

# Fault lines, Litany of Blunders in the Federal Union of States

Review article on “India – A Federal Union of States: Fault Lines, Challenges and Opportunities” by Madhav Godbole

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## I Introduction

*India- A Federal Union of States: Fault Lines, Challenges and Opportunities* (Konark Publishers Pvt Ltd., pp. xcv +349. Rs. 800) is yet another contribution from Dr. Madhav Godbole in the long list of well researched books on India’s governance. This book combines his deep understanding from the review of history, his vast administrative experience, his ringside view of politics and exhaustive understanding of the Constitution and the nuances of federalism. All these converge forming an authoritative study on the evolution of the Indian Union, the fault lines and the challenges they create and what needs to be done to overcome the challenges. The evolution of the Indian Union is traced right from the system of dyarchy designed in the Government of India Act, 1919. It goes on to detail the basic governance and assignment system set out in the Government of India Act, 1935, the roles played by different leaders in ensuring the integration of 554 principalities within the country and to create a ‘holding together’ federation (as compared to coming together in most other federations), and the legacy of colonial rule in shaping the Constitution of Indian Republic and creating the Union with heavy centripetal bias. The basic fault lines inherent in the colonial legacy in the Constitution exacerbated with the planned development strategy, ending the hegemonistic relationship between the Union and the States. The end of single party rule has created an atmosphere of disharmony and a lack of cordiality and trust between the Union and the States. While the book touches on these preliminaries, the essential focus of the book is on Jammu and Kashmir and the origins and perpetuation of the problems.

The book has five long chapters and begins with identifying the fault lines in the Constitution, the challenges they pose and the ways to move toward a cooperative federation. It begins with the evolution of India’s independent republic, identifies the birth defects of the Union arising from heavy reliance on the systems and institutions of the colonial past. The second and third chapters focus on the integration of Jammu and Kashmir and the fault lines arising from the inability to act decisively at critical times, the creation of Article 370 in the Constitution and its eventual abrogation, stripping of the Statehood and creation of separate Union Territories of Jammu and Kashmir and Ladakh. The chapters bring out the perpetual problems created by the personal weaknesses of the then Prime Minister, Pandit Jawaharlal Nehru, a litany of blunders and a cunning role played by the Kashmiri leaders and most prominently, Shaikh Abdulla. The fourth chapter identifies additional fault lines arising from sub nationalism – of mixing religion with politics, linguistic and local chauvinism and bringing in cultural factors for division.

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The last chapter brings out the tendency to create various impediments to mobility, the contagious approach to localisation in employment and admission to educational institutions, factor and product market distortions created by imposing impediments to mobility and trade. It also makes some references to foster cooperative federalism.

## II Colonial legacy and Emerging Fault Lines

The gradual movement towards multilevel governance during the colonial rule began with the system of dyarchy – the creation of Governors' provinces and demarcation of certain subjects as 'provincial subjects' under the Government of India Act, 1919. The Commission reviewing the implementation of the 1919 Act recommended the creation of responsible government at the provincial level in place of a dyarchy to which the rulers of some Indian states too agreed to form the federation of British India provinces and Indian states. The subsequent Round Table Conference which discussed these issues led to the enactment of the Government of India Act, 1935. Interestingly, the Congress party which was leading the fight for independence was initially opposed to the Government of India Act and Pandit Jawaharlal Nehru characterised it as a 'charter of slavery', but later he is reported to have said that it 'proved to be an organic link between the old and new.' The overwhelming dependence of the Indian Constitution on the 1935 Act was palpable and the author quotes S. S. Gill, "The Constitution of India cannibalised the much maligned Government of India Act, 1935 to the extent of incorporating 235 of its sections. The entire judicial and administrative framework of old rules, regulations and procedures were also added wholesale" (p. 6).

Godbole brings out the decisive role played by Sardar Patel as the Union Home Minister in integrating 554 princely states into 14 administrative units with remarkable speed and alacrity. It was no mean task. In fact, Winston Churchill had stated that India was merely 'a geographical expression, no more than a single country than the Equator'. But within two years after independence, the task of peacefully unifying India was accomplished. Administrative integration was accomplished even before the Constitution was adopted and that too, peacefully. However, a number of fault lines appeared posing formidable challenges.

