

RSTV: Big Picture
Challenges to the Federal Structure

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Guest - Abhilash Khandekar, Senior Journalist; J Sai Deepak, Advocate, Supreme Court; Shekhar Iyer, Senior Journalist

Larger Background:

- We have seen instances of tussle between the agencies of central government and the state governments.
- The latest in the list happens to be IT raids at the offices and residence of aides of Madhya Pradesh Chief Minister which saw run-in between the CRPF officers and the state police officers.
- Such instances were also witnessed in West Bengal, Karnataka and Andhra Pradesh as well where the central agencies proceeded with corruption or irregularity probes.
- The central agencies are formed in a federal structure and have primarily the responsibility of probing issues against government staff and serious cases referred to it by courts or by the state governments itself.
- Besides the cases of corruption probe, another subject which raises the issue of a federal structure are statements made by the leaders of Jammu and Kashmir centric parties on Article 370.
- Now, what are the challenges before smooth cohesion in the federal structure and what is the ambit of central and state agencies.

Analysis by the Experts:

What is the ambit of Central agencies when they proceed with raids in the territorial jurisdiction of the state government?

J Sai Deepak, Advocate, Supreme Court, weighed in with his arguments.

- Firstly, I don't believe that this particular issue highlights a problem with the federal structure at all. It is the plain and simple case of somebody treating the state as their own fiefdom. This is not a constitutional question at all, even remotely. The jurisdiction of central agencies when it comes to these issues is also crystal clear. And any interference or use of state instrumentalities or state agencies to prevent them from doing their job is a violation of fundamental legal principles and creates a law and order issue.
- Further, it only means a defiance of the constitutional structure. It is not something which highlights a problem with the federal structure. However, it shows someone's absolute indifference and apathy towards the constitutional schema as far as I am concerned. Thus, when the central agencies start a certain probe, or proceeds on a certain probe, it is obvious that they would have examined their jurisdiction over the concerned issue, which they would have verified. Now the agencies' jurisdiction or its ability to do its job is not restricted by the bounds of the geographical territories of a particular state. If the jurisdiction ventures into any state, regardless of whichever state it may be, and whichever dispensation maybe in power, the fact remains that as long as that particular subject matter falls within the scope of their particular jurisdiction, then there ends the matter.
- In fact, in such a situation, it behoves and it falls upon the state agencies, to cooperate with the central

agencies when it comes to this.

- Central agencies and state agencies are answerable only to the law and no one else, regardless of who is at the top. Therefore as far as I am concerned, this is not something that highlights a problem with the federal structure- however, this shows a wilful, brazen flouting of the federal structure.

Do you also think that Central agencies, whenever they act against the states in terms of probing, they are not obstructing anything? Rather, it is the state governments' responsibility that the agencies must cooperate with the central agencies. Your thoughts...

Abhilash Khandekar, Senior Journalist, weighed in with his thoughts.

- Legally speaking, the state agencies must cooperate. One must note that there are no two opinions about it. As far as the situation in Madhya Pradesh is concerned, when the IT raids were being conducted in Bhopal, the state police agencies, that is the DGP and the Home Secretary and others were not informed and when the raids were conducted in a multi-storied building, which had a number of flats. In one of the flats, where the raids were being conducted by the IT authorities, one of the residents complained that the main gate of the whole complex was being locked up by the CRPF and nobody was being allowed to go in or go out of the whole complex. Thus, they called up the police, and the local police wanted to enter, however, the CRPF apparently, did not allow them. It is from here that the altercation began. Thus, here it was not about IT raids as such, and nobody was opposing the IT raids. However, because, Madhya Pradesh has a Congress Government that is recently elected, and the raids were being conducted on the Chief Minister's aids, the Congress apparently thought that this is some kind of a political vendetta by the BJP government at the centre and therefore, some kind of twist was given to the whole episode and it appeared to be a clash between the central agencies and the Madhya Pradesh police and the other agencies.
- Further, there is a clear bifurcation between the state subjects, the central subjects and the concurrent subjects. So, there is no clash as such.
- Even in Delhi, when there was a Congress government at the center and a Congress Chief Minister who was in charge of Delhi, there wasn't much friction between the two governments.
- However, as soon as that changed, with the AAP government coming to power and the BJP at the Centre, we saw friction between the Centre and the government of Delhi. However, I don't believe that the federal structure as such is being dented at any point of time.

What do you make out of the whole issue? We have seen the state governments of Madhya Pradesh and West Bengal were at loggerheads against the government at the Centre. There have been other instances as well of late. Do you think that there exists a lack of cohesion? This is because the sense is that Central agencies can proceed with investigations in any state jurisdiction. However, is it binding on them to inform the state government?

Shekhar Iyer, Senior Journalist, weighed in with his arguments here.

