

CENTRALIZATION OF FEDERALISM

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ABSTRACT

The topic we will be analyzing in our research paper is a vital clog in a wheel of different political systems operating throughout the world. What we showcase in our study is a recurring phenomenon in the political lives of the nations. But where we differ in the viewpoint is the reason behind emergence of the power concentration in well-established systems and the expected outcomes and methodologies these regimes tend to employ to prolong their rule. There are different manifestations in different parts of the world but there is something similar that pervades the phenomenon all over. That has been discussed in detail in our study which tries to bring about a coherence and study the similar techniques through which centralized power try to perpetuate their hold on power. Our observation has been derived from the current scenario of the nation state system as well as the role played by historic events in unfolding of the political exigencies at times. The moot point of our research is the dismantling of the established power structures by varying degree which ultimately leads to damage to the power distribution among the constituent units of the state.

KEY WORDS: Centralization, Federalism, Constitution, Power

The concept of amassing the power in a single authority is not alien to the subject of political science. But where the topic makes a distinction is worth noting. Although large number of states in the world works as centralized machinery, it is not expected of a federal system to work as such. Federalism as an idea in itself advocates distribution of power between different tiers of government and is provided to check the very matter we are discussing about i.e. centralization of federalism. Let's have a look at some crucial aspects our country is going through and has already have got them written in the history.

INDIA

The story doesn't stop with the neighbors and far relatives of our nation state systems. A strain has already taken root in the Indian political life with the NDA coming to power in 2014 but before we analyze the current scenario it is important to have a glance in the past for similar traits.

THE ERA OF INDIRA GANDHI

India emerged as a robust federal democratic republic once it got independence and had itself off shackles in 1947. Jawahar Lal Nehru the 1st Prime Minister of India carefully nurtured the state institutions to deepen the power sharing arrangement as agreed upon by the forefathers of the constitution. But all didn't go well for long and it took just 20 years to have its worst challenge to the federal set up by the then Prime Minister Indira Gandhi.

India was still in a nascent stage of evolving as a federal republic structure. It all started in 1971 with Indira

Gandhi's landslide victory under the slogan "Garibi Hatao". It marked the rise of an important pan India leader who was ready to bend the rules of the game. Constitution was amended with 24th & 25th amendment acts to circumvent the judicial review with respect to further amendments. A process of centralization was in the beginning which was taken head off by the judiciary in *The Kesavananda Bharti v. state of Kerala* (1973) (Retrieved from <http://lawtimesjournal.in/kesavananda-bharti-vs-state-of-kerala-case-summary/>) case which led to the evolution of the theory of basic structure. The glitters of power led Prime Minister Indira Gandhi to tinker with the long established convention of appointing the senior most judges as the Chief Justice of India by superseding three senior most Judges and appointing Ajit Nath Ray as the Chief Justice of India. The three judges were seemed to be penalized for the landmark verdict given in the *Kesavananda Bharti* case. Again the judiciary was at the receiving end with superseding of Justice A.R Khanna who was in line for becoming the next CJI. It was due to his dissenting judgment in the *ADM Jabalpur v. Shivkant Shukla* (1976) case, upholding the right to life even during emergency. This was not appreciated by the government and instead Mirza Hameedullah Beg was made the Chief Justice of India. The reason for bringing up these case studies are that these proved to be of great damage to very feature of federalism i.e. Independence of Judiciary. The executive misusing its power of appointments of judges is in itself becomes a harbinger of a biased judiciary.

The ever strengthening of power of PM Indira Gandhi had reached its zenith when she proclaimed emergency. It all started when a case was filed against her in the Allahabad high

court challenging her victory from Rae Bareilly constituency. The allegations were that she indulged in malpractices to win the elections. In *State of Uttar Pradesh v. Raj Narain (1975)* case she was convicted by the court of malpractices and had declared her election void which further stops her from holding any office or contest elections for the coming six years. To stay in the office of prime minister and to avoid these judgments she requested the then President of India Fakhruddin Ali Ahmed to declare emergency on the grounds of internal disturbances.

