

SEMINAR REPORT

Additional Terms of Reference of the 15th Finance Commission: Implications for the States

Saturday, 14 September 2019

Gulmohar Hall, India Habitat Centre, Lodhi Road, New Delhi

Organised By



Thiruvananthapuram, Kerala, India

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This report is prepared by Sri. Pyaralal Raghavan.

PROGRAMME

Inauguration and Book Release

Welcome:

K J Joseph, Director, GIFT

Chair:

Sitaram Yechury, Communist Party of India (Marxist)

Inaugural Address:

Dr Manmohan Singh, Former Prime Minister of India

Panelists

T M Thomas Isaac, Finance Minister, Government of Kerala

Jairam Ramesh,

Member of Parliament & Former Minister, Government of India

D Raja, Secretary, CPI

Harsh Mander, Director, Centre for Equity Studies

Dipankar Bhattacharya, CPI (ML)

Indira Jaising, Senior Advocate

Session 1

9:15 am to 10:20 am

Setting the Context: 15th Finance Commission Story So Far

Chair

T M Thomas Isaac

Finance Minister, Government of Kerala

Panelists

Haseeb A. Drabu,

Former Finance Minister, Govt. of Jammu & Kashmir

Abhijit Sen, Former Member, Planning Commission

Session 2

9:15 am to 10:20 am

Union Government Responsibilities: Perspective of Finance Commissions

Chair

Balveer Arora, Chairperson, Centre for Multilevel Federalism, Institute of Social Sciences

Panelists

Sudipto Mundle, Member, 14th Finance Commission

Indira Rajaraman, Member, 13th Finance Commission

Govinda Rao, Member, 14th Finance Commission

Atul Sarma, Member 13th Finance Commission

Abhijit Sen, Member, 14th Finance Commission

D K Srivastava, Member, 12th Finance Commission

Session 3

10:35 am to 11:20 am

PROGRAMME

Session 4 12:20 pm to 01:20 pm	<p>Implications on Fiscal Stability and Governance Chair Jayati Ghosh, Professor CESP, JNU</p> <p>Panelists Venkatesh Athreya, former Professor of Economics, Bharathidasan University Himani Baxi, Assitant Professor, Ahmadabad University D Narayana, former Director, GIFT, Thiruvananthapuram</p>
Session 5 02:00 pm to 03: 15 pm	<p>Response of the 4th Estate Chair T N Ninan, Chairperson, Business Standard</p> <p>Panelists T K Arun, Economic Times Harish Damodaran, Indian Express Sukumar Muralidharan, Adjunct Faculty, Jindal School of Journalism and Communication Mihir Sharma, Columnist, Bloomberg M K Venu, Founding Editor, The Wire D Vijayamohan, Senior Coordinating Editor, Malayala Manorama Sudipdo Mundle, Member, 14th Finance Commission Govind Rao, Member, 14th Finance Commission</p>
Session 6 03:30 pm to 04:30 pm	<p>Constitutional Implications of Additional Terms of References Chair A P Shah, Former Chief Justice, Delhi High Court</p> <p>Panelists PDT Achary, Former Secretary General, Lok Sabha M G Devasahayam, Former Chief Secretary, Haryana Mridul Eapen, Member, State Planning Board, Kerala A V Jose, Former Director, GIFT, Thiruvananthapuram</p>

PROGRAMME

Fiscal Health and Development Implications for States

Session 7
04:30 pm to 05:30 pm

Chair

Prabhat Patnaik, Professor Emeritus, JNU

Panelists

C P Chandrasekhar, Professor, CESP, JNU

Pravin Jha, Professor, CESP, JNU

Sushil Khanna, Professor, IIM, Kolkata

K Ravi Raman, Member, State Planning Board, Kerala

SUMMING UP

Concluding session:
05:30 pm to 06:00 pm

Chair

T M Thomas Isaac, Finance Minister, Government of Kerala

Abhijit Sen, Member, 14th Finance Commission &
Former Member, Planning Commission

Vote of Thanks

K J Joseph, Director, GIFT

SESSION 1

INAUGURATION AND BOOK RELEASE

WELCOME:

