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Financial and Fiscal Commission of South Africa: Any Lessons for Sri Lanka?

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There are obvious apprehensions among well meaning people about devolution or the present provincial council system for various reasons. First and foremost is its imposition by India in 1987 whatever the reasons, good or bad. Otherwise, there had been healthy national debate and evolution of ideas and structures about devolution dating back to the pre-independence period.

Even some may trace the contours of devolution in the ancient *manda-la* system where different tiers of administration existed in managing national affairs. *Manda* meant the centre and *la* meant the periphery. In this sense the basic concepts of devolution are indigenous to Sri Lanka.

Other apprehensions are because of terrorism that bled the country for nearly three decades and there are valid concerns that the ugly head might again surface if opportunities are left open under an ambiguous system of devolution – ambiguous in the sense that it would undermine the 'national interests.' Equally valid is the concern about the 'white elephant syndrome' which is largely substantiated by the experience during the last 22 years of provincial councils.

Finding a 'home grown' solution, however, should not preclude taking compatible ideas from other countries while that effort should be distinguished from the past practice or advocacy of emulating everything from 'outside.' As Sri Lanka is billed to be a 'knowledge hub' in the world - even going beyond the region, at least we should be knowledgeable about what is going on or experimented in other countries in many matters let alone devolution. Sri Lanka and its fraternal websites like the Asian Tribune also should be depositories of vast array of knowledge. It is in this spirit that this article focuses its attention on South Africa.

The Context

There are no Finance Commissions by that name or its equivalent except in India, South Africa and Sri Lanka to advice and recommend principles and policies on fiscal relations between the central government and other levels of government (provincial or local) in federal or devolved unitary states. A closest equivalent existed in the United States between 1959 and 1996 in the name of the Advisory Commission on Intergovernmental Relations (ACIR). However its functions were more towards promoting good relations between the Centre and the States than fiscal or financial matters.

The main reason for the absence of an advisory body to determine or recommend on fiscal relations in federal states is rather self-evident. An intermediary body would be considered as an infringement of the federal principle. In a federal system, powers including fiscal powers are very clearly divided between the national and the state governments through the constitution and the rest would depend on negotiations on an equal basis.

Not only that in such a situation a set up like a finance commission would be considered unnecessary, but also an inhibition. In the United States even the Advisory Commission on Intergovernmental Relations was abolished in 1996 as a statutory body. In a federal system, complete fiscal autonomy or independence is the admired norm, although in practice this may differ. India established a 'finance commission' in 1951 because it was not completely a federal system but a semi-federal structure particularly at that time.

On the other hand, in a devolved unitary state, a finance commission or its equivalent could be considered a necessity for proper fiscal relations although this is not readily accepted by many countries for lack of experience or insight. The reason is that devolution in unitary states is something introduced at a particular stage of political development and therefore the 'measures of devolution needs flexibility and adjustment' through experience particularly in the fiscal sphere. In the case of India, devolution was introduced in 1951 with some experience prior to that, and in the case of Sri Lanka the inauguration of devolution was in 1987 - introduced in a rather hurried fashion with few failed attempts prior to that for devolution or decentralization.

In 1957, Regional Councils were proposed under the Bandaranaike-Chelvanayakam Pact and repeated in Senanayake-Chelvanayakam Pact in 1965; and in 1980, District Councils were introduced which were soon abandoned under political circumstances. South Africa on the other hand benefited from new trends in devolution in very many countries since 1980s (Italy, Spain, Japan etc.) and more so from the theoretical debates on fiscal devolution. The introduction was in 1996. In creating the finance commission, South Africa took the example of India and also Sri Lanka.

The previous article on 'Finance Commission in Sri Lanka in Comparison to India' paid attention to India as the country which very much influenced Sri Lanka both in devolution and in setting up of the Finance Commission and compared and contrasted the structures, powers and functions of the two in some detail. The present article introduces the South African commission precisely called the 'Financial and Fiscal Commission' and attempts to draw similar or comparative lessons from that for Sri Lanka. Nowhere in the article, however, is an attempt made to argue that Sri Lanka should emulate in the same fashion either India or South Africa. Attempt is only made to draw lessons highlighting possible gaps in roles and responsibilities of our Finance Commission.