A crucial difference between decentralisation and federalism rests on ownership rights in constitutional powers (Breton, 2000). Under federalism, the powers of governmental units cannot be repressed or extinguished unilaterally, and the Constitution provides the safeguards and ensures enforcement of ownership rights. In this sense, Article 3 of the Constitution gives powers to the Parliament to virtually abolish or cannibalise the States simply by referring the bill containing the proposal for change by the President to the concerned State legislature. While this provision could have been helpful in integrating the princely states into 14 states, it failed to protect the very existence of the States and opened up a can of worms in terms of demands for statehood. The book highlights the harm created by intensified sub nationalism in the country, but can the balkanisation of States be arrested if more checks and balances are provided?

The inability to evolve a cordial Union-State relationship is the first major shortfall in the Union's functioning. The legacy of colonial rule and the partition of the country and the need to arrest the fissiparous tendencies by the native rulers were combined to create the Constitution with heavy centripetal bias. The adoption of centralised planning of the economy vested the power of resource allocation to the Centre. With the task of nation building paramount and with the overwhelming presence of the Congress party, the Constituent Assembly could not foresee the emergence of multi-party democracy. When opposing parties are elected to power in the Centre and States, disharmony and

mistrust emerge. Finally, ideologically, both the Congress and BJP, the two major national political parties believe in the strong Centre and do not like to entrust a larger role for the States in national affairs. Not surprisingly, there is no spirit of accommodation. Raja Chelliah once stated, 'everyone wants decentralization, but only up to his level'.

Clarity in the assignment system is important for both efficiency and accountability in service delivery. Assignments must be done according to comparative advantage of different governmental levels. However, certain overlapping assignments are unavoidable. The entire construct of the decentralisation theorem in fiscal federalism is on dealing with spillovers arising from overlapping assignments. Comparative advantage is decided by comparing welfare/efficiency gains from providing public services according to diversified preferences in a decentralised assignment with cost savings from scale economy from centralised assignment. The basic point, as stated by Breton (1996; p.185) is that if the Central government can elicit diversified preferences and provide public services accordingly, "decentralisation is not only not necessary but wasteful". The passage of time, changes in technology, political and administrative environment may make a case for having a fresh look at the assignment system. Thus, there is no ideology or established theorem in fiscal federalism literature that decentralisation is preferable to centralisation in all cases. While agreeing that national interest should be the guiding principle in reviewing the Seventh Schedule, it is unclear what is meant by 'narrow concerns of federalism'.

Although it makes eminent sense to review the Seventh Schedule, it is important to be careful to ensure that the assignment system enables efficient provision of public services. In this sense, the discussion on the division of legislative powers is ambivalent to some extent. The author presents considerable discussion on the concentration of subjects in the Union and State Lists and yet argues that the concurrent list needs to be enlarged mainly by transferring the State subjects to ensure uniform standards and provision of public services from a national perspective. There is no discussion on which subjects from the Union list can be transferred to the Concurrent or the State List. However, even as some legislative powers are moved out of the State List to the Union List, it is important to clarify the relative roles of the two levels. If setting uniform norms and standards is the issue, the Centre's role should be confined to all measures towards that, and actual delivery of the service could be done by the States. In other words, the relook at the Seventh Schedule should be accompanied by activity mapping to minimise overlapping and achieving clarity in the assignment system.

The fault lines in Indian Union begins with the lack of cordiality or harmonious relationship between the Union and the States. The failure to foresee a multiparty democracy and end of the single party rule reinforced by frequent elections and hegemonistic approach by the two major national parties, makes harmonious relationships between the ruling party or coalition at the Centre and those ruled by opposition parties in the States difficult. The office of Governor, a colonial legacy of having an unelected head of a State has over the years, been used by the ruling party at the Centre to control and constrain States by appointing the members of the ruling party. The ruling parties at the states see their main task as furthering the agenda of the party and act as the agent of the Central government which breeds mistrust and disharmony. The misuse of Article 356 to dismiss the elected governments on the ground that the constitutional machinery has broken was a source of instability, but the supreme court judgement on S. R. Bommai versus the Union of India that the decision to impose presidential rule in a state is judiciable has brought a check against the misuse. However, failure to act when required, like in the case of Godhra riots or when the Babri Masjid was brought down, has only exposed the failure of the system in spite of having institutions. Going further, the book argues, "... the second-generation reforms cannot be pushed beyond a point without the cooperation of the state governments' (p.64).

