

Centrally Sponsored Schemes (CSSs)

An increasing threat to federalism?

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Addressing a Niti Ayog meeting in August, 2022, the Prime Minister emphatically stated that India's federal structure and cooperative federalism should serve as a model for the world. However, among many recent measures, the increasing number of highly intrusive forays that the Centre has made during the last few years, through Centrally Sponsored Schemes (CSSs), into areas that legitimately belong to the States, make his statement sound somewhat discordant.

Especially in the case of the Covid crisis to which he made a special mention, recalling the initial delays on the part of the Centre to procure the vaccines on time and later, the hasty manner in which it exported the vaccines at the cost of domestic needs, and the way the Centre had then tried pass on the blame for the crisis to the States, did not entirely provide a good example of what cooperative federalism really means!

Article 282 & CSSs:

The Constitution has allocated subjects, listed out in the Seventh Schedule, between the Union (e.g. *defence, external affairs*) and the States (e.g. *health, agriculture*) for the purpose of legislative action, taxation and governance, with a separate list of subjects (e.g. *electricity*) placed in their concurrent jurisdiction. For subjects in the Concurrent List, while the States may also have the jurisdiction, to the extent that the Union chooses to legislate, the Union's legislation will override the State's jurisdiction. However, in such cases, the Centre is expected to consult the States in advance, in line with the spirit of federalism.

The Constitution further entitles the States to have a share in the Union's tax revenues, under Articles 270 and 275, as per the pattern recommended by the Finance Commission (FC) appointed under Article 280. In addition, Article 282 permits the Union to release grants to the States for “*any public purpose*”, a provision that is somewhat discretionary in nature, which the framers of the

Constitution had inserted deliberately by way of abundant caution, to take care of unanticipated contingencies.

While the allocations made under Articles 270 and 275 are strictly as per the pattern determined by the FC, the allocations made under Article 282 are beyond the FC's scope. This is the provision that has enabled the successive governments at the Centre to formulate many CSSs, several of them intruding into areas that legitimately belong to the States. The erstwhile Planning Commission, which the present government discontinued in 2015, was in close touch with the States, took their concerns against proliferation of the CSSs into account and tried to reduce their number and rationalise them, without any tangible outcome. The dominance of the CSSs as a vehicle for transferring funds to the States has increased rapidly over the last eight years. In many sectors important from the point of view of the States, the present government at the Centre has introduced CSSs which could distort the States' priorities, diminish their role and weaken them politically.

Threats to Cooperative federalism:

CSSs, which erode the fiscal space of the States, are one among the many threats that have emerged of late to the idea of cooperative federalism, a concept that does not find an explicit expression in the Constitution but is implicitly based on mutual trust and respect between the Centre and the States in their effort to promote the common good of the society.

Centralised governance cannot succeed in a country like ours, with such a wide-ranging diversity in terms of its culture and history, its numerous religions and beliefs, languages and dialects, its socio-economic conditions and so on. It is the States which are located closer to the people and it is they that understand the people's needs better. While the Centre could compliment their effort by extending a helping hand in terms of capacity building, technological inputs and institutional support, any undue interference by the Centre in governance in areas that belong to the States will be counter-productive. The need for cooperative federalism arises from this idea. On the other hand, attempts on the part of the political leadership at the Centre to impose laws, policies, schemes, cultural norms etc. on the States will only disrupt, not promote federalism. It is important for the Centre and the States to realise that their respective strengths are mutually complimentary, not in conflict with each other.

The CSSs are an antithesis of fiscal federalism:

The 15th Finance Commission has referred to the resource-expenditure asymmetry between the Union and the States. While the shares of the Union and the States in resources are around 63% and 37% respectively, the corresponding shares in expenditure are around 38% and 62%. There is need to correct this asymmetry by increasing the States' share in resources, a concern that is addressed by the successive Finance Commissions (FCs).

