here for lack of space.

⁴ In his keynote address at the Fourth International Conference on Federalism, organized by the Inter-State Council of India and the Forum of Federations in New Delhi from 5-7 November 2007, then Union Home Minister Shri Shivraj V. Patil solved the puzzle of

ordinances and administrative practices has been chipping away, on one pretext or the other, at the relatively frail constitutional scaffolding on which federalism was placed to begin with. The erosion of Indian federalism corresponds to a global trend toward ‘stronger states’. Meanwhile, alternative viewpoints exist. If federalism were to be considered, as Simone Vannuccini (2008: 38) suggests, a theoretical framework for “government of complexity” diversity might indeed overtake unity as an ordering principle for society.

FEDERALISM AND GOVERNANCE IN INDIA

Federalism as a multi-layered but complex system of governance has gained prominence in a discourse that is increasingly becoming polarized between attempts at building on the strengths of diversity in the pursuit of a multicultural society and tendencies of excluding identity markers seen as extraneous to the “nation that is Bharat”. Academics usually argue one side of the case or the other, but research on federalism is rarely conceptually linked to larger themes and issues. Referring to a clustering of scholarship around the core notions of “federalism and public policy”, “federalism and democracy” as well as “federalism and divided societies”, Jan Erk (2006: 116-17) correctly states that the key to solving the “grand questions” of federalism is to enable “shared theoretical benchmarks” and empirical findings “to cross research agendas”. From a wide range of issues this paper will pick the implications of federalism for the discourse on governance, taking into consideration the politics of recognition and the notion of identity.

Centrally controlled federalism

The Indian polity, in deciding on the horizontal dispensation of power, acted on two contradictory impulses. On the one hand, it tapped into a deep well of pride that finds expression in the celebration of ethnic, religious, linguistic and cultural variety, such a distinct feature of South Asia. On the other hand, India harbours, since Partition, a deep sense of wariness toward all political manifestations veering in the direction of secession. As a result, centre-state relations in India are characterized by an uneasy mix of unitary tendencies and regional aspirations. Depending on the chord that is struck in a particular context, federalism is portrayed as a recipe for meeting the needs of a heterogeneous society for pluralism and the demands of territorially based communities for recognition or an exercise in futility, even a potentially dangerous aberration of history. The emergence of such polar positions can probably not be fully understood without examining the nature of the state in South Asia. This will be done in a brief excursion in the section on identity below. Of more immediate concern, for the purposes of this paper, is the question of what qualifies India as a *federal* state.

The federal credentials of the Indian Constitution have been in dispute among legal experts and political analysts ever since its adoption. In mainstream political science and legal scholarship, federalism is defined as “a mode of organizing a political entity that grants partial autonomy to geographically defined subdivisions of the polity” (Rubin and Feeley 2008: 170). The Constitution refers to India as a Union of States, not a federation, and there are a number of characteristics more

micro physics and federalism in one breath: “[T]he charges in the atoms and the spirit in the human beings are not of different nature, but are of same character. That is what the expression Unity in Diversity suggests. The deeper knowledge ultimately leads to Unity, while respecting the outer variety.”

typical of a unitary than a federal state. Among the most notable constitutional provisions tilting the balance toward the centre are Article 3 (allowing for the creation of new states and a change in state borders without consent of the state or states concerned), Article 258 (2) (allowing the centre to charge the state with the execution of national legislation) and Article 356 (allowing for central rule in case of a ‘breakdown of the constitutional machinery’ in a state, see in more detail below). The Constitution further provides for a single judiciary, uniformity in fundamental laws, civil and criminal, and a common All-India civil service.

As for legislative powers, the Indian Constitution, in the Seventh Schedule, spells out the matters which are subject to the jurisdiction of the centre and the states, respectively, as well as matters falling under the scope of concurrent jurisdiction. The states therefore have residuary legislative power, an essential feature of the federal system, but it should be noted that even subjects contained in the state list come into the legislative purview of the national parliament if the Upper House decides that it is in the ‘national interest’ (Article 249). Moreover, the national parliament has exclusive powers with respect to any matter not specifically mentioned in the state or concurrent lists (Article 248) and jurisdiction for making laws with respect to the implementation of international treaties even if they concern matters of state jurisdiction (Article 253). Last not least, centralized planning in the field of development diminishes the capacity of states to set their own socio-economic agendas. The Sarkaria Commission (Govt. of India 1988: 1.4.09) cited the Planning Commission, an extra-constitutional body set up by the Union Cabinet in 1950, as “a conspicuous example of how, through an executive process, the role of the Union has extended into areas, such as agriculture, fisheries, soil and water conservation, minor irrigation, area development, rural reconstruction and housing etc. which lie within the exclusive State field”. The combination of central and federal elements has led observers to conclude that when it entered into force in 1950, the Indian Constitution, bearing considerable resemblance to the Government of India Act(1935), featured a “uniformly prescribed and centrally controlled federalism” (Conrad 1995: 418).

Deviations in the states from the Nehruvian model of governance were for a long time discouraged, if not disallowed. The dismissal of the Kerala state government in 1959, while it was enjoying majority support in the Legislative Assembly, has often been cited as an early example of the centre’s interventionist tendencies. The imposition of President’s Rule in Kerala, presumably motivated by the intention to oust the communist party from power, was “clearly against the letter and spirit of parliamentary democracy” and “created an unhealthy precedent in the Indian Constitutional system” (Vivekanandan 2007). It kicked off a period of meddling in state affairs by the Centre, often on flimsy grounds. Being held on a short leash by Delhi, the states were hardly allowed any space for political experiments. When competitive elements finally were introduced to the federal system it was through the back door of economic reform.

Power equations under neo-liberal influence

In the 1990s, the Union government abandoned the model of mixed economy and adopted a policy of market liberalization, privatization and foreign direct investment. Delegating vital competencies to the states, the central government became a mere “regulator” in a swiftly expanding “federal market economy” (Freudenberger 2005: 75-84). The increased role of the states in attracting foreign investors is neatly brought into focus by the way in which state governments have

set out to establish Special Economic Zones—which are essentially export processing zones—against the vocal resistance by significant segments of their home constituencies. Gujarat is a prime example of a state whose government has been vigorously pursuing neo-liberal policies, hoping to boost growth by courting big companies. Other states have been trying to do things differently, notably Kerala, which, despite a strained budget and growth rates trailing the national average, continues to stand out in terms of human development (Radhakrishnan 2008). In this context, it should be noted that the Kerala model has not only been successful at the ballot box but also instrumental in disproving the myth of economic growth spawning social development.

The revamp of Indian economy has turned the legendary elephant into a global predator, but a closer look at India's economic reforms reveals that the concessions granted to the federal units by the centre are only skin-deep and far from irreversible. The budget situation illustrates this. While it is true that state budgets have been steadily increasing, in line with growing responsibilities, the centre-state proportions have remained roughly the same: a comparative study of data from the last decade and a half shows that the central government's spending power continues to be 1.6 times that of the sum of all states (compare Rothermund 1995: 393 and 2008: 39). The imbalance in the fiscal relations between the centre and the states is aggravated by an uneven distribution of revenues, widely perceived to be beneficial to the stronger and disadvantageous for the weaker states. Aseema Sinha (2007: 479) observes that the effect of economic reforms in India has chiefly been a shift from vertical competition (where federal states compete with each other for centrally determined resources) to horizontal competition (where states compete for resources from a wider variety of actors), resulting in little else but increasing regional disparities.

Each their own, without interference from the centre, is the prerogative of the state in a federal system. Of course, this does not mean that the states are at liberty to adopt policies in contravention to the basic requirements of all citizens. Martha Nussbaum (2007: 133) points out that there has been a trend to tighten what she calls "the loose federal approach" by way of "setting minimum standards when matters that lie at the core of equal citizenship are involved". As an example, Nussbaum cites a Supreme Court decision making the provision of free school lunch, a long established practice in Kerala and Tamil Nadu, mandatory for all states. A shift in horizontal power equations, coupled with a greater focus on social justice, would perhaps help fix some of the more serious problems in some of the less flourishing regions of India. But such a move would require substantial political capital and a serious desire for change, both rare commodities in a society defined by nearly impenetrable top-down social structures that have survived the democratic experiment largely intact.