### III Kashmir and Other Fault Lines and the Perennial Search for Elusive Answers

The most important fault line of the Indian Union is the Kashmir imbroglio, and this takes a centre stage in the book in chapters 2 and 3. There is a detailed chronological account of the problem beginning with the troubled accession of the State to Indian Union. The narrative on Pakistan's adventure to occupy Kashmir forcing Hari Singh, the ruler of Kashmir to run for cover and seek accession, the hesitancy in pushing them back all the way to free it from the invaders, and the concessions made in terms of asymmetric provisions, the Delhi agreement in 1952, the repeated deceptive role played by Shaikh Abdulla, the failure to take advantage of holding 90000 Pakistani prisoners of war and 5000 sq. miles of territory in the Shimla Accord between Mrs. Gandhi and Mr. Bhutto in the Shimla agreement in 1972, all have been brought out in detail. The well-researched account of the events brings out the hesitation, indecision of the rulers in Delhi, the adventurism and crookedness of the rulers in Pakistan and deceptive role of the Kashmiri politicians. The author considers abrogation of Article 370 in August 2019, which abolished the special status to the State, which was given for a temporary period, but had acquired a permanent status as an important landmark and the much-needed break from the past.

The author lists a litany of blunders, and there are seventeen of them, made by the Government of India in dealing with the Kashmir problem. First, instead of leaving the matter of integration of Kashmir with Sardar Patel, the Prime Minister Pandit Nehru took the matter in his own hands and considering the swiftness in integrating 553 princely states and his own role in safeguarding Kashmir's future, the author believes that Sardar Patel would have played a more decisive role. Second, it was at the insistence of Shaikh Abdulla, Nehru divested the charge of Kashmir from Patel. Third, the Kashmir complication arose from linking the request for acceptance of accession by Maharaja Hari Singh with the Government of India's intention to hold a plebiscite. Fourth, there was no need for agreeing to a separate Constitution of Jammu and Kashmir. Fifth, Nehru heeding the advice by Mountbatten stopped the Indian Army from taking over all areas of Jammu and Kashmir. It was a mistake not to name Pakistan as the aggressor in India's complaint to the United Nations. Excessive reliance on Shaikh Abdulla including making the statement in the UN that India had agreed to the accession of J&K mainly because of the support extended by Shaikh Abdulla was a self-defeating assertion. The Delhi Agreement was a prime cause for the Kashmir problem with Nehru agreeing with most of the things Shaikh Abdulla pressed for. Repeated arrests of Shaikh Abdulla and his detention for nearly 11 years raised serious questions of credibility. A valuable opportunity to reap the gains from the 1971 war which could have been used to solve the problem was squandered in the Shimla agreement by converting LOC as an international border. The 1975 agreement between Indira Gandhi and Shaikh Abdulla could have been used to abolish Article 370. Treating insurgency with kid gloves for long created an atmosphere of continued violence. Deployment of the army for years together in the Kashmir Valley gave the impression that it is an occupation army. The Armed Forces Special Powers Act has become highly controversial. Finally, Pakistan's role in instigating, funding and supporting insurgency in J&K must be addressed with a new sense of urgency. The list is long and chartering a clear forward path is complicated.

Chapter 4 deals with additional fault lines and these include intermixing religion with politics. In the initial years, despite Jawaharlal Nehru's strong support to Mr. Ananthasayanam Ayyangar's resolution to separate religion from politics and ban communal organisations in the Constituent Assembly, no action was taken to amend the Constitution which required two-thirds majority in the Lok Sabha and endorsement by one-half of the States. Mrs, Indira Gandhi and Rajiv Gandhi too enjoyed significant

mandate, but the matter was not carried through. The book talks in detail about the damage caused to the secular fabric of the country through the acts of destruction of Babri Masjid and the Godhra riots and impending danger that may be caused by attempts to 'liberate' Kashi Vishwanath temple from Gyanvapi Mosque and the Krishna Janmabhoomi temple in Mathura. The sad commentary is that despite resolutions from some members of the Constituent Assembly, and Commissions like the National Commission to Review the Working of the Constitution and the Supreme Court judgments, the malady of communalism continues. The question is, in a semi-feudal system where loyalties are defined by religion and caste, will the legal constitutional separation between religion and politics make any difference at all?