This led to an extreme centralization of power that India had seen in colonial times. The instrument to give force to amassed powers came in the form of 42nd constitutional amendment act 1976 famously called as mini-constitution. It brought radical changes in the constitution which was to help the prime minister to deal with the situation as she wanted. Federalism took a beating as never before. PM Indira Gandhi ruled by decree, opposition leaders were jailed, civil liberties curbed; elections suspended and due to the narrow and rigid interpretation of supreme court in *ADM Jabalpur case* populace were denied of the writ of habeas corpus. Effectively, right to life was snatched away from citizens with no remedy against the state. Much needed respect came only with the defeat of the government in 1977 elections and the ascent of Janata Party with Morarji Desai to power. This kind of turn of a federal polity into a centralized structure using its own constitution and state organization was a first for an independent India which still had not forgotten the brutal colonial past. As per our analysis, centralization of a federal polity can only be affected by a popular leader who goes on to subvert the law of the land paradoxically with people's mandate. Although the times of Indira Gandhi represented nadir of the Indian federation, a mild form can be seen unfolding in the current situation.

Prime Minister Narendra Modi has returned to power in 2014 with a popular mandate for the next five years. As the condition for concentration of power demands a popular leader, it is quite evident in the present day polity and administration that the process has already begun. Let's have a look at some examples.

ARTICLE 370

The central government has taken a bold step in abrogating the temporary and special provisions of Jammu and Kashmir. Article 370 hitherto a taboo for centre and left parties to even discuss has been struck off from the constitution by a very strange interpretation of the law and a strong mandate. The abrogation was followed by splitting the state into two union territories giving the centre all the powers required for the administration of the erstwhile state. It is the strongman image of the PM Narendra Modi, who does not hesitate to take bold decisions even if it comes at a cost of damage to federalism. Carefully observing the abrogation process, it certainly clears the intention of the government from the first. The government

planned the abrogation by forming a government with The Jammu & Kashmir Peoples Democratic Party (PDP). Soon in the second term of the Modi government, they suddenly withdrew the support which led to the collapse of the government. Governor dissolved the assembly and assumed all the powers to further support the functioning of the state machinery. Suddenly overnight the government declared the Article 370's clauses being scrapped and removing the entire special provisions and dividing it into two Union Territories. The government dissolved the assembly so that no one can oppose this step and also convinced the President to support the decision of abrogation. A state with special powers to govern has not even been left as a state with the blessings of the Prime Minister.

States have been reorganized in the past too but the difference is that they were altered due to the popular demand of the people. The present case is in stark contrast where the wishes of the people were thought to be represented by the governor. Elections have been promised in the J&K but the centralized power structure is there to remain for at least some times to come. The central government with its new found powers is determined to alter the situation in J&K to India's favour i.e. a better integration into the Indian state. The centralized machinery may work for good.

SEDITION

Of late, a matter of concern that haunts the people of India is the restriction of their right to speech and expression. This is the slapping of a Macaulay era legacy that entered into the statute in 1870, the sedition law i.e. the infamous section 124A of the Indian Penal Code. It has a dreadful reputation with Bal Gangadhar Tilak and Mahatma Gandhi in its kitty. But now the same law is back baiting the civil society members and activists. The obnoxious application of Section 124A in a haphazard manner in recent times has raised eyebrows all over the country. A sign of stifling dissent through its use is evident but what is not clear is the framing of dubious charges in seemingly related cases of dissent. The Indian Penal Code defines sedition (Section 124A) as an offence committed when "any person by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India". The constitutionality of sedition was challenged in the Supreme Court in *Kedar Nath Vs State of Bihar (1962)*. The Court upheld the law on the basis that this power was required by the state to protect itself. However, it had added a vital caveat that "a person could be prosecuted for sedition only if his acts caused incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace"

For example, 49 intellectuals were charged for a letter to the Prime Minister regarding the recent ongoing mob lynching cases in the country. Another example is RTI activist Akhil

Gogoi, Assamese literature Hiren Gohain and a senior journalist were slapped with the sedition charges for speaking against the Citizenship bill.

TUSSLE WITH THE RESERVE BANK OF INDIA

The most discussed and famous issue of the Modi government in economic sphere will always be the Demonetization. The banning of old currency notes and introducing new notes to curb black money and to remove counterfeit currency had generated mixed feelings in the society. Some supported it but maximum criticized it for the inefficiency in the process of planning and execution. Many had to stand in lines for hours and some lost their lives due to non availability of hard cash. The main issue relating to the topic is that the way this step was taken bypassing the concerned authorities. The Reserve Bank of India had red flagged this move and did not permit the government to go further with the step. "Most of the black money is held not in the form of hard cash but in the form of real sector assets such as gold or real-estate and...this move would not have a material impact on those assets," the RBI Central Board, in the minute of the 561st meeting that was held at 5.30 pm that day, said. Despite warnings and concerns expressed by the RBI, the government went ahead with the move. (<https://www.businesstoday.in/current/economy-politics/demonetisation-rbi-warned-govt-black-money-fake-currency-claims-medical-tourism/story/289291.html>) In the late 2018 there emerged an issue which seriously raised a question on the autonomy of the RBI. The government invoked section 7 of the RBI Act 1934 to give directions to the RBI in order to functioning public interest as the government deems fit. It was the 1st time that the Brahmastra of section 7 was used in the history of RBI.

