

Rajya Sabha and the Dilemma of Federal Second Chamber in Parliamentary Democracy

Abstract

There has been a growing debate regarding the utility of federal second chamber in inculcating diversities and multiple cultures within a nation. The US federal model represents a reference point for the entire world when it comes to understanding and studying the federal second chamber. Indian Rajya Sabha functions within a Parliamentary system and is criticised for its non performance with regards to protecting and guarding regional interests. It also fails in its endeavour because it is conceived in a manner where it does not share equal power with the lower chamber. But the changes in tone and tenor of Indian politics in the coalition era has certainly changed the position of Rajya Sabha. It has gradually started to find its feet in the coalition era by asserting itself more as a chamber of significance.

Keywords: Westminster, Federal, Coalition, Liberalisation, Bicameralism, Representation, Regional.

Introduction

India in 1950 adopted the Westminster model of government which was prevalent in England. The Indian Constitution maker adopted a mixed system by introducing a federal component in parliamentary framework. It was conceived that Federal principle would help the country to inculcate social and regional diversity. However parliamentary principle always remained predominant over the federal principle.

Rajya Sabha is the federal second Chamber of the Indian parliament. The federal character of Rajya Sabha have been diluted by the absence of equal representation for each federal unit as in the United States but on the basis of their population (art. 461) and 80(2) IV th Schedule). So Uttar Pradesh has 31 seat whereas states of North East has one seat each. A constitutional amendment in the Representation of the People Act (1951) brought by the NDA government August 2003 abolished the domiciliary requirement for members of Rajya Sabha elected from a particular state. Another change that was also brought in was with regards to secret ballot instead of open voting. This was done to keep the party members discipline by forcing them to toe the party line by issuing party whip.

Since India adopted Parliamentary form of democracy it was always believed the structure of a federal Second Chamber constructed with the intention of protecting regional interest would be shaky. The constitution was so designed that it gave primacy to the lower house with respect to the upper house parliamentary democracy always faces the dilemma of the utility of the federal Second Chamber in a parliamentary democracy. In the last three decades and more there has been a Paradigm shift from a state Centred strategy of development in India to a market Centred strategy. it is witnessed that forces of economic liberalisation coupled with forces of political federalization have propelled growing assertion of regionalism and localism (Saxena, 2002). India's era of coalition politics also coincides with the era of economic liberalisation. so it is important that the new equations would demand new patterns of federal or Union -state relations.

Aim of the Study

The paper aims to see the (a) the representation of the province or units in the federal structure and (b) the relationship between the idea of federalism and bicameralism. To elucidate the point further the national representatives get elected in their territorial constituency whereas provincial representatives are elected through an electoral college indirectly. The issue arises that is this differential mode of election also

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reflected in different personal profiles and behaviour patterns of the representation.

It leads to a situation where the federal government has to resolve two issues of contention (a) a federal government should have unicameral or bicameral legislature and (b) the constituent units needs to be represented asymmetrically on the basis of population of the states or symmetrically on the basis of equality of states which was settled in the Philadelphia convention in the USA in 1787 in favour of bicameralism and equality of states.

If we analyse different federations we find that they have varied in terms of their option for equality of States. Ronald Watts(2008) in his study has found bicameralism as a norm barring few countries like United Arab Emirates, Venezuela etc. Watts in his tabular presentation brings out the reality of the equality or inequality of the regional second chambers. He shows that although equality is the norm, it is true only in half of the 18 federations listed in his table. It would be within the scope of the paper to review the experience and reformist debate on the issue of equality of states in the federal literature. The problem which is related to the issue constitutes the mode of election of the representatives. Closely related to this is the composition, powers and role of the federal second chamber.

Review of Literature

There is dearth of literature on the theme. W.H. Morris Jones in his classic work Parliament of India analysis Parliament as a secondary chamber. He found that Rajya Sabha was not even performing the task of revision. For him Rajya Sabha provided neither for technical revision nor for a wider or more leisurely debate. The only relevance that he could find was a site to reduce burden of the Lok Sabha as the first chamber of legislative initiation and a forum for grand and soaring debate.

