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Federalism, Paradiplomacy and Foreign Policy: Juxtaposition between De facto and De Jure

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ABSTRACT: The article basically focus on how the federal relation affected by foreign policy making and implementing by centre taking its constitutionality defined prerogative under various constitutional provision. In past, ruling government in New Delhi often ignores the local dynamism while making and implementing the foreign policy. However with the increasingly influence of the states government in foreign policy-making and is mostly due to development of twin fact i.e., liberalization of Indian economy in 1990 and rise of regional politics, the smaller state-based parties started to play a role in national politics at the centre. India do have case where centre-regional party conflict over foreign policy (in case of Sri Lanka and Bangladesh) often overshadow the implementation of coherent national foreign policy discrepancies and with the change of Government in Delhi, governments seems to finding it important to engage in domestic deal making for the successful actualization of their foreign policy agenda as it reflect from the creation States Division within the Ministry of External Affairs by the present ruling government in New Delhi

Keywords: foreign policy, paradiplomacy, constitution, federalism, praxis

Introduction: -Recent years have seen an increasing involvement of regional governments in the international arena a phenomenon sometimes known as paradiplomacy. The reasons lie both in changes at the level of the state and international system, and in political and economic developments within regions themselves. Globalization and the rise of transnational regimes, especially regional trading areas, have eroded the distinction between domestic and foreign affairs and by the same token have transformed the division of responsibilities between state and subnational governments. (Keating 1999) Termed “paradiplomacy,” was first proposed in 1990 by the American scholar John Kincaid, who outlined the foreign policy role for local and regional governments within a democratic federal system.¹ The term

paradiplomacy variously called as ‘state diplomacy’, ‘continent diplomacy’, ‘regional diplomacy’, and ‘subnational diplomacy’. As opposed to conventional diplomatic relations that fall under the exclusive domain of sovereign nation states exercised by central governments, paradiplomacy—a neologism—makes space for external relations of subnational or federal units that might indulge themselves in international activism in order to promote their own interests.² Historically, the study of paradiplomacy owes its origin to the study of federalism. Beginning in the 1970s, the study found its roots in case studies conducted on the federal units of Canada, Australia and the US. Scholars specializing in the study of federalism were the ones who sought to examine the impact of paradiplomacy on federalism and intergovernmental relations.³ Though subnational paradiplomacy also finds place in non-federal countries (such as in china), until today this federalist dimension has played a leading role in studies on paradiplomacy. In Indian case, the practice of paradiplomacy did not sought much attention until 1990 mainly due to the so called domestic dimension strongly backed by traditionally constitutional division of powers between union and state government and furthermore Foreign policy, which is a subject of high politics (inter-state relations), as against low politics (intra-state relations)⁴ was considered as a field of exclusive dominance of sovereign states (Union government in case of India) but not the constituent units (state government). In other word the country’s constitution does not provide any power to regional (state) government to work in foreign policy space. There has been tradition problem time and again centre ignores the local dynamism taking under its constitutionality defined prerogative. Occasionally a kind of critical discourse has flared up due to the constitutional tilt and this often discourages subnational diplomacy, in the institutions of the Indian state. However the states government has sought to have more influence in foreign policy-making especially after 1990. There were two factors that significantly contribute to this. One is rise of coalitions in Indian politics. The period December 1989 to May 2009 coincides with the tenure of nine different governments at the center in which almost all parties across the political spectrum participated in some way or the other. This variation is crucial not only because of the power difference between levels but also as it changes the opportunity structure available to parties. This clearly reflects the weakness of national parties between 1989 and 2014, and the place of regional parties in national coalitions emboldened state leaders to make demands on the centre⁵ and second, the introduction of neoliberal reforms in the Indian economy. This reform brought massive economic changes and furthermore encouraged state governments to participate directly in India’s foreign relations by making links with international organisations, other national and subnational governments.