As already pointed out, the CSS-related funds provided by the Centre to the States under Article 282, from out of the Union's tax revenues, are over and above the rule-based allocations made under Articles 270 and 275, in line with the pattern recommended by the FC. To that extent, though they may imply an additionality to the resources of the States, since they do not allow any flexibility to the States to adapt them to suit their requirements, they are often out of tune with the State's own priorities. Since they come with the pre-condition that the States should also provide funds to meet their share of expenditure to qualify for each scheme, the States are forced to earmark their own resources, distorting their own budgetary priorities. The FC allocates the States' share in the Union's tax resources in accordance with a formula that takes into account various factors such as their respective needs, *inter se* equity considerations and relative indices of performance, whereas the pattern of allocation of CSS-related funds among the States neither conforms to those norms nor leaves any flexibility to the States to align the schemes in tune with their own needs and priorities.

It is against this background, the Fifteenth Finance Commission (FFC) has observed, “*Centrally sponsored schemes (CSS) co-financed by the Government of India should be flexible enough to allow States to adapt and innovate. Top-down mandates and strictures on programme implementation are the antithesis of an open-source model*”

The guidelines issued on the CSSs and other non-Fc special assistance from time to time since 2017 by the Union Ministry of Finance make it difficult for the States to innovate and adapt them to suit their requirements. Those guidelines insist on the States to propagate the all-India character of the schemes, “branded” appropriately, with the credit given exclusively to the Central leadership, a fact that betrays the intentions underlying those schemes. The CSSs have thus become a convenient instrument for the political leadership at the Centre to use public resources for gaining private political advantage, a prospect that the framers of the Constitution would never have visualised, when they inserted Article 282.

The guidelines issued by the Ministry of Finance on the above subject in 2022 are a case in point. In these guidelines, one component provides Rs 50,000 Crores of interest-free loan assistance to States

on a *first-come first-served* basis for encouraging the States to disinvest their State-owned undertakings and monetise their assets, an idea that several States have opposed time and again, in view of the wide-ranging adverse public interest implications of disinvestment. In the case of such States, the special assistance provided serves no purpose, except depriving them of their share of special assistance. Had the Centre allowed some amplitude in using those resources, the States would have innovatively deployed the same for strengthening their public sector undertakings in a more constructive manner.

CSSs & legal implications:

In *Bhim Singh v. Union of India* [(2010) 5 SCC 538] ('*Bhim Singh*'), the Supreme Court, while dealing with the constitutionality of the Members of Parliament Local Area Development Scheme (MPLADS), a Central Sector scheme, held that the use of article 282 by the Union for making grants for "*any public purpose*" would not be violative of the Constitution. Unless new grounds can be cited, the legality of the CSSs thus pronounced by the apex court cannot be questioned. However, it is instructive to go back to the Constituent Assembly discussions on the spirit of federalism as viewed by the framers of the Constitution at that time.

Constituent Assembly debates:

On fears expressed by some members of the Constituent Assembly on excessive concentration of powers in the Union vis-a-vis the States in the draft Constitution, Dr B R Ambedkar had clarified as follows.

"these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only.....The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself.... The Centre and the States are co-equal in this matter... It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it"

In other words, it was never the intention of those that framed the Constitution to treat the relationship between the Union and the States as anything other than that of a co-partnership. The

intent underlying Article 282 needs to be understood against this background. However much the CSSs may be in line with the Constitutional provisions and however much discretion Article 282 may give to the Union in the matter of giving grants, that Article cannot and should not be used as a surreptitious instrument to change the character of the Union-States relationship, as originally visualised by the framers of the Constitution. CSS grants under Article 282 cannot be allowed to proliferate to such an extent as to permit the political leadership at the Centre to misuse them to gain political advantage for itself by weakening the States, distorting the Union-States co-partnership relationship that Dr Ambedkar had referred to.

If one were to look at the trends in the recent years in proliferation of the CSS-related fund releases in proportion to the gross fund transfers to the States, it would become abundantly clear that they are going to pose a serious threat to the identity of the States as independent political entities.