B.L. Shankar and Valerian Rodrigues in a The India Parliament remarks that the Rajya Sabha was a representative of nation like the Lok Sabha but in a different sense. It would represent the nation as a differentiated whole. They also add that while the idea of federalism was accepted by this perspective, the federal remits were not seen as self-contained but subject to the idea of popular sovereignty. Caught in this straight-jacket of nationalism and federalism, the Rajya Sabha is struggling to find its distinctive rationale in the Indian Constitutional design and parliamentary federal dynamics.

Sandeep Shastri (2007) in his study of the Role of Rajya Sabha studied the changing profile of Rajya Sabha members from 1952-2002. His study brings out some interesting patterns and trends. Out of 1607 members of the house in aggregate, regional and national parties have tended to nominate and get elected proportionately more such members to the Rajya Sabha who have had earlier been members of State Legislative Assemblies. The percentage of such members partywise is as follows: TDP (66), AIADMK (60), CPI (60), CPI (M) (60). Among the larger National parties Congress has 43% of such members while BJP has 54%. He finds substantial amount of experience in these members. He concludes by

saying that despite the constitution makers intention to emphasize the parliamentary rather than federal character of Rajya Sabha, in actual practice membership of the Rajya Sabha reflects regionalist or federal incumbency of the house.

M.P.Singh in The Indian Political System (2005) argues that the essential parliamentary interpretation of the powers of the Rajya Sabha was a by — product of the one party dominant system in the early decades of the Indian republic. He finds that the federal relevance of Rajya Sabha is likely to become more salient with the growing regionalization and federalization of the political system.

Rekha Saxena in her article The Rajya Sabha: A Federal Second or Secondary chamber (2008) comments that in early years Rajya Sabha performed the role of representing states insignificantly. But the transformation of party-system at national and state level has expanded its role. She suggests that its increasing federal relevance may be further strengthened by expanding its electoral college to include local bodies in addition to state legislature. She brings in the suggestion made by Rajni Kothari to reconstitute it as a Pradesh Sabha with some representation to the local bodies which if implemented would give substance to the rhetoric of multi-level federalism. Such reconstituted Rajya Sabha should speak for the lower levels of the polity and should have a special voice in legislations affecting the lower levels.

Sarkaria Commission appointed in 1983 in its report adopted to go along with the approach in the Constituent Assembly and the text of the constitution which made it a federal second chamber within an overarching parliamentary system that makes the Lok Sabha the centre of political gravity in the system. But it still found the importance of Rajya Sabha in two respects. One was a house representing experienced persons providing mature input in legislative and constituent process. The other was lending some continuity as Rajya Sabha is a continuous chamber where one-thirds of its member retires every six years.

The NCRWC (2002) appointed by BJP led NDA in a report expressed itself against the amendment then proposed to abolish the domiciliary requirement for eligibility for Rajya Sabha membership, as in its opinion it would compromise the basic federal character of this body.

The Commission on Centre-State relation (2010) chaired by M.M.Punchhi for the first time dared to go beyond the foregoing predominantly parliamentary constructs of the Rajya Sabha. It argued that the existing arrangement needed serious rethinking in the radically changed federal atmospherics of the country. It said that the time had come to remove the federal imbalance in the political system whereby the smaller states were practically marginalized by the larger states with their large representation in the national as well as federal chambers of the parliament. It recommended the strengthening of committees of the Rajya Sabha with the expert aides and effective say in laws and issues affecting the states.

Although federalism as a theme and federal literature is on the rise but there is still paucity of work related to Rajya Sabha. So I have not used very recent references in my study (not after 2011). Moreover I have tried to review that literature I have come across. It may be the case that work on the themes may have taken place which remains unknown to me and like a researcher I will keep exploring and enriching the content of my work.

Federal Formation: Different Varieties

Michael Burgis (2006) tries to combine the dilemma of "double representation" in federations in particular and other state characteristics. In doing so he has also delineated four developmental models of "democratic revolution" with special reference to federalism :

(a) the USA (1787, (b) Germany (1949), (c) the Swiss model (1848), and (d) the Westminster model in Canada (1867), Australia (1901) and India (1950). Arranged thematically and giving attention to the historical background as well as crystallized federal structures in these four models, we get the most federal and polyarchical structure in the USA and Switzerland on the one pole and the more nationalist federative structure in Germany on the other, with the Westminster inspired commonwealth constitutions with federal unions with strong parliamentary centres falling in between the two. U.S., Switzerland, gives equal representation to the states by direct election to the federal second chamber. Canada and India have opted for a nominated regional representation the Senate and Rajya Sabha which is indirectly elected.