K J Joseph

Director, GIFT

CHAIR:

Sitaram Yechury

Communist Party of India (Marxist)

INAUGURAL ADDRESS:

Dr Manmohan Singh

Former Prime Minister of India

PANELISTS

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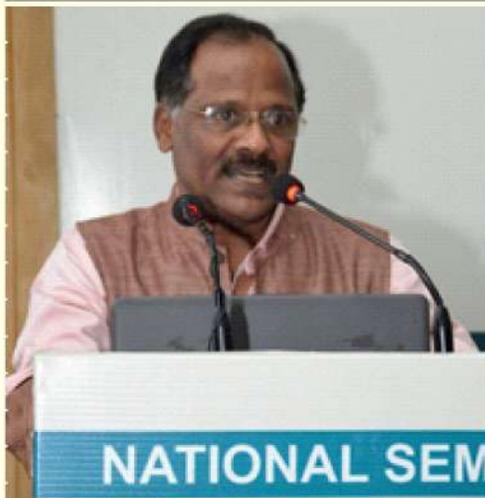
Dipankar Bhattacharya

CPI (ML)

Indira Jaising

Senior Advocate

WELCOME :
K J JOSEPH



I have the very pleasant responsibility of welcoming all of you to this Seminar. I won't take much of your time since we have a very tight schedule. The point is that we are living in very difficult times forcing us to deliberate on many issues of much relevance today for the Indian economy and polity. Yet many of these issues are not getting adequately deliberated upon. Hence, we at GIFT felt the need for taking the initiative of organising this seminar on the additional terms of reference of the 15th Finance Commission, given its serious implications on the fiscal federalism in the country and more specifically of the finances of the states. The seminar is organised with the belief that being the largest democracy there is room for deliberation and presenting the other side. We are happy that former Prime Minister Dr Manmohan Singh and eminent personalities representing academia, politicians, policymakers, jurists and journalists have positively responded to our invitation. With much appreciation, I most warmly welcome all of you to this seminar. Thank you very much for joining us and I welcome you once again.

CHAIR:
SITARAM YECHURY
COMMUNIST PARTY OF INDIA (MARXIST)



I think this is a very timely and necessary initiative taken by Gulati Institute for holding this discussion on the threats to India's fiscal federalism. This is not merely a threat to fiscal federalism. The moves of the government to alter the terms of reference of the 15th FC are a threat not only to fiscal federalism but also to the federal structure of the Indian constitution. I don't want to go into the details on which the experts would deliberate about except put the issue in context of the overall attacks our country is facing over our constitutional foundation of which federalism is a fundamental feature. Our constitution envisages that the country cannot remain united unless there is decentralisation and the states have an important role in running the country but also in keeping our country's unity and integrity. That is why Article 1 of our constitution says that India that is Bharat is a union of states. The states are integral to that and a very evolved mechanism worked out on the centre-state relation. What is happening today is not the normal tendency of any government in the centre to encroach upon the rights of the states which we have seen since independence. But this is a qualitatively new attack being mounted where a unitary state is required for those in power today in order to impose their ideological project. Federalism or all other fundamental pillars of our constitution evolved in the process of unification of India's diversity.

This was a battle between the three visions of India that emerged during India's freedom struggle. One was the vision that envisaged India to be a secular democratic republic that was the vision of Congress when they came to the conclusion that India cannot hold on together unless you have a secular democratic foundation. The other vision was of the left who said that secularism is a necessary but not sufficient condition. India's future would have to be that the political freedom that have been achieved must be extended to ensure the economic freedom of every individual and therefore it is necessary to go towards socialism.

A third vision that emerged then, that was actually absolutely antagonistic to both these other visions, which had a twin expression, was that India would be defined by the religious affiliation of its people. And thus, was born the Islamic state of Pakistan by the Muslim League and the Hindu Rashtra by the RSS. Now to convert the secular democratic republic to Hindu Rashtra that the RSS is seeking you require a unitary state structure. Federalism is thus antithetical to the entire political project of the RSS. What we are seeing today, not only in the fiscal arena but overall on the attack on the states as in Jammu and Kashmir, where a state is dissolved and a union territory formed, I mean all these things constitute part of this overall effort. So, the fiscal part of it, like the terms of reference, which we will discuss now, how they imposed central subjects as subjects to be shared in terms of burden of financing it by the states.