A fundamental debate on power relations, vertically or horizontally, is being met with resistance by political leaders, government agencies, advisory bodies, but also, increasingly, civil society and academic circles. Difficulties are hushed up and differences glossed over. 'Consensus-building' is peddled as a panacea for governance shortcomings of any kind, naturally at the lowest common denominator and in a spirit of voluntary participation. Rajni Kothari (2005: 120-23) maintains that there has been a democratic trickle-down effect in India through the engagement of various movements in issues of social justice. But this is not a compelling assertion in light of what many commentators readily acknowledge to

be India's continuously 'abysmal performance' in human development terms.⁵ Democracy and the realization of economic, social and cultural rights go together, but anti-poverty campaigns in India, despite unwavering commitment by some civil society groups, no longer feed on mass support. The fight for the eradication of abject poverty has been diluted by a powerful neo-liberal potion that is one part democratic rituals, one part *aam aadmi* rhetoric and two parts fixation on economic expansion.

The Millennium Development Goal on poverty reduction provides that the number of people living on less than a dollar a day—after revision, US \$ 1,25—shall be cut in half by 2015. With approximately 400 million people living below the poverty line (as per data provided by UNDP), India is likely to fall short of that goal. This is because poverty levels in India have increased since 2000 and will remain, in what seems the best case scenario, relatively unchanged in the years to come. While the need for decisive action is clear, the path toward reaching the goal on poverty reduction is not. Noting that in India affluence and poverty are closely intertwined, Gowher Rizvi (2007) voices the opinion that the only way out of the 'poverty trap' is for government, market and civil society forces to join hands to engineer what he calls "tripartite governance". However, Rizvi argues the case for a new governance system in isolation of constitutional reform. When he writes that the "liberal Constitution and federal political institutions" in India have been "retained", it sounds as if he means to say that this in itself is a success. But reforms have never been quite sustained in India, or other administratively challenged states, if unaccompanied by institutional adjustments. Subrata Mitra (2008: 10) points out that the most promising route to reducing inequality in India and accommodating demands springing from distinct group identity is by way of *combining* redistributive policies and a constitutional overhaul. So far, however, reform projects on issues relating to social justice, federalism or other vital tenets of the Indian Constitution have little to show for all the time and resources devoted to them.

Federal reform

India today is experiencing a lively debate on federal reform. Much like in Europe, the discussion revolves around effective governance, participatory decision-making, the ability to create innovative concepts in a competitive economic environment and strategies to counter the fallout of globalization. To a much greater extent than in Europe, however, the discourse in India focuses on the merits of federalism for the preservation of the principle of secularism, the resolution of ethnic conflicts and the maintenance of social peace. Proponents of federalism maintain that a push toward centralism harbours the risk of alienating an already wary periphery, potentially resulting in violent secessionist scenarios and the eventual fragmentation of the Indian polity. Critics fear that federalism may lead to the clustering of groups around disparate agendas and, eventually, the break-up of Indian society.

The only comprehensive review of the federal system in India so far has been undertaken by the Sarkaria Commission, which was set up in 1983 to review the powers, functions and responsibilities of the centre and the states. The Commission

⁵ The UNDP Human Development Report 2009 ranks India at 134 out of a total of 182 examined states, based on an index combining as indicators life expectancy, education and income.

submitted its report five years later, providing a set of specific recommendations to reverse the trend toward concentration of power at the centre (Govt. of India 1988). The Sarkaria Commission has been lauded for its keenness on striking “a fair balance between autonomy and integration” and promoting change through “federal political culture” rather than constitutional amendments (Mathews 2006: 177). A close reading of the report, however, does little to justify such praise. The report is historically incorrect, as Pritam Singh (2008: 63-64) points out, when it defends the constitutional decision for a single citizenship by comparing India to the US, inexplicably biased in favour of the centre when it blames “state politics” and “local leaders” for a loss of political culture, and outright parochial when it brands attempts at rearranging state boundaries based on language claims as “linguistic chauvinism”. It is also not clear what Matthew (2006: 178) meant to say when he wrote, eight years after the release of the report, that the Commission’s recommendations were “currently at various stages of implementation and execution”. This is not to denigrate the report or its impact. Government-sponsored commissions are routinely given a raw deal. The assignments are complex, the terms of reference vague and powers limited. Most strikingly, expectations all around are not matched with teeth for implementation.

In practical terms, the Sarkaria Commission will likely be remembered for the implementation of two of its 247 recommendations, namely the set-up of an Inter-State Council and the strengthening of autonomy through regular elections and greater financial independence of local governance bodies (*parishads* and *panchayats*). But again, both innovations are a mixed success at best. The Inter-State Council has “remained more or less dormant” (Rothermund 2008: 36-44) and is being used “for cooling the heels” of individuals who have fallen from the centre’s grace (Verma 2008: 104), while the local bodies, confused about their mandate, starved of resources, unwieldy and unaccountable, have had their issues all too often sorted out for them in the state legislative or, if there were national implications, in the Lok Sabha, the Lower House of parliament (Hooja and Hooja 2005). The *United Progressive Alliance*, in power at the centre since the national elections in 2004, has been calling the *panchayat raj* system instrumental for bringing democracy to rural India but has stopped short of proposing the introduction of a full-fledged three-level governance system in India. Critics fear that any further constitutional appreciation of local bodies will do little more for the poor and needy than reducing the size of the crumbs falling from the table.

In 2000, the Union government of India instituted a national commission to review the working of the Constitution and recommend changes in the areas of, among others, parliamentary democracy, electoral reforms, centre-state relations, the directive principles of state policy and socio-economic development. The commission’s report, submitted two years later, contained, under the rubric Union-state relations, the observation that “our constitutional theory as well as practice have kept pace with contemporary developments”. Not all observers agree. Ram Narayan Kumar and Indira Jaising (2010) concluded that the commission had “dodged” the issue of federalism despite the fact that it represented “a real challenge to the functioning of Indian democracy at the advent of the 21st century”. Finally, in 2007, almost two decades after the submission of the Sarkaria Commission report, the central government decided to establish another commission to look into “new issues” that had arisen in the way the centre and the states related to each other. The Commission on Centre-State Relations, mandated to “examine and review the working of the existing arrangements between the Union and [the] States” is yet to deliver its report. But the fact that it was asked to make only such recommendations that are actually “appropriate keeping in view

the practical difficulties” does not bode well for its coming up with out-of-the-box thinking.

As the institutional mills continue grinding their federal grain and issue after issue is being declared too sensitive to tackle in the short-term, the clamour for separating the constitutional wheat from the bureaucratic chaff has been getting louder yet again. A whisper of change is wafting through the corridors of power and this time, observers say, it may be real. In the *Keshavananda case* (1973), the Supreme Court held that amendments to the Constitution were to be considered unconstitutional to the extent that they ran against its “essential features” (Nussbaum 2007: 126-27). Subsequent Supreme Court decisions have held that the doctrine of “essential features” extends to, among others, the idea of federalism. Conservative as it may be, the Supreme Court is seen by many as a last resort of bringing to a halt tendencies aimed at disrupting an already fragile federal balance. Meanwhile, the role of federalism as an amplifier of participatory decision-making is being brought into renewed focus as it becomes clear that prescriptive policies from the centre are yielding meagre results in bridging the abysmal cleavages in Indian society along the lines of caste, class, religion, region and language.

India and the notion of the flailing state

Governance in India has long been plagued by the ABC of state cirrhosis (absenteeism, bureaucracy and corruption), but two recent trends have substantially added to the complexity of the situation. First, there has been a shift in threat perception. Ethno-nationalist demands from communities on the periphery are no longer considered the country’s predominant security challenge as the rise of ideological movements in India’s heartland—the so-called ‘Naxal menace’—has started to sting New Delhi at home and abroad. The launch of *Operation Green Hunt* in September 2009 marked the beginning of a military campaign, committing police, paramilitary forces and, possibly at a later stage, special army commandos with a view to bringing large swaths of territory firmly back under government control. Second, there are indications of a widening rift between state and civil society discourse on governance, accompanied by a growing reluctance on the part of the former to accord political space for dissent to the latter. The two trends combined mount a challenge of unprecedented proportions for India’s democratic system. Even though India is clearly not failing, a persistent governance crisis has experts talk of it as a ‘flailing state’.