Why Second Chamber or Its Utility

The most important rationale for federal second chamber is its role in representing the constituent regional / provincial states. It is called the house of revision is parliamentary as well as federal settings. If regionalism is constitutive of federal political formation than bicameralism is the institutional device to articulate this function. Federalism is an essential tool to balance diversity. So a regionalism also has some cultural and ethnic dimension other than territorial dimension and federal constitutional contract is best recourse to contain territorial or cultural regionalism.

Smiley and Watts have called the upper house in federal states as an instrument of 'intra-state federalism' that it is "meant to accommodate and reconcile the variety of regional viewpoints in support of the central institutions". We have seen that federal bicameralism does not have a uniform pattern across the board. The Presidential federal second chamber and parliamentary federal chambers have glaring contrasts.

Nelson Polsby (1990) has classified 'transformative legislatures' and 'arena legislatures'. Although one more often sees the government of the day using whips to stage-manage the show, it is evident that the American congress illustrates the transformative model while the arena model is typical of parliamentary system of U.K. and commonwealth.

There is primacy of the popularly elected chamber but constitutions of parliamentary

federations do not automatically make the second chamber a subordinate house as most of them constitutionally give equal powers to the two houses in legislation, except the money bills. In India the federal second chamber enjoys very significant powers in case of constitutional amendments.

Now let us dwell on the other variable in the context of relative power of the two houses which is the representation rules under which the two houses are constituted. If population becomes the criteria for representation than larger states would numerically preponderate in both the house vis-à-vis the smaller states which is the case in India and Canada. If provinces or constituent units are given equal representation in the second chamber, than the capacity of the house as a regionally represented body is enhanced. In U.S.A., small states are out numbered in first chamber but they are equal in the second chamber.

Bicameralism in Parliamentary System

It is primarily designed as a chamber of revision although in a federal system its primary role is justified in terms of regional representation.

The Indian Rajya Sabha was designed in the parliamentary mode despite its federal representative name. The Rajya Sabha is notionally equal except money bill out is sizably small in numbers. In case of a joint sitting Lok Sabha is numerically preponderant. Some commentators have even argued that instead of protecting the interests of states, the Rajya Sabha can in fact allow parliamentary or union encroachment on state jurisdictions. By a 2/3rd resolution of the Rajya Sabha, the union can create an additional All-India service and the Parliament can legislate on a state subject. Nevertheless, it is notable to point out that since the transformation of the congress party's dominance into multi-party system, the situation has significantly changed. As the Rajya Sabha is elected by the elected members of state legislatures, it reflects the state party systems more faithfully than the Lok Sabha. Since 1989, it has been the norm that there has been optional majority in the Rajya Sabha. So in a way the importance of the federal second chamber has grown in the coalition era.

Relevance of Federal Second Chamber

The regional aspirations on the basis of identity and developmental needs are on the rise across the world and various countries are coming up with responses varying according to their social, economic and political conditions. There is an increasing role and relevance of second chambers in the era of increasing regional aspirations. The relevance is greater for a country like ours, where region is not only geography but rather it carries cultural, linguistic and economic overtones. The federal second chamber is Canada and India reflect same perspectives on the issues of regional representation. Although the centralization of the earlier decades is non-existent but the federal second chamber has failed in its duty to protect and guard the interests of provinces or regions.

Conclusion

The constitution lacks a clear verdict on assigning co-equal power to Rajya Sabha and distinctly follows the

Parliamentary system rule of giving primacy to the Lower House. But India's political course correction and changes in the economic policy globally have brought a sea change in the powers and function of Rajya Sabha. It has become a more credible chamber in the coalition era as it can easily check the Lok Sabha majority in case of constitutional amendment bills where it enjoys equal power. In the present scenario the Land Acquisition and Rehabilitation Bill despite being introduced by the NDA government thrice couldn't see the light of the day because it lacks majority in Rajya Sabha.

But the most vital issue at stake is the utility of Rajya Sabha in terms of its ability to act as a protector of States interests. In this vital task the strength of regional parties have overshadowed the utility of chamber as the chamber has failed to carve a separate identity for itself then the lower house. So its been rightly critiqued as an extension of the lower house or more famously as the 'secondary chamber'.

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