What was initially thought of as a 50-50 revenue sharing has never been achieved. It was promised on the last occasion that 42% would be earmarked to the states and that is now reduced. And now with this additional term of reference, I don't know how legal is it to change or amend them midcourse. But in the overall context, in the name of building a security state they want everybody to share the burden. And in this way the states' rights are very severely curtailed. This is an extremely important issue. I am glad that it is a very packed agenda. All these aspects should be discussed and after that I hope that the conclusions will be made public through some publication.

We are fortunate to have Dr. Manmohan Singh here. He will be the most competent to speak on this subject because he served as Economic Advisor, Finance Secretary, Governor of the Reserve Bank of India, Deputy Chairman of Planning Commission, Finance Minister and then the Prime Minister. If I am not wrong Sir, I think the initial conception was that the Planning Commission would be the permanent secretariat of the interstate Council which never of course happened. Leaving that apart. It is my great pleasure to request Manmohan Singh to speak to all of us and give us the advise that usually does.



INAUGURAL ADDRESS:

**Dr MANMOHAN SINGH,
FORMER PRIME MINISTER OF INDIA**

Dear friends, I am very grateful to the organisers of this seminar for inviting me to sit through some of the sessions of this very important seminar which is looking at the terms of reference of the Finance Commission. The Finance Commission is a constitutionally appointed body whose significance is very great because it derives its mandate from the constitution of India. And I am going to speak on the limited subject of what is the significance of the additional terms of reference which has been given to the commission at the fag end of its tenure. I am being told that the commission was going to submit its report by end -November and it was in end of July that the government gave additional terms of reference with regard to creation of separate funds for defence and internal security.

Defence, of course, is the prerogative of the central government which is on the union list and internal security is also largely in the list of states though the centre also plays a role. So, the question is what should the commission do? The commission, I am told, once upon a time during the ninth Finance Commission said that it will be guided by the constitutional mandate and will do fair distribution of taxes regardless of what the government of the day may say. Now, I don't know whether this commission will adopt a similar line of thought.

But since internal security as well as defence are subjects which are of great national importance and it would have been the best course that the central government had gone back to chief ministers' conference which is under the auspices of the Niti Aayog if it has to tinker with the terms of reference. Otherwise there would be a strong feeling that the centre is trying to rob the states of their due resources allotment and that is not good for the federal polity of our country and cooperative federalism that we all swear by these days.

So, I respectfully request the authorities to take the view that they will go by the advice of chief ministers if there are any controversies with regard to additional terms of reference of the Commission. Otherwise there is no doubt in my mind that the Commission should take a broader view of its mandate and in allocating resources to both centre and states it must look at what are the requirements of our polity at this moment of time.

There are certain basic issues like allocations for health, education and other important subjects like protection of environment where all states have legitimate interest and what should be done by the government is to evolve a broad national consensus in dealing with these issues. Otherwise there would be bickering and dissatisfaction and this would not be good for the federal polity of our country. Cooperative federalism requires give and take and therefore it is very important that the central government should take initiative to consult states as often as necessary to carry them along rather than imposing their views on a reluctant Finance Commission.

That is all what I wanted to say. I am not competent to comment on other aspects which are before the Commission. But I do believe that it is a bit odd that the government comes up with additional terms of reference at the fag end of the commission's work particularly when the states have already gone to the commission setting out their resource requirement. The commission would have certainly taken note of them.

And now to impose further terms of reference on the commission would complicate its work and that is certainly not good for the federal polity and cooperative federalism that we all desire should flourish in this country. Beyond this I have nothing much to say but I do wish this conference all well - you are engaged in a very important exercise and I sincerely hope that your

work and your deliberations would help to strengthen the broad national consensus on issues of cooperative federalism. The Finance Commission is a constitutionally mandated body whose report goes to the ministry of finance and then to the cabinet and therefore the government of the day can take a view that whatever the mandate of parliament the government could abide by that rather than unilaterally imposing its views on the reluctant state governments. With these words I once again thank you for inviting me to this important meeting.