In contrast to the failing state where the state as a whole is dysfunctional, the flailing state is characterized by weak ‘sinews’ and ‘nerve lanes’ connecting the ‘brain’ and the ‘limbs’. India has first been coined a flailing state by Lant Pritchett, Professor of Economic Development at the Kennedy School of Government, Harvard University. In a paper made available on his home page, Pritchett (2008) identifies as the main characteristics of the flailing state the coupling of sustained growth and electoral democracy with “mixed” success in nation-building and a dysfunctional administration. He then makes the case that India is a ‘flailing state’ for its apparent inability to translate well-thought out policies into tangible action on the ground. In other words, India is perfectly capable of devising a governance system suited to its complex needs but thrown out of gear under the weight of its enormous and incompetent bureaucracy. Pritchett goes on to explain the low administrative performance in India as a result of (1) an exploitative system inherited from the British; (2) the steady decline of the Congress Party’s role as an “institutionalized political aggregator from the grass roots” and (3) the rise of

regional and caste-based parties “more focused on jobs and contracts for their supporters” than “broad based benefits to citizens”. That notwithstanding, Pritchett believes that India—rather than China—has the grit to make the “long hard steady slog to prosperity and governmental efficacy”.

Pritchett’s label of India as a flailing state, even if taken out of context, stuck almost instantly. A few days after the serial bomb blasts in New Delhi in September 2008, the Times of India published an article on ‘terror and India as a flailing state’. The article quoted, among others, Balveer Arora, Professor of Political Science at Jawaharlal Nehru University, as saying that “flailing means having the power but being unable to use it effectively due to incompetence to achieve your goal” (Ghosh 2008). Arora, one of the leading experts in India on federalism, expanded on linkages between the flailing state and the debate on federal reform in India in an interview with this author in March 2009. On that occasion, Arora explained that perhaps it had not been realistic to expect a more distinctively federal design to emerge from the constitution-making process in India after Independence. Partition was fresh on the minds of those in responsible positions, he stated, and the fear of secessionist scenarios creating a domino effect constituted an overriding concern. The picture looked different now, he insisted, sixty years after the adoption of the Constitution. In a recent article on federalism, Arora (2006: 32), quite unlike Pritchett, referred to federal coalitions (and economic reforms) as positive developments, concluding that Indian federalism, “robust and self-confident”, had claimed its place “as one of the ways in which federal principles can be applied in the context of a developing country with a plural society”. In a similar vein, Joachim Betz (2008: 97) regards the federal elements of the Indian Constitution as a safeguard of ethnic and linguistic diversity, paving the way for the peaceful resolution of existing conflicts. So if India is flailing, according to this school of thought, it is not because of its federal system.

Such a positive assessment of Indian federalism, however, reflects only one side of the debate. Others believe that India’s political elite was never quite at ease with the idea of decentring the project of nation-building and did what it thought was required to keep it at bay. Ram Narayan Kumar (2008: 343-49) maintained that the handling of political crises in Punjab, Kerala and Tamil Nadu had demonstrated very early on Delhi’s determination to ride “roughshod” over any opposition to power concentration at the centre. ‘Cooperative federalism’ had become, so Kumar, the rallying cry of political forces who thought that it was in the best interest of the nation to retain the privileges of an all-Indian Civil Service (“control[ling] all strategic posts”), a “unitary system of justice” and a variety of emergency provisions, effectively turning “demarcation of powers” as a guiding principle of the Constitution into a “hoax”. However, if the Indian variant of federalism has blurred jurisdictions, in contravention to the requirements of an effective system of checks and balances, there is no longer protection to be had from the Constitution against state abuse, a formula for impunity. This strand of analysis therefore establishes a clear link between what it considers the miscarriage of federal institution-building and the notion of India as a suppressive or, to use Arora’s definition, a rudderless state that has lost its way. Given the divergent views on shortcomings in India’s constitutional design and institutional practice, the following chapter will assess the wear and tear of Indian federalism.

FEDERAL SYSTEM UNDER STRAIN

The introduction of federal elements into the Indian Constitution has been controversial for a variety of historical, political, legal, socio-economic and cultural reasons. Chief among the numerous problems in centre-state relations are the significant disparities in the dispensation of power and a widening cleavage between constitutional guarantees and political realities. The following section will deal with the contestations of Indian federalism, paving the way into the heart of what is known, in Indian construction jargon, as the ‘hard hat zone’.

Legal asymmetry

Federalism is vital for a comprehensive understanding of the way regions relate to each other and the centre. But to the extent federalism requires flexibility, cooperation and sophistication its level of implementation is also indicative of the central government’s ability and preparedness to accommodate societal complexity. India, like Canada, constitutes an asymmetrical federation in the sense that some states have constitutionally guaranteed prerogatives setting them apart from the other states of the federation (Stepan 2002: 3-4). However, in the case of India, rather unlike Canada, the affording of special status to a group or territorial entity never came easy. It was routinely preceded by hard bargaining, political turmoil and, in the lead-up to the creation of Nagaland and Mizoram, armed struggle. The most far-reaching privileges in the constitutional scheme of India have been reserved for the state of Jammu and Kashmir (J&K), which is in possession of full legislative powers, except for foreign affairs, defence and telecommunications (Article 370). Special constitutional provisions are also applicable to other states, in particular Nagaland (Article 371 A) and Mizoram (Article 371 G), which have retained veto power over national legislation concerning religious and social practices, customary law and procedure, administration of civil and criminal justice as well as ownership and transfer of land and its resources. Furthermore, the Fifth Schedule of the Constitution contains special provisions for the administration of scheduled areas and “scheduled tribes”, and the Sixth Schedule provides autonomy arrangements specifically for “tribal areas” in Northeast India. In purely constitutional terms, the Indian polity has thus given (some) recognition to historical and political particularities defying uniform treatment.

Constitutional status and political reality, however, are two different things. Robert Agranoff (1999: 22) astutely observes that the defining quality of constitutional entrenchment is to be seen in the “politics of recognition”. Whether the granting of special status translates into self-rule on the ground essentially depends, so Agranoff, on society at large being “sufficiently flexible, accommodative and innovative to incorporate complex differences and identities.” As far as India is concerned, many observers have expressed serious doubts as to the central government’s good faith implementation of constitutional pledges when they pertained to groups considered to be on the margin of its nation-building project. What the Indian state has given with one hand, according to critics, it has taken away with the other. A critical analysis of the situation in J&K as well as the Indian Northeast will ascertain to what extent India’s asymmetrical federalism has actually resulted in greater autonomy for the people for whom it was created in the first place.

Jammu and Kashmir, seen in isolation from its international dimension, is the showcase of India's asymmetrical federalism. The 1952 Delhi Agreement between Indian Prime Minister Jawaharlal Nehru and Kashmiri Chief Minister Sheikh Abdullah provided the political framework for granting the Indian state of J&K comprehensive autonomy, in accordance with Article 370 of the Indian Constitution (Behera 2007: 38). However, in the course of several decades, the agreement between Delhi and Srinagar was observed but in the breach. Federal legislation was gradually extended to Kashmir; governors were appointed and dismissed at will; the democratic decision-making process in the state was disrupted and political upheaval violently crushed. All this resulted in a situation that Alastair Lamb (1993: 322), at the height of the insurgency, judged to be "terminal colonial". With the militancy on the wane, there are signs of hope that the federal design will be restored to its originally intended form. However, it is doubtful whether federalism will be met with much enthusiasm any time soon, especially in the Kashmir valley. In an interview with the author in 2007, a human rights advocate and civil society activist from Srinagar drove home that point in a particularly colourful allegory. No Hindi film director, he ventured, would opt for a remake of a movie that had already flopped at the box office. The same logic applied, he said, to the common Kashmiri when asked whether they were willing to take a second chance with Indian federalism. And yet, Kashmiris were expected to act in defiance of wisdom established by South Asia's most powerful film industry. One would think that even a trace of the sarcasm dripping from that statement would trigger a debate on why the federal principle has failed to deliver for the Kashmiri people. But perhaps Kashmir is too serious an issue to allow for much introspection.