South African Commission

The Financial and Fiscal Commission of South Africa is of a younger origin compared to India and even younger to Sri Lanka with its inauguration in 1996. The Commission is mandated by the 13th Chapter of the South African Constitution of 1996 (not 13th Amendment!) and the Financial and Fiscal Commission Act of 1997. The following is the way the Commission describes itself.

The Financial and Fiscal Commission is an independent, objective, impartial and unbiased constitutional advisory institution. It is a permanent expert Commission with a constitutionally defined structure, set of generic responsibilities and institutional processes.

The Constitution in its Articles from 220 to 222 explains its mandate and structure in an extremely readable manner - even for an ordinary citizen to understand its contents - quite dissimilar to India or Sri Lanka where constitutions and legal documents are drafted in extremely unnecessary jargon. The principles on which the Commission should work are generically prescribed in Article 214 of the Constitution under the same Chapter 13 on Finance. This is under the head of "Equitable Shares and Allocations of Revenue."

There are two sides to the principles enunciated under the financial allocations to the sub-national entities such as the provinces and the municipalities. On the one hand are the principles of equity. Under which first is the equitable distribution of national revenue among the three tiers of government: national, provincial and municipal. Second is the determination of what is called "each province's equitable share" from the equitable allocation to the provinces. Third is the allocation of 'any other share' to the provinces or local governments from the national government's share to meet any other circumstances or particular needs. It is possible in any country that some provinces need special assistance from the central government.

On the other hand are the principles of 'national interest' and "provincial capacity/efficiency." The South African constitution determines that these considerations also should matter when allocating funds to provinces. Under national interest, no funding should be allocated which could be detrimental or suspected to be detrimental to the security or peace. On the other hand, national interest could be a national need. There is no such a consideration in the Indian or the Sri Lankan constitution. However, the 'national interest' should not be an easy excuse to curtail funds to the provinces or to targeted province. To prevent this eventuality, the South African constitution directs that 'national interest' should be assessed through objective criteria.

Equally important is the assessment of capacity and efficiency of provincial councils in utilizing the funds allocated to them. If capacity is lacking, there should be special measures to rectify the defects. As a Finance Commission is the entrusted institution to assess capacity, it should also be entrusted to at least recommend the remedies. This procedure is there in South Africa.

In the case of the Sri Lankan constitution, there is Chapter XVII on Finance. However, as there were no provincial councils when the constitution was first promulgated in 1978, there are no provisions in that chapter talking about the equitable fiscal distribution among various layers of government. Although the local governments were long standing institutions in the country, this layer is also not recognized as part of the Constitution.

Even when the provincial councils were introduced in 1987, the 13th Amendment did not talk about 'equitable distribution of revenue' but only allocation of funds 'adequate for the purpose of meeting the needs of the Provinces.' However, the Commission was asked to 'formulate such principles with the objective of achieving balanced regional development,' as we have already discussed when comparing India and Sri Lanka in the previous article.

The principles of social equity are however in the Sri Lankan constitution under Chapter VI on "Directive Principles of State Policy and Fundamental Duties." In brief, they talk about "the equitable distribution among all citizens of the material resources," the "decentralization of administration" and "affording of all possible opportunities to the people to participate at every level in national life and in government.” The elimination of “economic and social privilege and disparity” is also included in these principles.

Some Lessons

However, in comparison to South Africa, what can be seen is the lack of cohesion and clarity in the Sri Lankan arrangements for fiscal devolution or the Finance Commission. In fiscal devolution, there is room and even necessity to take not only the principles of equity but also national interest/needs and provincial capacities into account – but based on objective criteria. These two aspects are not clear in the Sri Lankan case.

The mandate or the terms of reference in the case of South Africa is given in generic terms allowing flexibility. In the case of Sri Lanka, the mandate is too specific leaving room for rigidity. Both in the case of India and South Africa, the arrangements for devolution and provisions for the Finance Commission are separated. But in the case of Sri Lanka both are together in one Chapter (XVIIIA without a title) or rather in one Article (154A to 154T) giving the wrong impression that the Finance Commission is an institutional part of the provincial council system.