PANELIST:
T M THOMAS ISAAC,
FINANCE MINISTER, GOVERNMENT OF KERALA

The Indian constitution has always been described a quasi-federal one but it has been always been prone to centralism. But just as Sitaram has said what we are facing today is qualitatively different, it is a concerted attack on the basic federal structure of the constitution. If anybody has doubts, look at the plethora of legislation passed in the last parliament session. The abrogation of Article 370, the changes in the motor vehicles act, the medical bill, the electricity bill. The common denominator in all these changes is the undermining the rights of the state. It is in this background that we are very apprehensive of the change in the terms of reference of the 15th FC. I will briefly narrate to you the story so far.

Some of us finance ministers particularly of southern states took the initiative for a meeting in Trivandrum soon after the changes in the terms of reference of the 15th Finance Commission which got lot of publicity. Suddenly it was posed as an issue between the north and south. The southern states have certain commonalities and the use of 2011 population census data had some implications for them. Therefore, we decided to take up interstate distribution separately and focus on issues of common interest to all states. That is why we had the second conclave in Vijayawada where we were joined by finance ministers from Delhi, Bengal, Punjab and so on.

What were our apprehensions. We thought that the TOR would worsen the vertical imbalance. There was an explicit attempt to review the award of the 14th Commission. The 15th Finance Commission was asked to review the implications of the 42% tax devolution to the states which is unprecedented. Virtually suggesting a roll back. Second N K Singh who is the chairman of the Finance Commission also headed the FRBM review committee and the TOR refereed to conditions that could be imposed on the borrowing power of states. The review committee on FRBM had suggested that the overall debt of centre and states be pegged at 40% of the GDP; states at 20% of the GDP. And therefore, the fiscal deficit has to be drastically reduced. The centre would have 2.7% of the GDP as fiscal deficit and states will have 1.7% of GDP. The perverse impact of the FRBM is only one issue. The states have now Rs. 1.5 lakh crore of rupees in 14-day treasury bills. Because you have now a barrier to spend. Keep the revenue deficit target. Therefore, the unspent money goes to the treasury. Now this is going to worsen the situation. So, this was the second apprehension.

Third, the constitution provides, that even after devolution if there is a revenue deficit for the states a revenue deficit grant should be given to them. And the TOR specifically states that the Finance Commission should look at whether the revenue deficit grant should be continued at all. Fourthly, the Finance Commission was encouraged to look at the expenditure side like how to curb the populist schemes. They were asked to enter the political domain. It is not for the Finance Commission to determine what is populist or non-populist, it is the political sphere. This too when Agenda 2022 of the central government were provided funds. These were our main concerns. And after the presentation of the memorandum to the Union President it has some positive impact.

The Finance Commission announced that they would be following their own methodology. It became inexpedient politically to tamper with 42%. That was the situation before the election. Soon after the election an additional TOR is issued. Now you cannot tamper with 42% the attempt is to squeeze the divisible pool itself. You keep it at 42% but the divisible pool is squeezed suggesting that apart from the centre and states there is now a third component for funds for non-lapsable defence for which a

separate mechanism has to be provided. And it is very clear that the attempt is to squeeze the funds going to the states. Now this is the situation. Apart from a few people the response has been muted so we thought we must deliberate on this in the national capital itself rather than making our voices heard from Kerala. So, we are here. Very eminent people have accepted our invitation to come and discuss about this grave threat to our federal framework and make our voices heard. Thank you very much.



PANELIST:
JAIRAM RAMESH,
MEMBER, PARLIAMENT &
FORMER MINISTER, GOVERNMENT OF INDIA

I see a lot of media people. I am going to disappoint you. No masala. This government came to power on the plank of cooperative federalism. And the Prime Minister made it sound as if he invented the concept. Actually, the first time the term cooperative federalism entered the political debate was in 1996 with the Common Minimum Program of United Progressive Alliance (UPA). There was a section on cooperative federalism. And one of the consequences of the cooperative federalism concept was that in the 1997 budget the concept of a single divisible tax was announced by the finance minister P Chidamabram and not by this government. That was how the concept of common minimum program was taken forward.