Another issue raised by the author is the linguistic reorganisation of States despite Nehru's opposition to linguistic chauvinism but was lost in the political milieu even by his own party. Having exhausted the linguistic rationale for the division of states, the cultural dimension was added to divide Andhra Pradesh into Andhra and Telangana. The author warns that the creation of Telangana on purely cultural grounds may set a new stage for the next round of division of States. There are also increasing signs of sub-nationalism, intolerance and localisation of jobs not only in the government but also in the private sector. The author cautions that the growing menace of sub-nationalism must be addressed with utmost urgency. Perhaps acceleration in labour intensive growth in the country is a medicine to this cancer, but other administrative actions will also be necessary. The question is, will our political leaders care for such a nationalistic perspective?

Another important fault line is the attempt to divide the States into smaller ones. Of course, states like UP and Bihar may need divisions purely for reasons of administrative effectiveness. At the same time, considering the fact that India is a Union of States with a strong Centre, creation of smaller States will further weaken their bargaining powers. The fault lines arising from domiciliary requirements and the restrictions placed on the movement of people and products and contentious problems arising from linguistic chauvinism, are also discussed in detail.

The last chapter of the book is on the measures needed to strengthen India's federalism and is captioned "Towards Cooperative Federalism". The important issues dealt with in the chapter include clarity in the assignment of legislative powers of Union Territories, the need for a constitutional court to exclusively decide on constitutional issues given the Supreme Court is unable to decide on important constitutional issues within a reasonable time period. The chapter also discusses the need for establishing a trade and commerce authority of India to ensure freer trade and commerce throughout the country. While noting that the implementation of GST has helped simplify the tax and considerably eliminate cascading, the chapter identifies the remaining reforms to be carried out in the interest of cooperative federalism. The chapter also explores alternative mechanisms to resolve Centre-State and interstate matters in view of the poor performance of the Interstate Councils.

The contentious nature and a lack of clarity in the assignment of functions between the elected government in the Union Territory of Delhi and the Lt. Governor appointed by the Government of India is discussed in detail. The author is of the opinion that Delhi should continue as a Union Territory in view of its special status as the capital of the Country. The overlapping issues, however, continue to be contentious even after the Supreme Court passed the judgement that except for police, public order and land, the powers of the elected government are supreme. However, the issue is not likely to rest anytime soon as the subsequently passed National Capital Territory (amendment) Act, 2021, clarified that 'government' in the National Capital Territory means Lt. Governor. Even in matters in which the elected government is authorised to make laws, the opinion of the Lt. Governor should be considered. This has

been challenged by the Delhi government and the author notes the understandable reluctance of the Centre to grant the powers of a full state government irrespective of the party in power at the Centre. On Jammu and Kashmir, the author suggests the restoration of Statehood to create a congenial environment to initiate the political process with Ladakh separated and kept separately as a Union Territory. The impasse on the Union Territory of Chandigarh has been squarely attributed to Indira Gandhi's rigid stand and recommends the transfer of Chandigarh to Punjab along with a decision to build a new capital for Haryana.