Many justifications have been given for the multitude of interventions undertaken by the centre in the state of J&K, but the recurrent theme is national security. Kashmir lies at the heart of an ideological struggle between India and Pakistan. Both New Delhi and Islamabad fear that if they were to give up control over Kashmir, they would also lose the ideological tool for justifying the brand of state they have created for themselves after Independence. In the face of the "threat posed by Pakistan", it was argued, the "need of the hour" was for the Indian state of J&K to be "internally strong" (Nand 1995: 189-90). Such strength could be accomplished only when "uncertainty" was removed from the people's minds about its status, which, in turn, was possible only through "complete integration" of the state into the Indian Union. Ironically, the same finding that led to Kashmir being afforded exceptional powers under the Indian Constitution, namely the uncertainty regarding its final status, was subsequently used to curtail its competences vis-à-vis the centre.⁶

With respect to Northeast India, the situation is equally complex. Conveniently lumped together as the 'Northeast', the seven sisters states (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and

⁶ In Pakistan administered J&K, the picture is similarly bleak. Azad Kashmir has its own constitution, government, Supreme Court and flag, but no real autonomy. Virtually all important decisions are taken by the central government in Islamabad, which maintains a sizeable army presence along the Line of Control and controls the budget. The 'Northern Areas', comprised of Gilgit and Baltistan, are under direct administration of the Pakistani Ministry for Jammu and Kashmir Affairs, thus completely deprived of self-rule. Very recently, a proposal has been launched to bring Gilgit-Baltistan on the same footing as Azad Kashmir, triggering a lukewarm response from nearly all stakeholders for being 'neither here nor there'.

Tripura)⁷ comprise more than 200 ethnic groups and indigenous populations, effectively resisting any attempt at categorization and one-size-fits-all solutions. And yet, critics say the central government's approach to the 'northeastern frontier' has, for decades, consisted of alternately trying to 'develop' the region, co-opt political adversaries and suppress dissenting voices on the margin. Sanjib Baruah (2005: 34-35) claims that a process driven by the concern for national security has led to the creation of "small and financially dependent states" that are autonomous units of India's federal polity only in form, while "in terms of power vis-à-vis the central government, the federation is little more than cosmetic". Greater fiscal independence from the centre, coupled with a policy shift from national to human security, may be conducive to allaying a lingering sense of alienation among significant segments of the population in the Northeast. But the problem goes deeper. It appears that the provision of asymmetrical federalism in the Indian Constitution, rather than fostering regional autonomy, has resulted, paradoxically, in the strengthening of de facto control by the centre over the very entities that were supposed to be benefiting from special constitutional arrangements. Pritam Singh (2008: 56-69) has given a fairly comprehensive account of how the colonial rulers demonstrated "strategic flexibility" in their dealings with an assortment of local protagonists, tightening overall control by making concessions in individual cases. Considering the way in which the Indian state, both at the federal and state levels, has been ceding ground and reasserting power, particularly in J&K and the Northeast, one cannot help feeling that it has indeed taken a cue from British rule. Unfortunately, there is little space in the academic discourse for questioning India's commitment to constitutionalism. That notwithstanding, evidence is mounting that the project of nation-building has routinely taken precedence over the federal fine-tuning of the political system in areas considered to be security sensitive.

Political asymmetry

In every federal system the constituent units vary in population, size, economic strength, resources and wealth. This is natural and does not, in itself, pose a threat to the federation. However, if the differences between the states are becoming too stark, the smaller states will find it increasingly hard to make their voices heard. This is the case in India. In a comparative study on asymmetric federalism in 13 states and federations, Ronald Watts (1999: 64) found the population ratio between the largest and the smallest units to be the most pronounced, by far, in India (342.6 to 1).⁸ In representative democracies like India the demographic composition of a state constitutes an important, if not the only, yardstick to evaluate its role in national politics. This is because the number of representatives elected to the national parliament from each state depends on the number of voters enrolled therein. Even if the study conducted by Watts did not reveal the proportion of population under voting age and the average voting turnout in the respective states it should be permissible to conclude from the ratio alone that power imbalances between the states in India are so significant as to become unhealthy for attaining the goal of equitable participation in central government affairs. Watts (1999: 111) seems to have arrived at a similar conclusion when he contends that "extreme disparity [between states] has invariably contributed to

⁷ The state of Sikkim has a geography and history of its own and will not be considered as part of the Northeast for the purposes of this paper.

⁸ The statistical material provided in Watts' study is dated. Given the disproportionate demographic pressure brought to bear on India's most populous states, it stands to reason that the ratio would be even higher today.

stress, even leading in some cases to reorganization of the boundaries of the regional units as in India and Nigeria”.

Realignment of state boundaries sounds easy enough as a recipe but may come with serious side-effects if undertaken without proper consultation of the affected states and populations. Udayon Misra (2006: 3) shows that the re-drawing of boundaries in existing states and the creation of new states in the Northeast has led to the marginalization of large sections of people outside particular linguistic and ethnic parameters, resulting, in turn, in violent clashes, patterns of discrimination and even ‘ethnic cleansing’. The creation of Nagaland, for example, has remained behind what the Nagas themselves think is theirs, namely ‘Nagalim’, a Naga homeland comprising the territory of Nagaland, the hill tracts of Manipur as well as portions of Arunachal Pradesh and Assam. In Assam, on the other hand, especially in the Brahmaputra valley, there is deep-seated frustration, even anger, over the way the central government has allowed ‘the frittering away of state territory’, a process that may yet to be concluded, at least if the Dimas in the North-Cachar district and the hardliners among the Bodos and Gorkhas have their way. It must be deemed ironic that the change of border regimes, which decide who is in and who is out, continues to affect people living in complex multi-cultural settings at a time when the wounds of the Great Partition are slowly beginning to heal.

In light of this, the debate on spatial reform in India will need to be informed by an understanding of the inter-linkage of formal and substantive criteria. In federalism theory it is increasingly acknowledged that the quality of governance may be affected by both the number and size of states. As for the former, fresh research on the possible conflict-mitigating effect of federalism suggests that federal states with a smaller number of constituent units are more likely “to fail or experience severe conflict” (Adeney 2007: 120). With respect to the latter, it should be borne in mind that India’s population has tripled since Independence. The state of Uttar Pradesh alone, with a population of 190 million, outranks most middle powers of the world in demographic terms, hence the discussion of its trifurcation. Blaming unresponsive governance, poor development, political frustration, regional marginalization and crime on the “excessive size” of Indian states, B.G. Verghese (2008: 25) argued that “India could likely do with around 50-60 states”, with an average population of 15-40 million. Unfortunately, there has been, so far, no real debate on the criteria that should guide such a major reorganization of territory.

Recent practice has hardly commended itself as a model for successful state creation. The calling into being of Jharkhand, Chhathisgarh and Uttaranchal in 2000 seems to have been the result of political engineering rather than a combination of administrative, economic, ethnic and linguistic considerations. The surge in Naxal activity in the former two states—the Union Home Ministry calls them the “epicentre of left-wing extremism”—is a clear reminder that the carving out of an ever increasing number of new states from existing ones will not, by itself, reduce governance deficits. It goes without saying that in a system defined by the criminalization of politics—or the politicization of criminal activity—any additional level of governance will only increase the number of slices disappearing before the cake is baked.

The rise of regional parties on the national stage

In India, regional parties have always played an important role in the states and, to some extent, as tie-breakers at the federal level. But in the 1990s the dynamics changed. National parties started to lose substantial ground in an increasingly diversifying political spectre, while the influence of regional parties on federal decision-making grew significantly. Failing to secure simple majorities in central parliament, national parties were forced to patch together rainbow coalitions, sharply raising the profile of their junior partners in the states. Today, political outfits that are strong only in one or two states tend to exert decisive influence in coalition-building at the centre, and the outcome of national elections consequently depends heavily on how regional parties fare in the large states (Varshney 2007: 103). Contrary to some reports, this trend was not reversed by the Lok Sabha elections in 2009. If the ruling United Progressive Alliance was confirmed in office it was thanks to the joint effort of a 10-party coalition composed of national and regional parties, not a victorious Congress Party alone. The question that arises in the context of this article is how it affects governance when regional parties shoot into prominence on the national stage.