And in the common minimum program of UPA1, which was issued in 2004 there was a further elaboration of the concept. Cooperative Federalism has a 20-year-old history. It is not something suddenly invented by the prime minister. Our prime minister likes adulteration. I will follow the unadulterated model. He has converted cooperative federalism into competitive federalism, into combative federalism, into coercive federalism and into convenience federalism. These are the five Cs of federalism. Let me give you examples. This morning it was

announced that the TMC, the second largest opposition party in the Rajya Sabha, was denied a chairmanship of the standing committee which is its by right and the chairmanship was given to political parties with much smaller number of MPs. If this is not an attack on cooperative federalism then what is it? There is no law on this. But the convention is that the chairmanship of committees is determined by the strength of the political parties. This is what has happened to an opposition party.

I will give you another example of convenience federalism. When the Land Acquisition Act was passed in 2013, Arun Jaitley encouraged the states to dilute the progressive provision of the law by taking recourse to Article 254 of the Constitution. Many states like Gujarat, Maharashtra, Rajasthan, Telangana and Tamil Nadu diluted the provisions using recourse to Article 254. Now when the states are using Article 254 to dilute the provisions of the Motor Vehicle Act Gadkari is crying foul. So, what was acceptable for dilution of land acquisition law is not acceptable to the dilution of Motor Vehicle Act. I am not trying to justify it. I am trying to show you the double standards. You invoke cooperative federalism when it suits you and when it is not convenient you consign it to the dustbin.

Niti Aayog has been the greatest champion of competitive federalism. And the whole anchor of competitive federalism is that it ignores starting conditions, ecological difference, historical differences, ignore history that determines many things that have gone into the performance of the states. When there is no denying the fact that states like Bihar, West Bengal and Orissa felt the brunt of the freight equalisation policy which was abolished after 40 years only in 1992 after the intervention of the West Bengal chief minister Jyoti Basu. Now the eastern states are expected to compete as if all the initial conditions were same. So this whole notion of competitive federalism that is now gaining currency is very dangerous because it ignores the diversities.

Combative federalism is seen in the management of politics. Uttarakhand government was overthrown unconstitutionally. Same thing happened to the Arunachal government. Different standards were used in Goa and Manipur when it came to swearing in of new governments. Parties which did not receive the mandate got preference. Post poll alliances were given the first shot in forming government whereas the unwritten convention has

always been in support of pre poll alliances. This was done to fulfil the political agenda of the ruling party which is one nation one party. So, this is combative federalism. Never before, even in fifties and seventies when one party was in hegemonic position, such things happened. We see the dangerous consequences of this hegemony position in the centre and states at present.

Finally, there is coercive federalism where you really coerce states to do things which is part of your agenda. If you don't follow you are basically out. Here we have examples of this in political sphere and economic sphere. For utilisation of coercive federalism, you have institutions like CBI and enforcement directorate and others. When the prime minister said he has accepted the 14th Finance Commission report and 42% devolution there was thumping of desks to his support of cooperative federalism. But in the last four years, since March 2015, cooperative federalism has been completely degenerated into combative federalism, coercive federalism, convenience federalism and competitive federalism. So, I think it is a great threat. One nation one tax is fine. One nation one party, one nation one book actually it comes out better in Hindi.

As Sitaram says there is a concerted attempt and the entire approach to federalism is a different model of managing diversity. This is the underlying theme of whatever is happening. Accommodative model of diversity is sought to be replaced by a completely different model of diversity in which homogeneity prevails both in terms of political thought as well as economic policy. So, all I can say is that the initiative has come at the appropriate time when the attempt to tinker with the terms of reference of the Finance Commission at the last minute when there are hardly two months more to submit its report. And this is an attempt to give a fig leaf of respectability to a reduction in the proportion of tax devolution that the government wants in order to be able to fulfil its so-called security obligations both internal and external. So, I think we, all political parties barring the ruling establishment think there is a threat to federalism which is dangerous and we have to really work together both in parliament and outside. Whatever be our differences politically in the state of Kerala, at the national scene it is very clear that the CPM and the CPI the Congress and the regional parties are united in fighting the threat to cooperative federalism.