In the case of South Africa, the Commission is supposed to be making recommendations regularly both to Parliament and provincial legislatures. In the case of Sri Lanka, the recommendations are made only to the Government and more particularly to the President. It has already been suggested that the Finance Commission could especially be responsible or reporting to the Senate – keeping its independence, if a Senate is reintroduced in Sri Lanka. This could be in addition to its reporting to the President.

In South Africa, although the Commission is considered solely an independent expert body, “subject only to the Constitution” all attempts are made to make it representative and very specifically members are called ‘men and women.’ It consists of nine members, larger than both Sri Lanka and India and the composition is determined by several devices like what was prescribed for the ‘independent commissions’ in the now abandoned 17th Amendment in Sri Lanka. It is believed that Sri Lanka followed the South African model in formulating ways of appointing members of the commissions under the 17th Amendment. The mechanisms were complicated and unnecessary.

The term of office of the South African Commission is five years like in India. The structure of the Commission and its Secretariat is simple and straightforward. The Commission is composed of a Chairperson, a Deputy Chairperson and seven other members. The Chairperson is also the Chief Executive Officer. The Commission also has a Secretary and a Secretariat. While the Secretary handles the stakeholder liaison, there are three specialized divisions to assist the Commission with the functions of (1) Finance (2) Corporate Affairs and (3) Research and Recommendations. Resourced by several competent consultants, these divisions are most efficient and professional.

What may be most admirable in the case of South Africa is the quality of reports that are submitted by the Commission. There are three types of reports submitted: (1) annual reports (2) technical reports – submitted almost annually and (3) other reports - to mean specialized reports pertaining to the broader mandate of the Commission. The Sri Lankan commission in contrast appears to have a long way to go in professionalizing its structures and staff.

Some Recommendations

The following recommendations are based on the present and the previous article comparing the Finance Commissions in India, South Africa and Sri Lanka. They are tentative and flexible, subject to suggestions and revisions.

1. It is necessary to have a better clarity on the mandate of the Finance Commission in Sri Lanka, and this might not be done merely by having a Finance Commission Act of Parliament because an ambiguity exists in the constitution or the 13th Amendment itself. For this purpose a constitutional amendment is necessary.

2. The structures of devolution and the provisions for the finance commission should better be separated out, as in any other country. The structures of devolution also may incorporate local government institutions in addition to provincial councils. Fiscal matters of the local government institutions also could come under the purview of the Finance Commission.

3. The provisions for the Finance Commission should come under the chapter on Finance. There too the overall principles for fiscal devolution or decentralization should be specified. As discussed previously, the principles of both equity and national interest/capacity could be incorporated. The establishment of the Finance Commission should come separately with perhaps the mandate explained in generic terms to cover:

• To recommend principles on which revenue/expenditure should be allocated to provinces and local governments respecting equity.

• To recommend principles on which provincial and local allocations should be distributed equitably among different provinces and local government institutions.

• To recommend principles on which grants-in-aid should be allocated to provincial councils.

• To recommend approval and/or modification of provincial budgets.

• To recommend on any other matter referred by the President.

4. In recommending principles, there are several considerations that the Commission should take into account. Some of them may change from time to time while others may be long standing such as the ‘balanced provincial development.’ While the generic conditions can be incorporated in the constitution, others could be left for the TOR of the Commission. It is suggested that a clear TOR is issued when a Commission is appointed.

5. There should be a Finance Commission Act of Parliament which elaborates on the structure, constitution, mandate in detail, qualifications of members and the procedures that the Commission should follow in performing its functions.

6. It is proposed that the Commission should be named Finance and Provincial Planning Commission with incorporated mandate on planning and monitoring matters.

7. It is suggested that the Commission should be of 7 or 9 members with a Chairperson and other expert members on economics, finance, public policy and management. The members should be selected to ensure ethnic and gender representation as much as possible. The term of office should be five years.

8. There is a pressing need to improve the quality of Commission reports and recommendations. There should be more focus, addressing the mandate. The Commission should produce its Annual Reports which is not the case at present.

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