According to one school of thought, the entering of regional parties in the national fray has opened a window of democratization into societal processes all too often determined by a closed circle of political players. It is argued that the regionalization of national politics has made a dent into positions of the hitherto “dominant classes”, giving the social and political elites from different regions “a share” in the decision-making processes at the centre (Mahajan 2007: 93). Another line of reasoning highlights the importance of go-betweens for the resolution of identity struggles. Subrata Mitra (2006: 67) contends that the newly emerged group of regional leaders, often from India’s periphery, are particularly well suited to stand up for the “security and integrity of the nation”, while accommodating “social groups that entered post-independence politics with unsolved pre-independence (in some cases, pre-modern) problems”.

Critics, however, caution against the centrifugal potential of regional politics played out in the national theatre. Ronald Watts (1999: 111) contends that political parties operating at the federal, while focusing on the regional level hold significant disruptive potential, citing the examples of Nigeria, Yugoslavia, Czechoslovakia and Pakistan prior to 1971. But a tenuous situation will become explosive only, so Watts, if the constitution of the federation does not allow for legitimate regional grievances to be adequately addressed at the state level and a sizeable segment of the population is represented by regional parties. Both conditions do not apply to India. The system of asymmetrical federalism provides ample scope for fine-tuning the relations between the centre and the states, while the vote banks of regional parties whose agenda distinctly differs from the political mainstream in India are too insignificant numerically to have much of an impact on the federal stage. Others go as far as identifying regional parties as a catalyst of separatist tendencies. Matin Zuberi (2006: 303) has singled out the mobilization of voters in India “on the basis of distinct group identities” as a factor contributing to “demands for autonomy and even separation”. But the danger is to mix up cause and effect. Identity will become a rallying point for political activity (or agitation) only if it is perceived as a (potential) ground for discrimination. To portray the expression of grievances on the part of non-dominant groups as seditious would be tantamount to demanding that dissent be all-inclusive, which by definition it cannot be.

A separate set of questions pertains to the nexus between regionalization of Indian politics and spread of communal propaganda. The implications of the rise of regional parties for the secular fabric of society may be illustrated by an example from Northeast India, the new frontier of the citizenship discourse in India. In 1985, the Assam Gana Parishad (AGP), a regional political party locked in ideological competition with the proscribed ultra-nationalist militant outfit United Liberation Front of Assam (ULFA) rode to an impressive electoral success in Assam on a wave of anti-immigrant sentiment. The AGP lost power to the Congress Party in 1991, partly due to the failure of the Illegal Migrants (Determination by Tribunal) Act (1983) to serve as an “immigration regulation mechanism” (Sadiq 2009: 147-155). As a part of federal legislation, the Act and its implementation were outside the AGP’s control, but it is open to speculation what the political fallout would have been in the Northeast had the AGP as a player of regional stature not fizzled out so rapidly. A regional party able and willing to capitalize on the violent-prone anti-immigration stance prevalent in Assam then (and now) may have asserted itself on the national plane in ways going well beyond making proposals for tougher laws on naturalization and deportation of individuals with documentation gaps. After all, it should not be forgotten that the AGP was the political front of an extremist student organization responsible for the 1983 massacre in Nellie (Assam), which, with a death toll standing at 3,300, counts among the worst anti-Muslim pogroms in post-independence India. Then again, the orchestration of ‘local’ disturbances does not rely on the logistical base, infrastructure and manpower of regional parties. As the Gujarat riots of 2002 show, a national party will just do.

Federalism and secularism

It is conventional wisdom in political theory that majority rule does not ensure minority protection. The principle of secularism was built into the Indian Constitution to ward off the dangers of fragmentation and suppression along religious lines, a very real scenario in post-Partition India. Communal forces or “Hindu nationalists”, keen on cleansing the “common heritage and identity” of India’s “historic residents” from all alien elements, particularly those imported from “holy lands outside of the Indian subcontinent”, represent the boldest challenge to the Nehruvian vision of India as a broad-minded and multi-faceted nation (Sagar 2009: 806-10). For all its light-hearted statements on the alleged resilience of Indian federalism, the Sarkaria Commission appears to have taken the threat to secularism seriously. Referring to the “relatively communal nature” of some “majorities” and “minorities” at different governmental levels, the Commission highlighted the need for “democracy [to be] seen as Government by ‘compromise’ between the majority and the minority, and not an authoritarian use by the former of its voting power riding roughshod over the latter” (Govt. of India 1988: 21.3.03). The row over the *Amarnath Yatra* in the lead-up to the 2008 Assembly elections in J&K may serve as a stark reminder of how easy it is to turn a society proud of its secular credentials and rich ethnic fabric into a skeleton of majoritarian elites.

The kernel of the *Yatra* dispute lay in a decision by the J&K government to grant the board of a Hindu shrine located in Kashmir land rights for the periodic accommodation of a swelling number of pilgrims. What started as a purely administrative issue soon snowballed, thanks to the mismanagement on the part of the state government and, notably, the Governor, into a mass agitation pitting against one another the Hindu majority population of Jammu region and the

Muslim majority population of the Kashmir valley. Political parties on the right in both parts of the state cleverly exploited the issue in the 2008 campaign for Assembly elections and turned a tide of communal feelings, regional sense of neglect and general prejudices into solid electoral gain. The *Yatra* episode, confined to the special case of J&K as it may be, begs the question of what will happen to India if the undermining of secularism in the guise of ‘regional grievances’ becomes political routine and what are, in a polity becoming detached from its constitutional moorings, the safeguards against discrimination on religious grounds and the renewed outbreak of large-scale communal violence.

Ironically, the most sustained attack on both the principles of federalism and secularism came from the misuse of a constitutional provision, which B.R. Ambedkar had called a ‘dead letter’: President’s rule. Article 356 gives the central government powers to dismiss its counterpart at the state level if and when the ‘constitutional machinery’ is deemed to have failed. Contrary to the expectations of the Constitution’s drafting committee, the emergency provision became an effective tool “to topple state governments, which failed to promote the interest of the ruling parties at the centre” (Saxena 2006: 124). There is virtually no historian or legal analyst today who claims that the use of President’s rule has always been in the best interest of balanced centre-state relations. The constitutionally objectionable dismissal of the Kerala government, discussed above, was the first of many instances in which the central government distorted an already ill-balanced relationship with the states even further. Meanwhile, little light has been shed on the damage done to the federal principle in cases where Article 356 was *not* invoked even though it should have been.

The political context leading up to the destruction of the Babri Masjid in 1992 and the riots in Gujarat in 2002 has been widely discussed in India and abroad but rarely under the aspect of possible collusion between democratic governance and sectarianism. The destruction of the Babri Masjid in 1992 and the ensuing riots that left thousands dead in Muslim neighbourhoods of various Indian cities, notably Mumbai, could have been prevented had the centre not sat on its hands, for weeks, while *kar sevaks* (volunteers) went about their business of preparing and perpetrating an orgy of destruction and violence unprecedented in post-independence India. When communal violence broke out again ten years later, this time in Gujarat, the political opposition, citing Article 356, called for the dismissal of the state government, in the face of mounting evidence that it had instigated or at least condoned the riots. At the time, the National Human Rights Commission urged the Union government to intervene on human rights grounds, while the Upper House of parliament, the Rajya Sabha, adopted a resolution recognizing the need for the central government to issue directions to the Gujarat government under Article 355—widely seen as a precursor to Article 356—to stop violence from spreading. In the course of the Gujarat riots, more than 2,000 people were killed, the overwhelming majority of them Muslims. All the while, the central government stood by, invoking the principle of federalism and, as critics claim, “using the Bommai judgement as a shield”.

In the *S.R. Bommai case* (1994), the Supreme Court, in a landmark decision, declared that the ‘satisfaction’ of the President regarding the ‘breakdown of the constitutional machinery’ in a state—the legal requisite for the dismissal of a state government under Article 356—was subject to judicial review (Baxi 2003: 75-76; Saxena 2006: 126). The Supreme Court had thus ensured that the executive branch was to be made accountable for its actions, but had not, contrary to what the Union government would suggest in the context of the Gujarat riots, curtailed the powers

of the centre to protect the lives of Indian citizens. It is hard to find fault with the view expressed by J.S. Verma (2008: 100), a former Supreme Court judge, that “majority support in the state assembly”, the lack of which, according to the Supreme Court, triggers Article 356, cannot save a state government from being dismissed when it is found to be flouting constitutional principles such as secularism.