Foreign Policy and Constitutional Prerogatives in India:-

Foreign policy can no longer be thought of simply as ‘what states do to, or with, other state’.⁶ It being a dependable variable is influenced and shaped by a combination of a large number of factors or variables which can broadly be categorized under domestic compulsion and international milieu. Though foreign policy basically define as the a state's external behaviour may be conditioned by the international system, yet

the range of choices and emphasis within these limits wide, with the result that the goals, content and conduct of that behaviour are to a significant extent shaped by the domestic context out of which it crop up and is true and applicable in context of India as well. Immediately after its Independence India as sovereign actor had to navigate the water of international politics which characterized with the then bipolar competition and conflict (of power politics) that often compelled to face challenging and turbulent world beyond its geographical frontier. The world mean time had witnessed a devastating war and was grappling with issues of reconstruction. With its first failure of league of nation, world was yet another attempt to establish an international body for marinating international peace and security .Many new countries were emerging as a result of the collapse of colonialism; and most new nations were trying to come to terms with the twin challenges of welfare and democracy. Free India's foreign policy reflected all these concerns in the period immediately after Independence. Apart from these factors at the global level, India had its own share of concerns. The British government left behind the legacy of many international disputes; Partition created its own pressures, and the task of poverty alleviation was already waiting for fulfilment. This was the overall context in which India started participating in the world affairs as an independent nation-state. Before independence India foreign policy until 1947 was strictly decided⁷ and controlled by the centralized political authority from Britain designed to serve the it interest . And even after independence in 1947 the leaders embrace the same feature but it was meant to serving its national interest other than anything else. The turmoil that accompanied India independence after 1947 put huge and subtle challenges in front of Indian leadership. Of all the challenges the integration and consolidation of the states within the Union of India is perhaps most critical to meet and indispensable at the same time. The princely states were so many that there was even disagreement as to their number. One historian puts it at 521; another at 565. They were more than 500, by any count, and they varied very widely in terms of size and status. At one end of the scale were the massive states of Kashmir and Hyderabad, each the size of a large European country; at the other end, tiny fiefdoms or jagirs of a dozen or less villages.⁸ This all together put the whole integration and consolidation process in jeopardy that followed prolonged bargaining and negotiation, in varying degrees, with the Indian princely states, which were given the autonomy to settle the question of their future status by the withdrawing British government, made the process cumbersome.⁹ Given that the constituent states of the Indian Union did not share a cohesive sense of Indian identity historically and were administered under different legal bureaucratic frameworks, any further consolidation of state power after India gained independence required a strong Center. Despite gaining independence the centralizing structures of the colonial state apparatus were not dispensed with. A preponderance of the central government's role in the exclusive conduct of the foreign relations of India, therefore, needs to be seen in this context.¹⁰ There is an unmistakable unitary tilt in the Constitution of India adopted in November 1949. Article 1 defines India as 'a union of states' and the word 'federalism' does not even appear in the constitution. Moreover, under article 249, the Center can legislate on matters in the State's list for the purpose of national interest for a period not exceeding one year at a time. It can also override the state legislation in case of emergency situations under

articles 352 and 356. The doctrine of repugnancy privileging federal law over state law further ensures the superiority of the Union.¹¹ There are number of constitutional provision that clearly shows how the Constitution of India categorically places foreign policy decision-making in the hands of the Union government. It introduces, discusses and passes legislations for both domestic and international affairs. Infact the question of foreign policy was left to the central government. Infact and State legislatures had no legal jurisdiction in this context of foreign policy making rather a very limited, informal and non-binding consultation with the states has taken place in practice. Some the constitutional provision such article 246—Seventh Schedule (List I) on Centre–State relations— placed the ‘defence of India’ and ‘foreign affairs’, including ‘all matters which bring the Union into relation with any foreign country’ and other such related activities—like citizenship, defence works, consular services, the UN, foreign loans, and participation in international conferences—under what came to be called the ‘Union List’. These included subjects where only the ‘Parliament’—at the centre—‘has exclusive power to make laws’.¹² Besides the Union list that contains 98 items, the Parliament is also authorized to make any legislation on subsequent items of Concurrent List along with state authorities under article 246 (2).¹³ Similarly article 253 empowers the Parliament to legislate or amend any law for the successful implementation of international treaties, agreements and conventions 14 and reads: “253. Legislation for giving effect to international agreements notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”¹⁵ The above enshrined article in August Document, clearly manifest that it does not provide any constitutionally granted power to regional government to work in foreign policy space. The Indian constitution confers on the Union of India legislative and executive sovereignty. Infact, there has been tradition problem time and again centre ignores the local dynamism taking under its constitutionality defined prerogative under article 246 and 253. All these constitutional provision indubitably speaks about the centre Prominency in matter of treaty making ,signing of international agreement and conventions with foreign policy . This constitutional tilt worked well in the initial decades following Independence, with both the Centre and state governments being ruled by the India National Congress party. In such a setting, Centre-state tensions remained circumscribed by the dominance of the Congress Party in the Indian polity. However, the emergence of a coalition and minority governments in 1967 exerted enormous pressure on the federal structure of India.

