

Conflict Avoidance & Resolution Can Open Gateway to New India

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LET Centre-States Clash over Farm Laws Be a Wake-up Call

"No Central Government, which is wise, will undertake a conflict over small matters. Can checks govern a country; every check means a conflict and every time a proposition is positively made in the Legislative Assembly and shaped into a policy, a check means an invitation to a public meeting, an invitation to an argument, sides being taken, appeals being made and a lot of misunderstanding. Whereas if they meet together, consult together and dispose of things together, we will not have conflicts and checks. It is only against dangers that checks are provided explicitly but in other matters we envisage a complete harmonious self-governing family working together but if we provide checks in a family, we go with a divorce document even before we marry".

Alas, this Team India vision of late C. Rajagopalachari, Home Minister, is totally forgotten. His sage words, expounded in provisional Parliament during August 1951, are highly relevant today.

This is because conflicts of all sorts at all levels have become synonymous with vibrant democracy. This is due to complex inter-play of various factors notably bad governance and clash of rights.

Central policies, schemes and laws are thrust on the Nation as a fait accompli. Crucial bills are rarely referred to time-tested institution of joint committee/ select committee / standing committee of Parliament.

You name a subject & search for it on the Net. And you would find dozens of weblink to documents on conflicts over the searched subject. Every issue ranging from reserving beds for Covid-19 patients to farm laws turns into conflict to be resolved by the judiciary.

The Constitution is supposed to be the ultimate guide for the Nation. In actual practice, the Constitution itself has become the source of friction between the Centre, States and among the States. It needs to be written specially to avoid its misuse by the Centre and to avoid legislative conflicts. What applies to Constitution also applies to Central and State laws that trigger avoidable litigations.

This issue has been aptly addressed by a 2019 study titled '**Cleaning Constitutional Cobwebs Reforming the Seventh Schedule**' submitted by Vidhi Centre for Legal Policy to 15th Finance Commission.

For the sake of simplicity, this column would focus on Centre-State legislative conflicts over farm laws & farmers' protest. Before elaborating on this, we should note that conflict avoidance and resolution has turned out to be the Achilles heel for the NDA Government. This, in spite of the fact that Prime Minister Narendra Modi himself is actually aware of conflicts & has spoken wisely on them at certain events.

In his first Independence-Day Address to the Nation on 15th August 2014, Mr. Modi stated:

"When I came to Delhi and noticed an insider view, I felt what it was and I was surprised to see it. It seemed as if dozens of separate governments are running at the same time in one main government. It appeared that everyone has its own fiefdom. I could observe disunity and conflict among them. One department is taking on the other department and taking on to the extent that two departments of the same government are fighting against each other by approaching Supreme Court. This disunity, this conflict among people of the same country! How come we can take the country forward?"

About a year later, he revisited the need for avoiding conflicts at a global conference on '**samvad**'. Mr. Modi stated:

"When we talk about dialogue, what kind of dialogue should it be? It is dialogue which produces no anger or retribution. One of the greatest examples of such dialogue was the one between Adi Sankara and Mandana Mishra".

Narrating this fascinating story from Ancient days, he stated that Adi Sankara won the debate against rituals as Mandana Mishra's anger was palpable.

Unfortunately, anger is discernible in Mr. Modi's repeated attacks on those who oppose three central farm laws. These were imposed on the nation as ordinances on a subject (agriculture) which is clearly specified in States' List in the Constitution. The Government later rushed the ordinance through Parliament as bills without referring them to any Parliamentary committee. The Government did not disclose what led it to change its constitutional stance, reiterated over last two decades, that both agriculture and agricultural marketing are State subjects.

For instance, the Government told Lok Sabha on 27th March 2018 that

"at present, there is no proposal under consideration of the Government to bring agricultural marketing into the concurrent or Union List".

This reply to a question was preceded by Finance Minister late Arun Jaitley's disclosure of the Government's decision to draft a model contract farming (CF) law.