In 2014-15, the CSS fund releases constituted only 7.5% of the gross fund transfers to the States in that year. In contrast, in the Budget estimates for 2022-23, the corresponding proportion is around 47%. The day is not far off when discretionary grants from the Centre to the States will eclipse the rule-based transfers, eroding the role of the FC. If this happens, very little political space will remain for the States, with the governance system becoming more unitary than federal.

In this connection, we should recall the observations made by Dr Ambedkar in his last address to the Constituent Assembly as follows.

There “is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide,....however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot”.

What we witness today is a political process, fully fuelled by a serious threat to fiscal federalism, which in turn will weaken the States vis-a-vis the Union. Aided by this and further compounded by polarisation of the electorate driven by ultra-nationalism and other divisive forces, the trends point to the kind of “landslides” referred by Dr Ambedkar. As a vast nation with inherent diversities, India cannot be governed as a unitary political system.

Is there a way out?

Constitutionality of Article 282- A different point of view:

It is important in this context to go back to the landmark judgement in the Kesavananda Bharati case in which the Supreme Court had observed as follows.

“Though the power to amend the Constitution under Article 368 is a very wide power, it does not yet include the power to destroy or emasculate the basic elements or the fundamental features of the Constitution”.

In the light of the observations made by Dr Ambedkar, as cited earlier, the Union and the States are equal co-partners, the residuary powers given to the Union do not represent the essence of federalism, *“the chief mark of federalism ..lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it”* and, therefore, the federal balance reflected implicitly in the Constitution needs to be viewed as much a part of its fundamental character as the other “basic elements” referred in the Kesavananda Bharati judgement. If such a co-partnership between the Union and the States gets disrupted in one way or the other, it would imply a radical change in the character of the Constitution, which would be inconsistent with the vision of those who had drafted it in the first instance.

One way to understand how the residual authority vested in the Union under Article 282 can indirectly result in a paradigm change in the federal arrangement is to imagine a political party coming to power at the Centre wishes to exploit the discretion provided in Article 282, to increase allocations of funds for non-FC purposes including the CSSs to such an extent that the FC-related, rule-based funds become insignificant. It is possible for such a political party to channel large fund transfers through the CSSs as direct cash transfers to the accounts of the citizens for gaining political mileage at the expense of the other political parties, thereby reducing the FC's role to near irrelevance, and consequently replacing a system of federal governance by a unitary one. An onslaught on the political identity of the States would change the basic character of the Constitution, literally dismantling federalism. If that is so, is there not a strong case for the judiciary to redefine the scope of Article 282, the special circumstances under which it can be invoked and the pre-conditions necessary for safeguarding federalism?

This is a matter that can be pressed before the judiciary for a re-interpretation of the ambit of Article 282. Of course, the judiciary will have to subject interpretation of that Article to a rigorous scrutiny in line with the earlier case law on what constitutes the fundamental character of the Constitution in

the light of the debates that took place when it was discussed in detail and finally adopted.

What next for the States?

It is worthwhile for the States to look into the possibility of contesting the legality of proliferation of the CSSs and the possible misuse of Article 282.

While it is one possible course of action, there is perhaps no other better alternative for the States than to come together on a common platform, possibly a Federal Front of the States, to take up the range of issues of federalism with the Centre, not only for preempting the misuse of Article 282 and the proliferation of the CSSs but also a host of other common issues such as unilateral legislative measures and policy decisions taken by the Centre that adversely affect the States. Such collective action on the part of the States assumes utmost urgency as the pace at which the Central leadership is racing ahead towards a unitary system of governance can cripple federalism in an irreversible manner.

On the occasion of the release of his book, *Ungalil Oruvan* (One Amongst You), Shri M K Stalin was reported to have said, “*The Dravidian model believes in equal rights to all ethnic groups. India is a union of states. The constitution says so. All the states should have higher powers and federal rights. The Indian government, which is a union of states, should act on the principles of federalism*” (<https://thewire.in/politics/mk-stalin-book-release-national-ambitions-politics>).

There can be no better statement on the rationale of federalism than what Shri Stalin had thus explained. Federalism is based on self-respect on the part of each State and its people and their commitment to self-governance. A vast country like ours with all its diverse features cannot be governed in any other manner.