Praxis of Paradiplomacy in pre-1990’s:- The Indian Constitution distributes political, financial and legislative authority between New Delhi and the States, with the centre enjoying primacy due to its control over finance, defense, trade, telecommunications and foreign investment. But the states, too, have wide authority on vital issues that have significance for India’s investment climate, like power, agriculture, land, domestic investment and police. The system works well when the Center and the States are in synch, which is by no means assured when narrow parochial interests supersede the demands of national interests. (Chari

2014) India remained a centralized democracy while the Congress, in the initial few decades ruled the Centre and the states, which changed radically in later years. During Nehru's years in power (1947–1964), not only did the states have no role in the country's foreign policy making; even his own cabinet colleagues did not play a prominent role in it. While an underlying reason for the limited role of states was Nehru's personality, a significant driver was the presence of what is commonly referred to as the Congress system, which refers to the huge majority that the Congress Party enjoyed in the country's politics and governance before 1967. Until then, most states were ruled by the Congress Party and, given the constitutional provisions regarding foreign policy; it was unthinkable for a state to dispute the Nehruvian foreign policy consensus. Nehru himself often wrote to his various chief ministers on foreign policy issues to take them into confidence, though it was mostly by way of informing them of foreign policy matters rather than consulting them (Jacob 2016). The years 1947–1991 – the era of high centralisation of political and economic life, featuring precise economic plans, the policy of controlling practically all aspects of economic life, a high level of bureaucracy, state controlled economic policy and practical cut-off of the Indian economy from the global market.¹⁶ The first three general election of 1952, 1957 & 1967, we see the congress dominance and was dominant political force throughout the country from upto 1967. The year 1967 is considered a landmark year in India's political and electoral history. The dramatic nature of the political change would be more apparent at the State level. The Congress lost majority in as many as seven States. However, in the mid-term elections (in 1971) to the Lok Sabha, the Congress party under Indira Gandhi came back to power in the centre as well as the states. The forty-second amendment to the constitution increased the powers of the central government at the expense of the states. The centralisation of authority increased with the National Emergency of 1975–77. In 1977, the Congress lost political power at the centre and the Janata Party formed the government, which was a coalition government. It was, however, short-lived and in 1980, Indira Gandhi came back to power.¹⁷ In the 1984 election, held after Indira Gandhi's assassination, the Congress polled the highest vote and seat tally ever as a sympathy vote swept the country and brought her son Rajiv to power. (Zoya Hasan 2010, Political Parties, p 243). With the assassination of Indira Gandhi in the mid-1980s, her son Rajiv Gandhi witnessed the end of an era of Congress Party domination.¹⁸ In other word one can reasonably argue that the rise of regional parties, from south India during linguistic mobilization in the 1950s and 1960s to West Bengal in the 1960s to north India with the rise of the Samajwadi Party (SP) and Bahujan Samaj Party (BSP) in the 1980s and 1990s, has meant that apex national parties can no longer rule in decision making in Delhi alone. Regional parties mobilize a variety of different political cleavages, most commonly language and caste, and have become the key players in a number of states. This marks a major break from the era of Congress dominance. Though Nehru, Indira Gandhi, and Rajiv Gandhi never ruled unchallenged by intra-party factionalism or opposition parties, they nevertheless had a major hand and role in the formulation and execution of foreign and defense policy. (Paul Staniland and Vipin Narang 2015, p207)