In his Budget speech for 2017-18 delivered on 1st Feb 2017, Mr. Jaitley stated:

"We also propose to integrate farmers who grow fruits and vegetables with agro processing units for better price realisation and reduction of post-harvest losses. A model law on contract farming would therefore be prepared and circulated among the States for adoption".

The Constitution has not been amended till today. Then, how could the Government enact two new farm laws. And how long the State Governors would block anti-central farm bills passed by State assemblies where the Opposition is the ruling party in States. The Centre-States showdown over legislative competence is, perhaps, unprecedented.

It is here apt to cite Punjab Assembly's resolution against three farm laws and passage of its three bills to counter them. The Resolution says: ***"These legislations are a direct attack, and use of subterfuge to encroach upon the functions and the powers of the States, as enshrined in the country's Constitution".***

The President of India Ram Nath Kovind has reportedly refused to meet chief ministers of four Congress-ruled States who wanted to share farmers' concern over farm laws.

Specifics about new laws a bit later in this column. We hope the Supreme Court would ask the Government to disclose under which Entry of which List of 7th Schedule of the Constitution two new laws have been legislated.

The Government should disclose to the Nation whether it earlier misread the Constitution by harping on previous regime's contention that agricultural marketing is a State subject.

It is the clarity on agriculture as State subject that led successive Governments to convince States to change archaic State agricultural market laws. This was done through three successive versions of model agricultural marketing laws.

A majority of States did amend their laws or enact new ones beginning 2003. They also incorporated CF provisions under their respective agricultural marketing laws. A few of them have legislated CF laws. CF is today a respectable stream of agriculture across the country. Many food companies are deeply entrenched in this stream. Several of them export processed farm produce sourced through CF.

Much before the Centre thought of marketing CF to the States through draft model agricultural market laws, CF had already taken deep roots in the country. Cocoa, as an inter-crop or as add-on crop to existing plantations, is a notable example. Cadbury India (now Mondelez India) introduced Cocoa crop to India in 1965. Rest is history that can be read on the company's website. We can add dozens of success stories from different crops/downstream sectors.

Farmers didn't come to streets when CF was mooted in the country's first-ever National Agriculture Policy in 2000. They did not resort to ***rasta roko*** when CF was articulated in the maiden National Policy on Farmers in 2007.

Everything was okay as long as farmers knew that CF was regulated by State policies and laws & was not contrived to benefit the corporate sector. Thus, the Centre's sudden decision to wrest control over agricultural marketing and CF has unnerved the peasants. The Central laws would naturally override State laws if the Supreme Court rules in favour of the Modi Government.

The Growers' concern is heightened by the fact that the Centre has been murmuring about fiscal burden of minimum support prices (MSP). It haggles with the States over sharing losses incurred in procurement of nutri-cereals such as bajra, pulses and oilseeds.

Instead of debating issues raised by stakeholders from the Opposition-ruled States, Mr. Modi has called them as habitual critics. He complains their job is to oppose everything that is happening in the country.

He reportedly stated:

"These days they have a problem with historic reforms in agriculture. They are upset not for farmers but for themselves. For ages they strengthened their power through middlemen. The people of the country have begun destroying their web of deception".

The Modi Government has not constituted National Integration Council ever since it came to power in May 2014. It convened only once Indian Labour Conference, a tripartite forum, in 2015.

NDA Government convened only once Inter-State Council (ISC) in 2015. It is required to ***"meet at least thrice in every year"*** as stipulated in Presidential Order issued in May 1990, notifying ISC's formation.

The list of cases where institutional arrangements stand weakened or derailed is long. Suffice it to say that the Government should realize that institutional deficit ultimately leads to public protests.

ISC itself was formed 21 years after it was first recommended by 1st Administrative Reforms Commission (ARC) in its report on Centre-State Relations (CSR). The Government formed ISC under Article 263 of the Constitution only after Sarkaria Commission on CSR articulated need for it in its report submitted in 1988.