I don't think it is required for them to do so. Unless of course, it is a local situation wherein they can

requisition a state force. However, where the central agencies feel that prior information could result in a leak out and would result in the raid not being successful, then they can go ahead. Besides, these are income tax laws. One can take an example at what happened at the Kolkata airport recently. A passenger arrives from Bangkok, and is stopped by the customs because they suspect that the passenger is carrying some contraband gold which was not declared. Further, the customs are about to proceed with the usual process and suddenly, the Kolkata police burst into the airport area which is not under their jurisdiction (it is under the CISF), and then they threaten the custom officials to leave the passenger. After this, a case is sought to be filed against the customs officials. Now the question arises: Why does the Kolkata police suddenly get worked up about a passenger arriving from Bangkok?

Similarly in Bhopal. Income tax raids must be happening in several parts of Madhya Pradesh? Why is it that only these residents complained? The people who have been caught are understood to have worked with the Chief Minister of Madhya Pradesh. When we discuss about federalism, or cooperative federalism, or centre-state relations, there is a political element to it. There was a recent case when the Tamil Nadu Chief Secretary was raided and the IT authorities deemed it fit to even take the CRPF there! They called the CRPF because the AIADMK leaders and their goons arrived there to intimidate the officials. Therefore, I believe that there is a lot of politics in this. There is an attempt by the elected representatives as well to intimidate the law enforcement officials. These are the dangers that one is up against.

What are the bars on the Central agencies?

J Sai Deepak, Advocate, Supreme Court, weighed in with his arguments.

When it is understood or it becomes absolutely clear that the ramification of a certain issue goes beyond a particular state, by default or at least as a part of practice, such matters end up before the Central Bureau of Investigation. In fact, in quite a few instances, if an investigation starts at a state government or within the territory of a particular state and then they realize that this goes much beyond a particular state, and could have nationwide ramifications, then such a matter is referred to the CBI. Or, if it otherwise has an implication of national importance, then it is referred to the CBI.

Now, once that particular jurisdiction is established, and they decide to take action or take things further, assuming for a moment that you believe that this is indeed a violation of some kind of a procedure or a rule that exists, then one should question the legality of the transfer of that particular investigation at the first place. However, if one has a problem with the investigation as a whole or with the timing of that particular investigation, then that does not immediately translate to the questionability of the investigation or the jurisdiction of that particular organization in the first place.

As has already been pointed out, this is a case that relates to income tax. I don't know the specific facts of the case, and therefore I am not in a position to comment on who is right or wrong; I am simply moving forward on an academic legal solid basis which is- if there is a specific subject matter that falls exclusively within the exclusive jurisdiction of a central agency, then, it is up to that agency to decide as to what is the best manner to preserve the integrity of that particular investigation and whether it needs to liaise with the state officials or not. If it believes that doing so will compromise that particular investigation, then it is well within its rights to keep it completely silent. Now, if that translates to raising the bogey of the federal structure or a challenge to the federal structure, then it appears to me that every constitutional scheme is now being used as a façade to hide behind so that the actual issue is scuttled and brushed under the carpet. This was not the purpose of any of the basic structures put in place.

Unfortunately, when you discuss a constitutional issue, to limit the same to the four corners of academic debates, would perhaps be impractical, and it would not be meaningful as well. Unfortunately or

fortunately, this is inevitably linked to a political angle. Someone can also say that the very initiation of the investigation can also be political. This maybe so. But, at this point in time, the question that one would have to ask is this: so long as the ball has been set rolling within the four corners of the law, and the subject matter falls exclusively within the Union List under the 7th Schedule of the Constitution of India, then there is no question of their ability to pursue this matter and take it to its logical conclusion, whatever it may be.

Further, if one comes in the way of the investigation and if other bogies are raised, such as the convenient citing of elections, then something needs to be urgently done to address the matter.

Law and order cannot take the back seat just because elections are going on. The sanctity of the elections is understood, but that does not necessarily mean that every other process be in a state of suspended animation. The agencies have to do their jobs.

Corruption cases also cannot take a back seat just because elections are going on. We start talking about elections when a movie gets released; we start talking about elections when there is an IT raid- what are we going to correct with respect to an election? Has this practice been observed in the past 60-70 years where they say that the moment there is an announcement of an election, everything must come to a standstill?

The institutions must be allowed to do their job. At the end of the day, if one is right, if one is innocent, the facts will speak for themselves and law will take its own course.

Do tussles like this between the Central agencies and the State agencies, leave a scar on the federal structure? Would it affect the cohesive functioning machinery of Centre-State relations?

Abhilash Khandekar, Senior Journalist, weighed in with his thoughts.