PANELLIST:
D RAJA,
SECRETARY, CPI



Comrade Sitaram, friends. At the outset let me congratulate the Kerala Finance Minister for taking this initiative. You are all enlightened people. I don't need to say what is said in different articles of the constitution. You all know what is said in Article 280 of Finance Commission and its powers. Now the concern is that there is a threat to federalism. What is the threat in the context of the 15th Finance Commission, where does the threat come from, how to fight the threat? These are the questions we should address. I am one who believes that politics and economics cannot be separated and we should look at everything from that perspective.

It is true as Jairam pointed out that Modi started by talking of cooperative federalism. What we witnessed in his first tenure and what we are witnessing now is that there is no longer cooperation or federalism. There is only coercion. Everyone agrees. It is an attempt to concentrate all powers in the hands of the union government. Sadly, it is an attempt to subvert the constitution itself using the power of state apparatus in their hands. How to fight it. Jairam is again right.

When we did the common minimum program of the UPA we identified four major planks: secularism, federalism, economic development with

social justice and transparent good governance. These are the four planks we identified. Now parliament is itself becoming minimum parliament. Modi talked about minimum government and maximum governance. Minimum government will become minus government and maximum governance will become minimum governance.

Why I am saying this is because parliament is supreme in our democracy as it represents the sovereign will of the people. It is the supreme institution in our democracy. But right now, parliament is being undermined and minimised. If parliament is becoming redundant and if parliament is minimised then what remains. Democracy will die. That is the threat we are facing today.

How to stop this? Federalism is important. I am from Tamil Nadu. I know of the battles for more autonomy and more powers for state government. How Tamil Nadu stood up against the centre for more powers and autonomy. And then they fought. It included everything. Political and economic powers. It is not just asking for some funds from the centre. The Finance Commission is meant for distribution of taxes. It is meant to evolve a mechanism to pass on the money in grants. And all issues have to be decided at the political level at the government level.

How do you understand India as a nation and how do we distribute taxes. Now there is an issue if population is taken as a criterion. Then states like Kerala and Tamil Nadu are likely to lose funds. So how to address this. Now Modi keeps talking about one nation one tax; he talks about one nation one election and one nation one tax. He did not refer to demonetisation that has brought disaster to the economy.

He referred to one nation one tax which is GST. In fact, I was part of the parliament committee which scrutinised the GST. I gave a dissent note along with K N Balagopal. If government effort is to create a Indian common market, then government is determined to serve the interest of corporate houses. Then how will it help the common people, the toiling masses? This apprehension is getting strengthened. The prime minister said that wealth creators are to be respected. Who are the wealth creators?

That is my point. According to the prime minister it is the corporate houses and big business. He does not agree that wealth creators are workers, farmers

and those in the various sectors. The finance minister follows it up announcing a slew of measures giving concessions for the corporate sector. The economy is in shambles. Then we need to discuss how to protect the interest of the states.

But how to address the problems. The government at the centre should have proper understanding of the federal structure and federal governance of our country. And the constitution makes it very clear. That is why we have a union list, state list, concurrent list and powers are distributed to centre and states. Even the president does not have the mandate to tell the Finance Commission to do this or do that.

We are a nation. We know that India has tremendous diversities. Not in terms of language, culture and so on but also in terms of economic development. And there are different needs of different regions. How are we going to address all these concerns in a cooperative manner with a federal mindset? One nation anybody can agree. But one culture, one language, one tax, one election, one leader, one party, one religion nobody can agree. That means you are paving way for creating conditions for a kind of presidential form of government. I will say it is nothing but a fascist rule that will emerge. It will be nothing but calamity for the nation. It must not be allowed to happen. Before that we should all stand up. I won't take parties' names. Everybody who believe in democracy and justice, everybody who believes India should be prosperous should stand up and no ambiguity or wavering should be there. We have to fight the RSS-BJP combine, if we are to protect the constitution and the federal system of governance. That is my simple position. I speak directly. We have to take a clear-cut position against the present regime if we have to really fight the threat to Indian federal governance, federal system. Thank you.