CITIZENSHIP AMENDMENT BILL, 2019

Due to the lessons learnt from the partition of India, constitution envisaged a secular democratic republic where citizenship will have nothing to do with religion. This is where the present bill stands out. It envisages a citizenship to the persecuted minorities from Afghanistan, Pakistan and Bangladesh effectively denying entry to one particular community. No wonder why this bill is tabled in parliament in the 1st place. Centralization of power is often accompanied by an ideological pushover of the ruling party which is quite evident in this case.

RIGHT TO INFORMATION AMENDMENT ACT, 2019

The amendments introduced in the RTI Act, 2005 are a stark reminder of bending institutions according to the whims and fancies of the government- according to the transparency activists who opposed the bill tooth and nail from its inception. Anjali Bharadwaj of the Satark Nagarik Sanghatan, one of the transparency and accountability advocacy group described August 1 (day when the President gave his assent to

the bill) as "a black day for democracy"(<https://www.telegraphindia.com/india/president-ram-nath-kovind-shrugs-off-appeal-clears-rti-bill/cid/1695744>). Indeed the new act seriously hampers with the independence of the commission. Breaking with the past, now the salaries, allowances and other terms of services of the Chief Information Commissioner (CIC) and Information commissioners "shall be such as may be prescribed by the government"(<https://economictimes.indiatimes.com/news/politics-and-nation/govt-notifies-rti-rules-cic-tenure-cut-to-3-yrs-govt-to-decide-salary-other-perks/articleshow/71760604.cms?from=mdr>) . It means that now the government may bend the commission to suit its political necessities. There were calls to elevate the position of information commissioner but what has been done through the act is entirely opposite and could be used to shield information from public scrutiny and absolving government of its responsibilities.

INCONVENIENT REPORTS OF THE GOVERNMENT

The reports of the government department's itself are being delayed and attempted to be discredited.

- Periodic labour force survey: - a leaked media report in January 2019 threw a staggering figure of 6.1% of unemployment rate which was a 45 year high. It came at a time when the country was headed for the elections in couple of months. Although the government boasts of its transparent and clean image, it decided to delay the report till the results of the elections are announced i.e. with the formation of the new government.
- Consumer expenditure survey: - on November 15, in view of "data quality issue", the ministry of statistics and program implementation has decided not to release the results of the All India household consumer expenditure survey conducted by the National Statistical Office (NSO) during 2017-18. It is now being alleged that the results are reportedly being withheld due to adverse finding in the survey that consumer spending was falling. Leaked data reveals a decline in the monthly per capita consumer expenditure (MPCE) making it the first such drop since 1972-73.(The Hindu 24 Nov 2019)

The manipulation of information unsuitable to the government image is a dangerous and undesirable trait that seems to be taking ground. The data becoming a political tool is a peculiar characteristic of a modern centralized polity which tries to manage information according to its needs to sway public opinion.

WORLD

VENEZUELA

A crisis has unfolded in the Central American state once used to be a fledgling democracy and an example to its neighbors worth emulating. As the economic crisis in the

country bring people to knees, President Nicolas Maduro to cling on to power is using all means available to him as a head of state. Some of his actions in the process are: -

1. Jailing of political opponents for criticizing him.
2. Cracking down on street protests with a high hand, killing atleast 46 demonstrators in recent months.
3. Regional government elections are continuously postponed to maintain his grip on power.
4. The only institution to have a systematic critic to Nicolas Maduro i.e. country's parliament (controlled by the opposition) has been supplanted by rigged elections in July to create a superbody of legislative omnipotence. It has been given the responsibility to rewrite the country's constitution and expand his power.

A hasty constitution drafted by a doubtful legislative body at a time of crisis is not only going to exacerbate the grave situation prevailing in the country but throws it into another spell of turmoil which ought to wreak havoc in Venezuela. The economic crisis deepens; president hangs on, people protest on streets and thus goes the story of Venezuela. But the use of a crisis to expand his own powers and prolong his own rule, Maduro has shown a trend that can be seen in some other countries as well that takes us to the next example.

TURKEY

Turkey for long had been an ideal example for a gateway to Europe. Despite its most of the part lying in Asia and most precisely west Asia which is known for dictatorships, lawlessness, a terrorism breeding ground and authoritarian regimes, it not only managed to engrave secular and parliamentary form of government in its constitution but to carrying it on for a long time too. Turkey had a secular outlook and better power sharing arrangement which is now a thing of past.