Praxis of Paradiplomacy in post-1990's:- Since the 1990s, the political scene has been characterized by the variety of national-level political experiments to find a substitute for the old Congress Party rule. The post-cold war witnessed twin development of political decentralisation through national-level coalition politics and economic decentralisation entailed by the paradigm shift in India's economic policy, ushered in remarkable changes in the character of Indian federalism in general. This switch towards a more competitive and accommodative federal arrangement had reverberations in the foreign policy sector. Furthermore the gap between domestic and foreign affairs of a country gradually constrict and the matter of foreign relation no longer remains the isolated business of centre government as theoretically defined in constitution under article 246 and article 253. Under such circumstance the ruling governments in the New Delhi find themselves more and more susceptible to domestic compulsions in cases where state legislatures and regional political dynamics shape foreign policy priorities. This is not to say that states play a definitive role, but that regional preferences appear to have become that much more important to the executive at the centre. The overall transformation that has occurred in federal governments' role in conducting external relations and the involvement of sub-national members in this arena has been variously characterized as paradiplomacy.¹⁹ Economic reforms encouraged state governments to participate directly in India's foreign relations by making links with international organizations, other national and subnational governments. State governments have also engaged with overseas companies in pursuit of foreign direct investment (FDI). State governments began to take more of an interest in their overseas diaspora. Infact a paradigm shift in the Central government's policy became clearly visible when the Centre encouraged border-states to establish border haats to market local produce to accessible markets across the borders. The aim was to encourage transborder trade along the traditional trade routes and such haats went a long way in encouraging local prosperity and cultural exchange. The Central government facilitated such trade interactions both on the western and eastern borders; and from 1990 onwards, even the World Bank started extending loans to select states of India like Andhra Pradesh, Tamil Nadu and Karnataka for the same purpose. The Government of India played the role of a facilitator by extending sovereign guarantees in those loans. (TEWARI 2017) ²⁰

Apart from these many state such as Andhra Pradesh, Tamil Nadu, Kerala, Gujarat to be mention few has taking early advantage of changes in India's liberalizing economy to seek out resources from international investors and aid donors. During his first period as chief minister between 1995-2004, Chandrababu Naidu wooed the likes of Bill Gates, former British Prime Minister Tony Blair and former US president Bill Clinton to visit Hyderabad during his tenure, and sold the state as an IT destination when it was known largely for its history and culinary prowess than coding strength.²¹ He was a regular visitor to the World Economic Forum at Davos, making six visits between 1995 and 2002.²² Similarly he had led an official and business delegation to China to look for investments, today said that 29 agreements were signed during the six-day tour from April 1 to 6 2015.²³ In 22nd May, 2015, a delegation from Chengdu, the

provincial capital of Sichuan province in Southwest China, met Andhra Pradesh Chief Minister N Chandrababu Naidu here today and discussed possible areas of bilateral cooperation.²⁴ Although paradiplomacy in Kerala, Tamil Nadu does not have the same profile as in Andhra Pradesh but Yet the LDF government did seek out some overseas investment with attention being paid to potential investors in the Middle East, Singapore, Malaysia, and Russia.²⁵ Similarly nearly 5 million Keralites serving in the Gulf and other foreign countries, makes the economy of the state heavily dependent on non-resident Keralites working outside its borders. Thus, there arises a need to establish consular offices of the government of Kerala in these Gulf countries and even others, if needed. The geographical and strategic positioning of Kerala on the old sea trade route advantages the cause of paradiplomacy as increasing trade and commerce in the area could revive its old prominence. Owing to Kerala's high literacy and good health services, even medical tourism in the state is bound to see a boost with the use of constituent diplomacy. Male's dependence upon supplies from Kerala could also be used to India's advantage.²⁶ Among others, the Chief Ministers of West Bengal, Odisha, Madhya Pradesh, Gujarat, , Maharashtra, Tamil Nadu also have taken advantage of it so far by carrying out paradiplomatic activities Gujarat's Chief Minister Narendra Modi took a lead in this regard but In 2010 the Chief Minister of Himachal Pradesh, Prem Kumar Dhumal was invited by the Governor of California, Arnold Schwarzeneger to the Global Summit on Climate Change and in 2014 the Chief Minister of Maharashtra, Prithviraj Chavan led the delegation to the World Economic Forum in Davos. In 2011 the Chief Minister of the poorest Indian state, Bihar, visited China, where he had meetings with many regional leaders. The main subject of the talks was the engagement of Chinese partners in supporting the restoration of the places of historical value such as Bodh Gaya, Nalanda or Rajgir. In 2011 the USA Secretary of State, Hillary Clinton visited Chennai, the capital of Tamil Nadu.²⁷ Tamil Nadu has held 'World Tamil Conferences' to reach out to Tamil Speakers and enthusiasts all over the world at regular intervals. While cultural associations emphasizing regional identity like the Kerala Sangam have been set up, these are non-profit initiatives set up by diaspora in various parts of the world.²⁸