PANELLIST:
HARSH MANDER,
DIRECTOR, CENTRE FOR EQUITY STUDIES

The 2018 election verdict is seen as a mandate to Modi-Shah government to transform India according to their imagination of the India that we should live in. An India which is seen to be strong, muscular. In all of this we see a growing open impatience and casualness for what the constitution stands for. Therefore, in the next five years we will see a decisive battle playing out in India for the defence of India's constitution. The question then arises what lies at the core of the constitution. What are the values. I was thinking they are justice, equality, liberty, fraternity, secularism, socialism, scientific temper and federalism.

I think the defence of federalism is necessary for the defence of all other core ideas. In a unitary, muscular and centralised nation defence of justice, equality and all such things will become harder and harder. In the last five years we have seen the erosion of institutions. One such instance was the death of the Planning Commission. There was the Planning Commission where the states shared the vision of India. We had concepts like plan and non-plan expenditure, tribal sub plan, special component plan. All these fiscal spaces were erased. All this happened without much debate or discussion much less with the consent of the states affected by the decision.

What is pushed through are things like GST which propounds things like one tax for one nation. India was imagined as a union of states. There was a role for the union and there was freedom for the states. I think there is once again need for greater clarity on where the state should intervene and where it should not. Here of course there is many opportunistic engagements with these questions. I remember when the communal violence bill was debated there was huge uproar over the freedom of the central government to send in the army in case the state is not acting enough to stop violence.

These are other areas under the threat of centralisation. The last government tried to pass national guidelines on cow slaughter though it was a state subject and they had to pull back. Amit Shah then on the very next day after assuming power passed critical orders that can change India for ever without debate even within. This is an order which authorises every state government and district magistrate to establish foreigners' tribunals and start and extend national register of citizens. There is also talk of amendment of the Citizens Act. We need to go back to what the constitution envisages regarding what should be role of the India government, what should be the boundaries and the role and freedom of the states. And in this battle over the next five years for the defence of the constitution we all need to reclaim, reimagine, reassert, reaffirm the defence of federalism and the right of the states so that the states can carve out their destinies according to their mandate.



PANELIST:
DIPANKAR BHATTACHARYA,
CPI (ML)

Thank you Sitaram. We are here to discuss the implications of the terms of reference of the 15th Finance Commission. But this is in the context of the growing threat to federalism. I think we all understand that this is symptomatic of the larger and the bigger threat to our constitution and to our democracy. Democracy in a vast and diverse country like India cannot survive if it is not secular and the republic is not federal. Now since our constitution explicitly recognizes India to be a secular country this regime had to target the very concept of secularism. We know what has happened. 'But since federalism is not explicitly mentioned in the constitution so the regime did not have to attack federalism as a term. However they have subverted it in practice.

So cooperative federalism has actually turned into coercive centralism in the country and the most atrocious manifestation of this is seen in the example of Kashmir. Not only in terms of abolishment of Article 370 but also, for the first time in Indian history, a state was stripped off statehood, and a state has been reduced to a couple of union territories. This

attack on our federal framework is bound to affect all aspects of governance. Now we are discussing the fiscal implications.

What you see is basically a very systematic misuse of the concept of national security. Because this is being done for increasing the defence expenditure. Consideration of national security are being brought in to undermine democracy. What are the implications of the growing defence expenditure? We are looking at growing militarisation of India. Kashmir is going to be the model of Indian federalism. Obviously, it will need an unlimited amount of defence expenditure. And this defence expenditure is from tax payers' money and has its own cost, namely the people's welfare. And this cost, of people's welfare, is at a time when we don't have purchasing power and there is complete stagnation and recession in the economy.