- It does at times. One should go a few years back to a time when the then Madhya Pradesh Chief Minister Shivraj Singh Chauhan actually sat on a dharna against the Government of India's policies. I remember that at the time, Jairam Ramesh was the environment minister. And the sight of Shivraj Singh Chauhan sitting on a dharna in the state capital of Madhya Pradesh, against the Union Government had grabbed headlines then.
- There have been reasons in the past for which Centre-State relations for one reason or the other came in for some kind of stress when the UPA Government was in Delhi, and when the Centre-State relations for one reason or the other did leave some kind of scars.
- We must remember that about 20 years ago or 30 years ago, there were governments of not many parties in different states, however, today, that scenario has changed. We have a BJP government at the centre and there are many other state governments. Thus, they keep fighting over funds, they keep fighting over central forces, deployment, etc. Also, such actions such as income tax raids are also another example.
- In Madhya Pradesh, the income tax sleuths not only visited the residence of the serving Officer on Special Duty (OSD) of Mr. Kamal Nath, but they also took with them CRPF forces, anticipating some kind of law and order situation because they thought that the Madhya Pradesh police would have created some problems for them.
- The Madhya Pradesh police was not informed, the Election Commission was not informed, and therefore the issue was debated at length between the Congress and the BJP.
- However, the fact remains that the law is very clear on this issue. Therefore, I feel that whatever

clashes between the Bhopal police and CRPF that took place, it did not flare up much. However, definitely, the political slugfest is going on. The timing of the raid, etc. is being discussed nowadays.

Usually we see that whenever there is a crisis in the state, the state seeks help of the Centre. But, whenever there are issues regarding a probe, then we see a tussle between the State and the Centre. It is not just the State asking the Centre and the Centre asking the State; the instances have been from both the sides. Where do you see that one needs to draw the line?

Shekhar Iyer, Senior Journalist, weighed in with his arguments here.

I don't think that it is an issue of the Centre and State. The income tax department requisitioning central forces is very much within the relevant rules and the standard operating procedures that the tax officials follow. This is because the tax authorities may have to move in areas where a problem can arise. Further, it is important to note that no Chief Minister has a problem till the time when the elections came around the corner. Chandrababu Naidu did not have a problem; similarly none of the Chief Ministers during the last 4 years came forward and said that the present Government has discriminated against them. Even the Kerala Chief Minister said that he had the most sympathetic hearing from Prime Minister Modi (around the time the floods happened in Kerala).

Thus, wherever politicians feel disadvantaged on a particular issue, then we see points of friction being highlighted. Otherwise, by and large, we have not seen a situation where the Centre and States have been at loggerheads.

The States have been at loggerheads with each other- we have seen Assam and Nagaland fighting over the border issue. There have been river water disputes as well (for example Tamil Nadu and Karnataka). There have been instances where the institutions have been at loggerheads. Thus, institutional problems arise when there is a need to share resources.

The statement made by a particular Jammu and Kashmir politician on having two Prime Minister's- does this raise larger questions on Centre-State relations?

Shekhar Iyer, Senior Journalist, weighed in with his arguments here.

Prior to 1953, Sheikh Abdullah had a problem and then there was an agreement between him and Nehru known as the famous Nehru-Sheikh Abdullah pact. Subsequent to this pact, the National Conference was seen as a party that belongs to the mainstream. Post this, we saw the influence of the National Conference, gradually diminishing with the rise of forces such as the PDP. Now, after the PDP had an alliance with the BJP, today there is a race in the valley to somehow appease the separatist sentiments by the National mainstream parties, including the Indian National Congress. When the Indian National Congress was there at the centre, they didn't see any reason to revisit AFSPA.

Even the BJP's stand on Article 370 is not something new. It has been their stand right from the beginning (even during the Jan Sangh days). The philosophy of two flags and two constitutions are part of the philosophy which the Jan Sangh had opposed. Today, even the mainstream parties find it hard to campaign there (in J&K) if they do not pander to the separatist sentiments, which is very unfortunate.

If more and more such tussles become the norm in the future, i.e. between the Central agencies and the State agencies, would we see more court interventions in terms of probing certain officers of state departments and/or central departments?

J Sai Deepak, Advocate, Supreme Court, weighed in with his arguments.

The issue of federal structure and power sharing so to speak typically arises when you are looking at the sharing of resources, redrawing of borders, creation of new states, or distribution of finances, or portions that states are supposed to get from GST, etc. States cannot be expected to be standing at the gates of the centre with their arms outstretched for alms when it comes to their own resources and their own needs. However, the two issues which do not necessarily fall within the domain of Centre-State relations are:

1. Law and Order Issues:

A law and order issue is a law and order issue and it should not be given the colour of a constitutional problem which has to an extent created a fissiparous tendency in the relationship between the Centre and the States. Judicial intervention becomes important whenever such fissiparous tendencies arise.

2. Issues of National Security:

When it comes to issues of National Security, whether it is elections or any other thing that comes up, if a politician ends up catering to separatist crowds or secessionist crowds, then that is not to be seen only in the context of elections, but that is effectively going to create a long-term scar when it comes to the integrity of the country, and that cannot be glossed over and looked over as a mere statement made during the election season or during the heat of the elections.

That is, according to me, impermissible and unpardonable, regardless of whoever makes it. Further, if it happens to be a national mainstream party, which panders to that kind of a sentiment, merely because it sees some sort of a vote bank, then it effectively insults the electorate, and also its mandate as a national party which is meant to keep the country together, regardless of whether it occupies the treasury benches or the opposition benches. So, the statements made in Kashmir on Article 370 according to me, perhaps could end up creating situations where again religious minorities in that particular state will find it difficult to survive, and therefore the question of rehabilitation would again take a back seat.