Federalism: calming or stoking separatist tendencies?

A survey of the rich body of literature on federalism shows that assessments vary on the question as to whether federal systems are better able to ease societal tensions along the lines of ethnicity, religion or language. The federal structuring of a state is often considered conducive to creating a political system wedded to the principle of plurality, provided it possesses—as India allegedly does—a solid social substructure, a unifying sense of self (MacLaren 2008: 380). In that vein, federalism is understood to be an effective antidote to the centrifugal forces of globalization, regionalism and sub-nationalism. Sceptics argue that federalism is no magic bullet and often the vehicle to drive hidden agendas. Federal schemes, they say, carry the harbinger of secession almost by default as they give an institutional blessing to a mindset of distinctness. Jan Erk and Lawrence Anderson (2009: 191-92) write that “federalism may intuitively seem to be the best way to manage ethno-linguistic conflict”, but often results in providing “minority nationalists with the institutional tools for eventual secession”. In countries like India, where federalism is constitutionally entrenched and enjoys broad public support as a governance principle criticism often comes in roundabout ways or disguised as support for equally or, ideally, even more accepted constitutional features.

A standard argument for centralist rule in India is that democracy demands a “participant personality”, which, in turn, requires a “feeling of nationness”, while the “Indian masses”, regrettably, are caught up in “traditional”, sometimes “anti-national” loyalties (Das and Mahapatra 1998: 403). It follows that for democracy to thrive India will have to generate national sentiment and put a lid on marginal identities and ‘regional meddling’. Fortunately, the idea that Indian democracy needs to be saved from itself is not widely shared. There is a fair amount of acknowledgment in scholarly writing that India’s obvious deficits in handling “national issues” have left an ugly stain on its democratic fabric (Amin 2007: 711).⁹ It is indeed hard to comprehend why the democratic system—*demos* being the Greek word for people—rather than serving the people’s will, should impose on their aspirations and prescribe political solutions.

Anecdotal evidence suggests that India’s record of using federalism as a means of defusing separatist tendencies is rather uneven. The federal system has been able to provide workable solutions to a host of ethnic and linguistic issues beneath the threshold of secession. Conflict management in a ‘federal spirit’ guided Prime Minister Jawaharlal Nehru when the fast unto death of its leader Potti Sriramulu had the Andhra movement go on rampage in Madras and other localities in 1952,¹⁰ and helped bring linguistic minorities in the Dravidian South into mainstream politics. Alfred Stepan (2002: 47-48) shows how complex electoral trade-offs in Tamil Nadu in the early 1970s proved crucial for turning a “cultural

⁹ Amin is pointing to the difficulties of Sikhs and the peoples of the Northeast to assert “national rights”, but the list is arguably much longer.

¹⁰ The State of Andhra, formed in 1953, with Kurnool as its capital, was succeeded three years later by Andhra Pradesh, with the capital of Hyderabad.

nationalist ‘regional’ party, in effect, ‘centric-regional’, and a ‘polity-wide’ party, in effect, supportive of regional cultural nationalism”. This does not mean that identity-driven agendas have ceased to exist in the South. Calls for the cutting out of ‘Telangana’ from the state of Andhra Pradesh or ‘Vidarbha’ from Maharashtra go to show that tensions persist in southern and western India. Similarly, the Tamil Nadu government has a history of open disagreements with New Delhi, as was in evidence in the final weeks of the Sri Lankan army’s military offensive against the LTTE in the Vanni region in early 2009 when Chief Minister M. Karunanidhi went on a one-day hunger strike in protest against the suffering of the Tamil civilian population in the war zone and, in extension, Delhi’s alleged lack of initiative to stop the bloodshed. And yet, there is a decisive difference in the way dissent is being handled in the South and in the so-called ‘disturbed areas’ of India, such as J&K and much of the Northeast.

A recent study on the situation in Nagaland found that in the case of politically motivated unrest in the South the state relied on a stick-and-carrot policy (police action, plus bargaining), while the challenge posed by the Nagas triggered a very different response (Chasie and Hazarika 2009: 4-8). When political initiatives failed to bring the Nagas to endorse the Indian Constitution, the army was called in, and a deliberate attempt was made, so the authors, at tearing the social and economic fabric of Naga society apart. The Armed Forces Special Powers Act (1958) (AFSPA), which has been in force in parts of the Northeast continuously for more than 50 years and in J&K since 1990, sanctions, among other things, the shooting, “even to the causing of death”, of any person “who is acting in contravention of any law or order”. Legislation providing such sweeping powers to the armed forces is irreconcilable with the basic tenets of rule of law and has, in fact, been judged by international human rights organizations as a violation of international treaties to which India is a party. Whether an intended or inadvertent result of the centre’s counter-insurgency strategy, most observers agree that AFSPA has created a climate of fear among the affected populations, truncating political debate and debilitating democratic culture. What is more, AFSPA is seen by large sections of civil society as “legitimising repression and intensifying enmity” (Fernandes 2008: 194), in other words, providing a blueprint for impunity. Despite relentless campaigning, AFSPA has not been repealed but the central government seems to be prepared to consider amending it. However, even if AFSPA goes or has its worst teeth pulled, it just constitutes one among several draconian laws, enacted both by the centre and the states, to quell unrest in ‘disturbed areas’.

Of the numerous unresolved puzzles in Indian security analysis, perhaps the most baffling is the geographical match of ‘disturbed areas’ allegedly requiring special laws and constitutionally recognized territories holding special autonomy. There are no easy answers to the questions thrown up by this seemingly paradoxical situation but one possible explanation for the different treatment of Nagas, Kashmiris, Sikhs and others might be that they succeeded more thoroughly than they could have hoped in convincing the Indian state of their being distinct. Rather than being recognized as nations in their own right, however, they used to be portrayed, to borrow from Chasie and Hazarika (2009: 6), as societies prone to producing “arson, murder, loot[ing], dacoity, [robbery] etc.” From that angle, the introduction of asymmetrical federalism may very well be seen as a ploy to help build a case for the denial of constitutional rights—notably the right to life—to people considered to be a threat to the state and therefore undeserving of protection.

EXPERIMENTS IN FEDERAL PROBLEM-SOLVING

The seeds of a solution are often contained in the statement of the problem. What emerges from the previous sections is that in a world order increasingly transcending the notion of the nation-state it will be pertinent to ask how the versatile aspects and manifestations of identity can be brought into the purview of constitution-making and how the notions of sovereignty, self-rule, shared rule and citizenship can be recast to meet the aspirations of people rather than the administrative needs of the state. Ironically, it seems that the best way of preventing disintegration is to allow for secession to be considered as an option. Meanwhile, it is clear that for a state to be able to perform it has to sort out the nexus of identity and governance.

Handling claims of secession

Secession, all over the world, is a minefield of ideology and politics, possibly the reason why Malcolm Shaw (2003: 196), in his acclaimed treatise on international law, has refrained from taking a stance, arguing that there is neither a “right of self-determination applicable to independent states that would justify the resort to secession” nor an “international legal duty to refrain from secession attempts”. In the early 1990s, under the impression of German reunification and the collapse of the Soviet Union, international opinion seemed to be inclined to consider secession as a last resort in exceptional cases. When push comes to shove and a state engages in gross and systematic violations of human rights to crush a separatist movement, blocking all avenues to reach a peaceful settlement within the framework of the constitution, will it not be permissible for the people to call on the international community as the custodian of humanity and demand secession from the violator state? Christian Tomuschat (1993: 9), then member of the International Law Commission, expressed the view that a specific group being subjected to persecution by an “apparatus of terror” could no longer be held to any oath of loyalty toward the state running it. The clarity of such language has been somewhat blunted as a result of two mutually reinforcing developments: the ‘war on terror’ waged in the aftermath of 9/11 and a re-awakening of Global South sensitivities toward anything seen as northern interference in post-colonial state-building. That notwithstanding, the principle of self-determination, including its external component, has become part and parcel of the international discourse and is increasingly being couched in terms of human rights law.