So, it is easy to understand the implications of this growing militarism. It is very ominous. Federalism is relative to India's diversity. Diversity is the bedrock of unity. I would change the expression "unity in diversity" to "unity through diversity". India cannot remain united without the solid foundation of federalism. Diversity of federalism is being replaced by centralism and unity is being replaced by uniformity. And all this we are talking about like one nation, one election, one tax. It is a kind of homogenisation. That is the end of India as we imagined it to be. The end of India of our dreams. Federalism cannot be selective. It has to be principled and consistent. Because a lot of things that has been happening actually marks an acceleration of a process that has started much earlier. So, the defence of democracy, defence of secularism and defence of federalism has to be principled, consistent and very determined.



PANELIST:
INDIRA JAISING,
SENIOR ADVOCATE

I will give my comments as a lawyer. While I agree with the points made by earlier speakers, there has been debates in our courts on what exactly the meaning of federalism is. The courts are confused. They have used expressions like quasi federalism without explaining the meaning. Federalism means a relationship between the centre and states which is fair and equitable. Given that we elect our representatives on adult franchise as citizens we each have a voice not only at the centre but also at the states.

We citizens have a voice both at the centre and in the state elections. States and centre have equal and well defined relations. There is a separate chapter on centre-state relations in the Constitution. So, it is not that we are chartering unknown territory. We have the framework for this relationship in the Constitution itself. I do understand that it is a chapter which is less visited by the courts. Except for the fact that there is intense litigation on the distribution of power between the centre and the states So far there has been no litigation in the courts on the financial arrangements which should govern the relationship between the centre and the states. There are reasons for this with which I don't agree.

The courts see it as a political issue. So, the courts do not enter the terrain.

It is wrong to say that the courts should not enter the fiscal terrain. That is a British view. There too the courts think we should not enter the financial arrangements that the government of the day chooses to make. They say for example we cannot decide what percentage is to be given to education or health. That is for parliament to decide. That is understandable.

In my opinion issues such as finances that impact the relations between centre and states should be justiciable. The kind of scrutiny that the Election Commission of India has been subjected to under our laws has not been applied to the election commission. This is of course something we should revisit and ponder upon. Why is it that the Election Commission was subjected to very intense scrutiny by the courts and made in some minimal sense accountable to the people, but a similar scrutiny has not taken place on the Finance Commission?

In the UK it is now changing. Though the courts do not decide on allocations they do actually entertain petitions that ask the government to justify why a particular grant is made in a particular way when a citizen approaches them. So, these kinds of issues are reaching the courts in other countries. But it has not yet reached here. I will just mention a few articles of the constitution which are relevant for today's discussions.

We all know that when states were organised on linguistic basis by the states reorganisation Act and it continues to be the case today. We know legislative power is distributed between the centre and the states. Article 256 basically says that states ought to exercise their power in consonance with laws made by parliament. Dr Hamid Ansari has said that this is a much-abused provision.

We have also discussed how article 254 requires inconsistencies between laws of states and centre are to be avoided and parliament has powers to pass laws on concurrent list. It is Article 263 that provides for the inter state council whose proceedings are kept confidential. Article 280 clearly states the functions of the finance commission. Now we are told that there is an amendment under

which there is to be a separate consideration for defence. Some jurists have taken the view that the courts have overstepped their limits.

I actually had a conversation with a lawyer who also happened to be an economist and asked his opinion on the role of the courts in monitoring and guiding the economy of the country. His opinion was that the supreme court has contributed to the economic decline of the country. He had his own reasons which I will put on record very soon. But this was the evaluation of one of the senior most lawyers who represent corporate houses.

If this is the view of the corporate houses then we all need to sit up and decide what we want to do about it. Where exactly are we in the 2 G case?. The acquittal of the accused in the 2G scam is one instance. The SC has been looking at the forest cover case for 23 years. Somebody should look at whether the share of the forest has increased over the 23 years. Look at what has happened to the rights of Adivasis. There is litigation saying that the scheduled tribes are encroachers. It is being seriously argued in court that the centre has no right to pass the forest conservation act as it is a state subject. I have given examples of where the courts have gone wrong in handling the economy. I would conclude by saying that we need to critically look at the method under which the Finance Commission functions. But not at this time due to reasons which I can't articulate. I will end by again quoting from Dr Hamid Ansari, that the principles that should cover the functioning of federalism are democracy, justice, fairness sand efficiency. Thank you.

BOOK RELEASE



