

Constitution and Challenges of Federalism

We have just completed 55 years as a Republic, and this is a good opportunity to introspect. With great hope and expectation, the members of the Constituent Assembly adopted the Constitution on November 26, 1949, and the new Republic came into existence on 26 January, 1950. By any standard it was an extraordinary occasion.

The United States was the first republic in the modern world. With the Declaration of Independence, drafted by the great philosopher-statesman Thomas Jefferson in 1776, the American colonies rejected British rule. In the ensuing War of Independence, the American forces won. But the task of uniting the thirteen independent states remained unfinished.

In 1787, the Continental Congress met and started deliberating on the future Constitution. There were two different viewpoints prevailing at that time. The Republicans were in favour of popular sovereignty and supremacy of the states. The Federalists were in favour of a strong federal government which could bring unity and control the states. Finally, a compromise was arrived at, and the Constitution was approved in 1789. United States became the first Republic in modern world, and the American Constitution the first written Constitution.

But the early years of the American republic were turbulent. For nearly a decade, the Republican group, led by Jefferson and Madison, and the Federalist faction, led by Hamilton and Adams, were at loggerheads. In the midst of all the early tumult, the question of slavery was deliberately kept aside to buy peace and win the support of Southern states.

Finally, the Republicans vanquished the Federalists in the 1800 election in which Jefferson was elected President. The Republicans embraced some of the Federalist ideology, even as the states' rights were protected. The issue of slavery was not resolved until the civil war in the 1860s. But the promise of true liberty and democracy was denied to women and Blacks for several decades more. Women obtained the right to vote only in 1920s. While Black males got the right to vote after the civil war, that right became real for the Afro-American population in Southern states only in 1960s after the Civil Rights Movement.

The promise of the Declaration of Independence took over 180 years to be fulfilled. Judged by that slow evolution, Indian Constitution is both radical and revolutionary. At one stroke, all citizens got the right to vote. In a breathtaking display of idealism, and faith in our people, our freedom fighters embarked on universal adult franchise, and embraced the republican principle. The new Constitution itself was never approved by the Governor General, the notional head of state. By significant and deliberate decision, it was signed by the members of the Constituent

Assembly. As the preamble so eloquently declares, “We, the People”, have given unto ourselves the Constitution. The Constituent Assembly, and the drafting Committee under Babasaheb Ambedkar’s visionary Chairmanship, gave us a remarkable document of self-governance.

Meanwhile, the indomitable Sardar Patel integrated the more than 500 princely states into Indian Union. With the exception of Hyderabad state, not a bullet was fired in achieving this bloodless miracle. Given our special history, there was never any serious debate about the rights of states. Earlier, the Congress party had a vision of a decentralized, state-centered republic. But in the aftermath of partition, fears of fragmentation compelled the Constituent Assembly to create a strong Union government in a quasi-federal state.

As the painful memories of partition recede, our quasi-federal democracy has increasingly become a truly federal system. It took decades of debate and struggle. And it happened by a combination of three circumstances. Article 356 has become almost a dead letter after the Supreme Court verdict in Bommai case. The Union’s discretion to extend patronage through public sector investments has all but disappeared thanks to economic liberalization. And the compulsions of coalition governments made it impossible to ride roughshod over the states.

In addition to these changed circumstances, we must concede that fair and objective fiscal devolution has put our federalism on sound footing. The current practice of treating all Union tax revenues as the divisible pool of resources and earmarking a share to states (as recommended by the Tenth Finance Commission) has further strengthened the states. Today, the Union transfers over 42 percent of the tax resources to states – through Finance Commission, Planning Commission, and centrally sponsored schemes. With recent initiatives in employment, health and education sectors, it is likely that these transfers will reach 50% of Union taxes – a remarkable accomplishment by any standards.

In fact, now it can be argued that the Union’s ability to influence events in states has been reduced excessively. For instance, the Union has no automatic jurisdiction over criminal offences which affect public order or national security. Inter-state trade still faces several barriers, and the Union is helpless. The Union armed forces could not intervene to eliminate Veerappan, and a shameful menace continued for nearly two decades. States like Bihar are practically in medieval era, with kidnapping and organized crime as growing major industries. Politics, violence and crime are inextricably intertwined in many states. Left-wing extremism has taken hold of large regions in several states. In all these cases the Union is helpless. In some ways, it is paradoxical that the Union has greater influence on events in Nepal, Maldives or Sri Lanka, than in our own states! Clearly we need to reexamine some of the challenges faced in states, and find viable constitutional mechanisms to address them. Otherwise the growing regional disparities and lawlessness will pose the greatest dangers to our economy and national security.

There is a lot that is wrong with our democracy and politics. Even the working of the Constitution needs to be altered in respect of some details. The fact that we already have a hundred amendments shows that we adopted that great document in excessive and unnecessary detail. But we must also recognize that we have a noble and humane Constitution which has, in a large part, worked satisfactorily. And we have a democratic system which is resilient and capable of addressing our crisis. We, the people, need to take charge, and recognize that true transformation is possible only through our efforts.

But meanwhile, let us celebrate our Constitution and our democracy which give us, the citizens, the sovereignty, space and opportunity to rejuvenate our republic. If we work with good sense, we can surely transform our institutions of state and our politics and governance before we celebrate the 60th anniversary of our Republic. A great opportunity beckons us.

Jayaprakash Narayan

The author is the Coordinator of Lok Satta movement, and Janadesh, the National Campaign for Political Reforms. E-mail: loksatta@satyam.net.in; Url: www.loksatta.org