Some authors have locked the right to self-determination into broader reflections on the democratization of political systems in the Global South. Drawing on case studies of Tamil, Sikh and Kashmir “nationalism” in India, Atul Kohli (2002: 288) has tried to show that self-determination movements in developing countries typically follow the shape of an inverse U: the introduction of democratic governance creates room for groups to assert themselves only to provoke a backlash by the state until “a modicum of genuine power sharing and mutual accommodation between the movement and the central state authorities is reached”. This analysis, in portraying the emergence of a separatist movement and its suppression by the state as a process driven by the democratization of developing countries, convincingly parts with the pristine but simplistic notion of democracy, autonomy and territorial integrity being mutually reinforcing principles. In the rough and tumble of the real world they lock arms at times and rub against each other at others. Whether or not they meet to form a magic triangle much depends on their being allowed to each go at their own pace. But Kohli

overlooks another important point. The state's refusal to negotiate minority identity claims, as borne out in the cases of Punjab and Kashmir, rather than pointing to start-up problems with democracy, reveals patterns of structural violence underpinning power relations in elite-driven political systems, notwithstanding their democratic credentials. After all, violent conflict erupts where the state fails to make room for multiple identities to unfold.

Grounded in the "morality of international law", a recent stream of legal theory argues that *de lege ferenda* the right to secession should be triggered in the case of a massive violation of human rights, an illegal annexation of territory or a persistent breach of "intra-state autonomy arrangements" (Norman 2006: 172-173). Admittedly, the principle of secession as *ultima ratio* constitutes a legal norm in the making, hardly solidified by state practice and far from being universally accepted. But it undeniably has appeal in providing a level playing field for negotiating the principle of state sovereignty and the peoples' claim to respect for their sense of self. In India, the question of secession is all the more relevant as the Constitution is silent on the issue. But apart from a handful of academics, there are virtually no takers for a discussion on the feasibility of introducing a secession clause into the Indian Constitution. To the contrary, in the wake of the attack on the Indian parliament in 2001, the national security establishment has developed a tendency to portray supporters of sub-national movements as plotters of "separatist and irredentist struggles" and brand them without too much difficulty as extremist or even "terrorist" (Acharya 2006: 298). But 'terrorism' is a double-edged sword in scenarios where the state, too, stands accused of serious human rights violations as, regrettably, is the case in India.¹¹

In view of the parameters set in the international debate, calls for the incorporation of a secession clause into the Indian Constitution have certainly not been met with the consideration they deserve. It is readily overlooked by a large segment of security analysts that the principal reason for peoples to aspire to borders of their own is the imposition of overly narrow limitations on their aspirations in existing frameworks. But if other and less perilous venues are readily available to pursue the quest for self-rule, there is no need for a people to get locked in a pitched battle with the state over secession. The main argument for a secession clause is consequently not—and cannot be—that it neatly compartmentalizes 'messy' ethnic realities. Rather, it provides parity between the centre and the periphery, thus creating an incentive for the state to make serious efforts to accommodate people with varying sets of characteristics. As for the political fallout, chances are that talk of separation will lose momentum the moment minority groups feel they are at liberty to pursue it (that is what might be called the 'Quebec syndrome'). If indeed it does not, it is a disconcerting thought that the state should be able to interpret the silence of the constitution as a license to squash the emergence of an alternative discourse on state structures and governance paradigms.

¹¹ Siddharth Varadarajan, in an op-ed piece titled 'Ishrat is why encounters need judicial probing', *The Hindu*, September 10, 2009, p. 8, provides some chilling context to the 2004 killing of 19-year old Mumbai-based student Ishrat Jehan and three young men in Gujarat, dubbed by a magisterial probe in 2009 as a 'fake encounter': "While the police used to enjoy a certain degree of social sanction for these extra-judicial executions, the frequency and brazenness of recent encounters and the targeting of individuals completely unconnected to terrorism ... have led to the growing public and judicial demand for accountability".

Federalism and multi-culturalism

In a marked departure from the ideal of the nation-state, Will Kymlicka (2007: 17-19) has propagated a way of community-building based on belonging, recognition and acceptance. The aspired-to “multicultural state”, he explains, belongs “equally to all citizens”, accords recognition to the “history, language and culture of non-dominant groups” and accepts as “injustice” any previous attempts at “assimilation and exclusion”. But for all its sensitivity to the complexities of identity protection on the margins, Kymlicka’s theory offers all but cold comfort to groups with mixed or overlapping identities. Taking issue with the ‘monocultural’ tendencies of Kymlicka’s multi-nationalism, critics have stressed the need for deconstructing the notion of group allegiance. Placing the freedom-enabling dimension of culture, as expressed by liberal nationalists, in a “hybrid perspective”, Helder de Schutter (2007: 53) attempts to normatively ground multinational federalism in the cultural context of choice both at the level of the federation and the nations that make up the federation. If federalism were to be understood as a “fair solution to groups whose members have multiple identities”, he argues, cosmopolitan identity and citizenship could be developed as complementary rather than competing features of governance.

Once it is accepted that the nation-state no longer is the impermeable ‘black box’ of a Westphalian world order, there is considerable conceptual leeway in reconstructing the notion of citizenship. Citing dual citizenship and the European passport as examples, Saskia Sassen (2008: 320) maintains that “citizenship can undergo significant transformations without needing to be dislodged from its national encasement”. Translating this finding into the context of J&K, Ashis Nandy (2009: 154) contends that most Kashmiris carry “three invisible, imaginary passports” and may in the future want to be “simultaneously citizens of Kashmir, India and Pakistan”. Soft borders, people-to-people contacts, power-sharing arrangements and demilitarization are elements of a Kashmir roadmap agreeable, in principle, to both India and Pakistan, provided that the creation of overarching federal structures in the former princely state is embedded in a reliable security framework.

The discourse on the Northeast, similarly, owes much of its delicacy to India’s ‘cartographic anxieties’. Except for a corridor the width of a couple of dozen kilometres connecting the Northeast with mainland India (the so called ‘chicken neck’), the region shares more than 4,500 km of border, in some areas contested, with Bangladesh, Bhutan, Myanmar, Nepal and China. Against that backdrop, the launch of the India’s ‘Look East Policy’ was touted as the beginning of a new era for a region burdened by conflict. It is doubtful, however, whether Delhi’s new policy for the Northeast will be able to effectively address issues of governance and answer to the demands of local economy as long as it is being held hostage to the chicken-neck logic. India’s entrenched foreign policy position, in a nutshell, is an adamant ‘no’ to any integration of the Indian Northeast into cross-border structures without responding connectivity to mainland India.

Going beyond the path dependency entrenched in government thinking, Sanjib Baruah (2008: 19) has suggested “a decisive break from the notion of ethnic homelands that owes so much to the colonial propensity of fixing tribes to their supposedly natural habitats”. In his view, state governments in the Northeast, and possibly elsewhere in India, should be allowed to craft their own citizenship laws. The advantage of state-level citizenship would be that an ‘internal immigrant’ could become, in theory, a full-fledged member of the polity to which he or she has

shown allegiance by way of taking residence therein. Discrimination against domestic migrants, such as tea plantation labourers from Bihar or Orissa who settled in Assam a long time ago, could thus be successfully tackled. However, there are problems with the concept of state-level citizenship, essentially on three levels. First, it is not clear how politics would play out in the regional arena if competences relating to citizenship were to be transferred to the state level. It cannot be ruled out that the pendulum will swing back and compound discriminatory practices. Second, the areas of “citizenship, naturalization and aliens” are inscribed in the Union List of the Constitution, giving the centre exclusive jurisdiction over these subject-matters. As a result, the explosive issue of cross-border (‘illegal’) immigration would remain outside the reach of the states, diminishing the appeal of multi-citizenship. Third, the issue of a ‘border within’ throws up questions of how to square the goal of affording equal opportunities for all with strategies of positive discrimination and affirmative action for disadvantaged segments of society. To sum up, multi-level citizenship may serve to fill the Indian polity with the federal spirit that is central to the idea of power-sharing, but it is a contested notion for its potential of being exploited by nationalist groups using the notion of citizenship as a ruse for their exclusionist agendas.