President Recep Tayyip Erdogan ascended to power in 2014 with the support of his conservative right and depicted an urge in the nation for radical changes. But things went far too radical. A failed coup attempt in 2016 against the Erdogan government was a trigger that was all but needed to bring about sweeping changes in the constitution to bolster his own position. A referendum was held under a state of emergency which rather threw a majority of 'yes' votes for a presidential system (although with a thin margin of 51.41%-yes and 48.59%-no) which came into force with the presidential elections in 2018. (<https://www.brookings.edu/blog/order-from-chaos/2017/04/13/the-turkish-constitutional-referendum-explained/>) A strong leader was in the offing which was evident from the proposed amendment to the constitution. Proposals included structural changes: -

1. Abolition of the office of prime minister (powers subsumed by the president).

2. Creation of presidential system i.e. president would assume the power of both, the power of head of the government and the power of the head of the state.

3. Power to the president to issue decree on political, social and economical issues that would carry the force of law.

4. Structural changes to the body of high councils of judges and prosecutors and greater control over it.

The case of turkey is indeed an interesting one where the ruler rules with far greater power using the facade of democracy. Unsurprisingly, in a charged atmosphere of a failed coup, the president Erdogan played the right shots to perpetuate his powers. Now it is all different and a way clear for Erdogan to rule with minimal checks.

RUSSIA

Russia has had a long history of authoritarian regimes ranging from the Soviet governments to the present regime of Vladimir Putin. Although Russia officially declared as a federal political structure, there is no such thing left in the real polity. The 18 long years of President Vladimir Putin has resulted in a fair degree of centralization where powers are not only concentrated with the center but with one person that is the president himself.

He famously said in the Kremlin on April 25, 2005 "the disintegration of the Union of Soviet Socialist Republic (USSR) was the largest geopolitical catastrophe of the 20th century. The urge to revive the past glory was charged up in his sentence and he went on to say "it occurred because the union republics had gained too much power and acquired too many opportunities to pursue an independent course". It aptly describes the president's point in centralizing power and denying its share to the constituent units.

The Russian centralization manifests itself in many forms –political, social, economic and even demographic. As described by the historian Yuri Chernyshev "today all Russia is divided between Moscow and not Moscow".(Goble 2017) The centre Moscow attracts brightest of the talent from all over Russia and deny the constituents a chance to reap the benefits of development. The unrelenting centralization in Russia has not only concentrated virtually everything but has also left in the process the Far East regions untouched and underdeveloped for decades. A top down approach of implementing a common policy in such a large swath of land solicits unsurprisingly discontented views and opinions. A share of power devolution is the only key to the development in the regions as far as continents in the same country.

Although the political and social centralization is actively promoted by the centre but the case is somewhat complex in economic centralization. Russia from a long time has limited choice in its economic sphere but to centralize due to continuous geopolitical rivalry with the west. Whether it may be

the soviet times or of Vladimir Putin, Russia has always solicited a careful response in the west, more of a skeptical stance due to historical reasons. Even the current regime's policies are at a stark opposite from the west's in the geopolitical issues viz- Russian intervention in Syrian civil war and annexation of Crimea from Ukraine. Russia thus expelled from the G8 and sanctions reemployed. This continued great power rivalries and economic sanctions and threats from the west leave Russia with no chance to open up and decentralize its economy. Whatever may be the reason but centralization is the result.

UNITED NATIONS

United Nations (UN) as a forum for peace and a representative body of the countries all over the world throws an interesting picture. It was created on the altar of the World War II for conflict resolution through peaceful means and creating conditions for everlasting peace in the world. But may the mandate be lofty and grand, in present times UN as a decision making body with UNSC as its core is gradually losing its credibility. The power structure in the UNSC reflects the reality of the world post WW II but nearly after 75 years, the world is a different place. Power is not a possession of the few and the world is moving to become a multi polar in essence. But what we see in the largest global structure is the same feudal trends in the country side where a zamindar refuses to do away with his powers and lead to the empowerment of the people. There is a near unanimity in the permanent members of the UNSC to prevent any reform in the council as long as it is endurable. But the efforts are gaining momentum and only solace to the permanent members who also happens to be their tool is a lack of consensus on the parameters to be employed and the criteria for the membership. What happens to the veto power is also a burning question. Whether the new members too will be given veto power or veto power will just remain with the permanent five members or the very concept of veto power will be abolished are some questions yet to be decided upon.