On GST, the author is clear that crisis management due to COVID-19 pandemic should not deter the reforms to stabilise and improve the structure and operation of the tax. This includes making the tax system more comprehensive by including land and real estate and electricity. He states that the move towards single rate or two rates will have to be gradual after stabilising the revenue. On petroleum products, where it is necessary to include in the GST base. Considering that they contribute to 42 per cent of the revenue from domestic indirect taxes, the inclusion becomes feasible only when the revenue stabilises and the expansion of the base along the lines suggested are accomplished in two to three years. The need for having a strong technical secretariat comprising administrators, economists, accountants and lawyers is also emphasised. The author concludes, "With all its shortcomings, GST has helped India to take giant strides towards the objective of cooperative federalism". Not all will agree to this since the States agreed to forgo their fiscal autonomy in favour of tax harmonisation. That was primarily done by assuring them compensation against loss of revenue with the base year revenue escalated at 14% per year. The failure to generate the expected revenue buoyancy and the insecurity created in the failure to honour the commitments to compensate when the pandemic struck has left a lot of apprehension, and there are questions as to what will happen when the compensation period ends in June 2022.

The discussion on institutions to resolve intergovernmental bargaining and conflict resolution goes back to the creation of the National Development Council. However, the resolution process was mainly informal as the single party ruled the Centre and in almost all the States. There were other institutions like Zonal Councils, but they had limited success in resolving issues. The first Administrative Reforms Commission had recommended setting up of a body to provide, "... a standing machinery for effecting consultations between the Centre and the States .... on all issues of national importance" (p.289). Several states ruled by opposition parties argued for establishing an Inter-State Council (ISC) in their memoranda to the Sarkaria Commission. In fact, even the Rajamannar Committee had made the recommendation for the setting up of ISC as far back as 1971 but did not find favour with any government at the Centre until the V. P. Singh government set it up in 1990. The author, however, does not allude to the basic birth defect of the institution in that it was set up within the Union Home Ministry and as such, ceased to be independent. The author points out the lack of interest in operationalising the institution given that since 1990 only 11 meetings of ISC have been held until July 2016. The national development council could have played some role in bridging the divide, but that too has been inactive. The book does not discuss whether and to what extent the Planning Commission has played any role in promoting intergovernmental cooperation and to what extent its successor- the NITI Ayog can play.

Whenever we discuss Union-State relationships, we dwell upon cooperative federalism as a desired goal. However, most often, the desirability and achievability of this is taken for granted. Cooperative federalism is not a concept which is given unconditionally. Intergovernmental cooperation is possible only when certain preconditions are met. First cooperation is feasible in areas where there are gains from cooperation for all parties. It is also possible that when some parties gain and others lose, the gainers are willing to compensate the losers. The first precondition is the atmosphere of confidence and trust among the parties

and the willingness of the more powerful members of the party to gain this. Furthermore, cost and availability of information facilitate acts of cooperation. In other words, achieving intergovernmental cooperation requires minimising information, bargaining and adjudicating costs. Minimising these transaction costs requires effective judiciary, free press, and systems and institutions for bargaining and conflict resolution. The GST Council is still a work in progress and the pandemic has added to the mistrust. There are many more areas of mistrust between the Union and States and creation of an effective institution and bargaining are necessary.

The book does not discuss the ‘competitive federalism’ aspect of India’s federalism which is particularly important in the context of market-based development, though there are some discussions on market promoting federalism like the creation of a national market when dealing with fault lines like impediments to trade and local reservations in labour market. Interestingly, there are preconditions for successful competitive federalism, and these include ‘competitive equality’ and ‘cost-benefit appropriability’. Equality in competitive ability horizontally requires a measure of equality in the ability to compete for investments. In a system where per capita income differences are large, enabling the states to provide comparable levels of public services and infrastructure at comparable tax effort is infeasible. This, over time, could accentuate the divergence in incomes and can be a source of horizontal intergovernmental frictions. One possible way is to have clearly targeted specific purpose transfers to select areas to ensure minimum standards of services across the country. Of course, having 28 umbrella schemes as specific purpose transfers in the name of Centrally Sponsored Schemes is neither targeted nor provides substantial resources for equalising the levels of these meritorious services. The book does not deal with these issues.

On the whole, this is a fascinating book and is a must read for anyone interested in the history, understanding political machinations, and the role of important personalities in shaping the Indian Union. While there are several fault lines which are brought out tellingly, keeping such a Union with large diversities secure for 75 years by itself is an achievement. Godbole brings in rich knowledge of history, politics and his long years of administrative experience to bring several important facets of shaping the Indian Union, its fault lines and the way forward. This is definitely a book which deserves to be read and understood widely.

## References

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