Linking micro and macro identities

The essence of group identity is generally seen in the preservation of collective roots and common aspirations, but the self, in South Asian thinking, is straddling political borders, linguistic boundaries and cultural demarcations. Recent writing on governance has brought to the fore the potential of federalism for linking the global with the local and the concepts of space and community. Meanwhile, little work has been done on the need for decentring the notion of the nation and allowing for overlapping territorial jurisdictions. Hybrid federalism, notwithstanding its integrative credentials, has its point of reference still in the ‘state’ as the ultimate authority of identity consolidation, and state-making in South Asia, as in other parts of the Global South, is intrinsically woven into the process of power concentration at the centre. This is because post-colonial nationalism in India and Pakistan, in reaction to the colonial construction of identity, developed an ideological rigidity unbecoming for the fulfilment of constitutional pledges to federalism and devolution of powers. In competing for distinctiveness, India and Pakistan eliminated communalities and crushed the space for plural identities.

In some quarters, the view is being held that a ‘young’ state struggling to consolidate cannot be held to the same requirements as a state long established and secure in its borders. In that vein, Mohammed Ayoob (1995: 85) argues that the demands on “Third World states” by the international community to treat political opponents in a “humane manner” even when they are engaged in activities aimed at “undermining effective statehood” runs counter to “the imperatives of state making and state consolidation”. This, he says, is true not just for “predatory states such as Zaire or Sudan” but also “democratic members of the international system such as India”, which finds itself in the dock for repressing “avowedly secessionist elements in Punjab and Kashmir”. It is already questionable that a newly independent state should as such be in a condition of self-conscious vulnerability and therefore particularly prone to assailing cultures and beliefs of segments of its own population when they are feared to be coming in the way of nation-building. After all, the formation of national identity—if at all such a notion exists—is not conditional to the repression of marginal ones. But even if a propensity for

violence, direct or structural, was to be considered a characteristic of state-building in the Global South there is simply no reason why the principle of rule of law would need to be abandoned and contempt for it condoned.

As for local governance, it is clear that the Indian model of federalism has not met expectations even though it has been instrumental, as shown above, in creating a periphery within the periphery. Kamala Ganesh (2005: 15) writes that cultural activity today continues to carry the burden of a “pan-Indian cultural identity” moulded under the unifying pressure of the national struggle against the colonial regime. This can be read as an implicit acknowledgement that marginal identities, more than sixty years after Independence, are still not adequately reflected in Indian mainstream culture. A starting point for the conceptualization of plural and cross-border nationalities could be seen in the realization that there is “no hierarchy of loyalty but only contexts of identity” (Oommen 2004: 34). The concept of regional federalism—not to be confused with a revisionist set of ideas aiming to restore India to its ‘erstwhile territorial grandeur’—may indeed serve to take the edge off the contested notion of national space and make home a bigger place.

Just as Europe witnessed the constitution of ‘inter-regions’ and Southeast Asia is experiencing a renaissance of federal elements in the Mekong region, South Asia might see a revival of the South Asia Association of Regional Cooperation (SAARC), the creation of a cross-border ‘Indus region’, the opening of transnational corridors along the Brahmaputra river and a movement for bringing the ‘fringes’ into the centre of a comprehensive borderland discussion. After all, for security in South Asia to be defined as a shared concern rather than a zero-sum-game, it may be crucial to create space for the practice of “multiculturalism” and “greater devolution and decentralization of administrative, political, and economic powers” (Chari 2005: 112-15). Drawing on its rich experience with the transformational power of borders, India, along with its neighbours, will meet the challenges of transnational identities and regional integration if only it chooses the right path to address the thorny issues of governance.

The myth of governance: the flailing state revisited

Governance, or its malfunction, is central to the idea of the state. Lant Pritchett deserves credit for pointing out that the discussion of the failing state is limiting to the extent that a state can fall short in ways more comprehensive than non-performance. A state may be fully able and prepared to devise policies for discharge of its responsibilities and yet produce results quite different from those desired. James Scott (1998: 11) maintains that the narrowing down of vision to the pursuit of “sharply defined interests” is a characteristic of the state *as such*. He would likely take exception to Pritchett (2008: 7) arguing that it is the prerogative of “a pre-modern conception” to consider “people living in a territory [as] chattel of the state, who could be transferred from one ruler to another” whereas the “modern conception” places citizens at the centre of the state “which exists legitimately only as an expression of their will”. To Scott (1998: 351), the state, like “all socially engineered systems of formal order” constitutes “in fact [a subsystem] of a larger system on which [it is] ultimately dependent, not to say parasitic.” But if the state copies and appropriates non-state spaces it can do so effectively or not quite so. Pritchett’s distinction between ‘failing’ and ‘flailing’ holds, irrespective of differences over what the black box labeled state actually contains. In his diagnosis, however, Pritchett blunders.

First, even if there is an obvious connection between policy-making and implementation the strain put on the federal system by simultaneously providing and sabotaging asymmetry (see above) seems to suggest that *bad* policies formulated at the top (central and state governments) are implemented rather *well* at the ground level. Pritchett (2008: 3) may have reason to believe that the World Bank is “matched or over-matched at nearly every level by their counter-parts at the corresponding levels in the [Indian] government” but such an observation reveals perhaps more about the World Bank and its capacity to function organically than it does about the quality of the Indian government services.

Second, India’s failure “to deliver the benefits of effective government” is *not*, as Pritchett (2008: 29) asserts “the result of unresolved issues of social identity”. In fact, it is the other way around. The failure of the modern state to make good on its pledge of effective governance has provided the soil for clashes along ethnic lines. A recent study on group behaviour conducted in Uganda where, like in India, “differences between ethnic groups have been a basis for political organisation and the source of persistent political crisis and violent conflict since independence” may illustrate this point. Contrary to what one may have expected, the study found that “ethnic differences generate conflict not by triggering antipathy or impeding communication but by making salient a set of reciprocity norms that enable ethnic groups to cooperate for mutual gain” (Habyarimana et als. 2008: 140-41). The expectation that group alignment will pay off, however, is contingent on the notion that other systems of resource distribution based on participatory and inclusive governance will not. Extrapolating from their findings in Uganda, the authors of the study conclude that rather than giving in to demands of “separating groups” a premium should be placed on “creating impartial and credible state institutions that facilitate cooperation across ethnic lines”. But if good governance helps eradicate favouritism the implication is that it is not social identities that cause the disruption of the government system, as Pritchett suggests, but a lack of governance that causes a polarization of society on ethnic grounds. In that vein, Kumar Suresh (2008: 190) describes ‘identity politics’ as the result of the Indian state’s failure to accommodate societal demands for bridging the constitutionally entrenched tension between equality and difference.

The gap between the positions taken by Pritchett and Suresh is not so much of academic but prescriptive nature. If what needed to be done to fix the Indian state was to reconnect the brain with the limbs then, if one were to avoid the “long hard slog”k through history, the administrative body would have to be sent for surgery, a high-risk procedure potentially damaging the very tissue required to bind the body together. However, if one were to diagnose political unrest as a corollary of too narrow a constitutional and political framework then the remedy would be to simply provide a stimulant for the brain to send impulses to the limbs that are essentially clear and clearly essential.

CONCLUSION

Given its geo-strategic position, demographic dynamism and ethnic diversity, India is very naturally at the centre-stage of any debate on the future of federalism as a model of modern governance. The Indian polity has sent mixed signals and allowed for the shrinking of space for dissent. Torn between not doing enough and doing too much, India runs the risk of thwarting its chances of designing a federal system meeting its plural needs and undermining the consensus that holds the state together. In Homer’s tale of narrow escapes and eventual home-coming, Odysseus

managed to bring his ship to safety because he stayed his course in the face of lurking monsters. The Indian state, too, will survive with the help of a reliable compass, a good map and a sturdy boat. But to get around the Scylla of secession and the Charybdis of suppression, to come into its own, the 'world's largest democracy' will not get away with tokenism. Rather, it will need to set sail in the direction of inspired federalism.

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