PM-Chaired ISC has met only 11 times since its formation in 1990. Thus, a constitutional entity, created to manage conflicts in federal system, is virtually a famished body. ISC ***"meets rarely and has not been able to work to its full potential"***, observed Punchhi Commission on Centre-State Relations (CCSR) that submitted its seven-volume report to UPA Government in April 2010.

Two years prior to this, 2nd Administrative Reforms Commission (ARC) called for effective use of ISC for resolving Centre-State & Inter-State disputes. In its 7th report ***"Capacity Building For Conflict Resolution"*** submitted in March 2008, ARC stated:

"the Inter-State Council must be given the 'complete' role provided to it under the Constitution i.e. both conflict resolution and for better coordination of policy and action in matters of interest to the Union and States".

As Gujarat Chief Minister, Mr. Modi forcefully advocated implementation of CCSR's recommendations. He repeatedly suggested that ISC should meet at least twice a year. As PM, he owes an explanation to the nation for his silence on inordinate delay in acting on its recommendations.

Punchhi Commission recommendations have a direct relevance to three central farm laws. These were issued as ordinances in June 2020 and later enacted as laws by Parliament in September.

The three laws are: 1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Service Act, 2020. 2) The Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020. 3) The Essential Commodities (Amendment) Act, 2020.

The 3rd is an amendment Act and does not directly concern farmers. It can thus be left out of the focus in this column.

The 7th Schedule of the Constitution has organized the legislative domains into three categories - List I (Union List), List II (State List) and List III (Concurrent List). The subject mentioned in the 1st List is exclusive legislative domain of the Central Government. Similarly, List 2 mentions subjects that fall under the States' legislative arena. This is subject to specified situations where Parliament can enact law for one or more States. Both the Centre and the States can enact laws on subjects mentioned in 3rd List.

Showing Big-brother approach, successive regimes at the Centre have relied on Entry 97 of the 1st List to enact several laws. Entry 97 that confers residuary powers to Centre reads as:

"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists".

No one knows how many central laws have been enacted by taking recourse to Entry 97. Opaque governance ensures that Union Government does not disclose under which Entry of which List a legislation has been crafted.

In 1971, the Supreme Court delivered a judgement relating to wealth tax & Entry 97, thereby empowering the Centre to take recourse to Entry 97 with abundance. The apex court had observed:

"The residuary field of legislation no longer lies barren or unproductive. It has already yielded fruitful sources of taxation like the Gift Tax Act, the Expenditure Tax Act and borrowings as under the scheme of annuity deposits".

Vidhi study has voiced reservation over excessive use of Entry 97. It says:

"The Constituent Assembly's conferral of residuary powers on the Parliament was only to account for unforeseeable areas of exercise of legislative powers and cannot be extended to imply an infinite legislative domain for the Union".

The Study has thus called for review of three lists under Seventh Schedule after every 10 years to 1) remove entries that lost relevance; 2) to make additions keeping in view socio-economic dynamics and 3) to make appropriate placements in the lists.

It remains to be seen whether Vidhi study's recommendations are taken note of by the Supreme Court while deciding on the constitutional validity of three farm laws. Neither the Court nor the Government felt the need or urgency in expediting the hearing on spate of petitions against these Acts.

Has the Court asked the Centre to explain inordinate delay in taking a decision on recommendations of Punchhi Commission.

The Nation should belatedly act on the Report's conflict resolution mantra to draw curtains over farmers protest by ending Centre-State conflict on farm laws.

As put by the Commission,

"In a federal system, the existence of the power in the Union does not by itself justify its exercise and it is the considered view of the Commission that the Union should be extremely restrained in asserting Parliamentary supremacy in matters assigned to the States. Greater flexibility to States in relation to subjects in the State List and 'transferred items' in the Concurrent List is the key for better Centre-State relations".