PAKISTAN

Pakistan being a federal parliamentary constitutional republic is no more than a name than it means. The power calculus in Pakistan is one of the most complex in the world with a wide array of political scientists giving numerous theories on its working. Although federal by name, it is anything but federal. Pakistan works as a highly centralized state with a mask of democracy on its face. What is common in the understanding of the political pundits is of the enormous influence of the Pakistani deep state- the core being the military calling the shots on the behalf of the civilian government. It is widely acknowledged that the Pakistani polity and the civilian government survive on the mercy of military commanders.

Pakistan has been under military rule from 1958-71, 1977-88 and 1999-2008 which saw the enforcement of martial law. In spite of the 1st successful democratic transition of the

civilian government in 2013 and latest one in 2018 with Imran Khan coming to power, the role of Pakistani deep state is always looming over the head. There are already allegations of Imran Khan being selected by the military to helm the government than being elected by the people of Pakistan. Various reports have surfaced in the Pakistani media alleging rigging of elections by the military. The reports are indeed unverified and just in the nature of allegations, it still assumes significance. The recent azadi March by the cleric cum politician Maulana Fazlur Rahman to Islamabad and a sit in staged by him and his supporters had included the demand of "no role of the army in the electoral process" to its list. What it demonstrates is the role of deep state in electoral process and functioning of the government on a whole. No doubt that the centralized power core is intact which is invisible and perfectly embedded in the Pakistani polity.

ANALYSIS

The above examples have certainly cleared everything about the topic. But analysis might help to choose the side to support. This phenomenon has both advantages and disadvantages, distributing it among various domains of a system. This surely believes to give government a dictatorial kind of power and concentrates the power with one tier of government but it also smoothens or increase the pace of decision making i.e. it reduces the level of chain of command making fast and effective decision-making process. This is what is generally experienced in a democratic system where it takes decades for one decision to get passed due to conflict in ideology. Also it is often seen that the delay in work is due to the files passing from one desk to another and in various departments, the concentration of power reduces these number of departments being formed as the approval/decision is taken by a single authority making it cost efficient and more productive. But certainly it also increases the chance of not getting the work done as there is no vigilant authority to check the ineffective behavior of the employee. Many times it is seen that the states where the government at the center and state are different have to face some discrimination regarding the implementation of some central schemes or availing the benefits of it. For examples:- recently five non BJP state governments have urged the center to release the GST dues which are worth in thousands of crores. This certainly will reduce the enthusiasm of the state for GST. But with the same government in the state as well as centre, the centre can deduce some better policies for those states which need to save some indigenous community there like the tribals etc. Coming of a religious ideology based party can create a secular hoax. This is what is evident in the citizenship amendment bill.

Many times the most evident symptom of this happening is seen in the grassroots levels. The coming of strong party at the centre and capturing maximum states certainly make

their power strong and start suppressing the regional parties. Regional parties rise when the local people or people of a particular community are not heard and are suppressed. To let their voice be heard such parties start keeping their agendas in front of the government through various means. To overcome the negligence of the centre and to remove the biasness of the party at the centre towards particular state results in emergence of various regional parties which is evident in the 20th century?

CONCLUSION

Having analyzed a number of countries displaying authoritarian tendencies in varying degrees along with a special emphasis on Indian system, we hereby infer that it is definitely possible for a federal system to centralize its machinery but the vital link which is necessary is a popular leader. Established political federal states can only be hampered with a leader with huge mandate and public trust. These leaders do not hesitate in overstepping of their fenced powers and the public trust acts as a bulwark in their authoritarian projects. But this only holds true of relatively stable polities rather than the chaotic ones where demagogues have the sway. We genuinely tried to take examples from the world which are large powers; some had been stable from a long time and some with a permanent facade of democracy and federalism but working under a sword of military. The most interesting one, although sidestepping the nation state boundaries was the UN that presented an interesting case which ought to be brought to the notice of our readers to grasp the nerve of the subject.

According to our analysis, all those states which have a history of constitutionalism and stable governments can be shielded by strain of centralization in some basic ways: -

1. The nation states must promote effective decentralization of power in their hey days right up to the last tier of governance. It will act as a cushion in time of populism and will definitely buy time for the country to head towards next elections.

2. A strong public opinion and empowered civil society is must to ward off a country from the path of centralization. An example is Britain. Even without a judicial check on the legislature (judiciary keeps itself to procedural formalities) it seldom drives into misadventure just due to a strong and well informed public opinion.

Just by following through these steps, even populist and centralized regimes can be checked to a decent level so as to not hamper the basic structure to common detriment.

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