However in some cases state governments are not allowed to engage in paradiplomatic informally. Infact the centre government guide and constrain the activity of state governments. Chief Ministers and other members of state cabinets are expected to keep the Cabinet Secretariat and the Ministry of External Affairs (MEA) "informed" of any overseas travel plans, and they are required to get "political clearance."²⁹ Furthermore there were couples of occasion when state government minister are restrained from carrying paradiplomatic activities. For instance the chief minister of Bihar, Nitish Kumar, has been denied permission to travel to Nepal by both the UPA government (in 2008 and 2010) and by the NDA (in 2015).³⁰ Similarly there we find numerous instances of foreign policy issues in which some of the constituent states in India have themselves shown special interests³¹ and centre unequivocal constitution prerogative on pursuit of coherent, national foreign policy called into question (Ganguly 2015). For example, the Ganges Water Sharing Treaty with Bangladesh would not have been possible without the support of the

West Bengal Government. Similarly the issues of enclaves (sovereign territories of India and Bangladesh surrounded entirely by the territory of the other) which was left hanging over since the boundary treaty with Bangladesh in 1972, could be sorted out only recently with the active cooperation of the States which share a boundary with Bangladesh, including Meghalaya. Water and land boundary issues with Pakistan have to take into account the views of the adjoining states of J&K, Punjab and Gujarat. In our dealings with Nepal, UP and Bihar are key dialogue partners. For example, Kerala is quite active on NRI and PIO issues for obvious reasons. Trade, investments and national and international security issues bring forth the views of states on these matters.³² Similarly in recent decades UPA regime that lasted until 2009 faced an important challenge from its communist allies in Parliament over the question of US-India nuclear agreement. More over the refusal of the Chief Minister Mamta Banerjee, to endorse a water sharing accord with Bangladesh in 2012 during the UPA government and also in 2017 under present Modi led NDA Government. Regardless of whether or not her reasons were sound, the incident underscored the growing significance of the India's federal structure in the conduct of the country's foreign policy. Similarly the southern state of Tamil Nadu critically influence on India's policy to Sri Lanka and it's clearly discern from way India dealing with Sri Lanka over the vexed issue of the country's treatment of its Tamil minority after end of its civil war in 2009. India on march 2012 voted for a United States-sponsored resolution at the United Nations' top human rights body censuring Sri Lanka for its alleged rights violations during the war against the Liberation Tigers of Tamil Eelam. India initially showed reluctance to vote on a nation-specific resolution but changed its stand after political parties in Tamil Nadu exerted pressure on the United Progressive Alliance government to go with the resolution. The DMK, in particular, threatened to pull out its Ministers from the UPA government on the issue (PTI 2012). All this case in point conspicuously signify the formulation and the conduct of India foreign policy has been increasingly conditioned by the domestic political dimension.

Conclusion: - To conclude one can reasonably argue that the reconfiguration of Indian politics and liberalization of its economy after 1990 has affected the country's federal relation in general and thereby foreign policy in more than one way. All these development creates a space for smaller state-based parties to play a role in national politics at the centre, which are still moved by compulsions that are state-based. India do have case where centre-regional party conflict over foreign policy (in case of Sri Lanka and Bangladesh) often overshadow the coherent national foreign policy but with the change of Power in New Delhi, present government seems to finding it important to engage in domestic deal making for the successful actualization of their foreign policy agenda as it reflect from the creation States Division within the Ministry of External Affairs. It can be consider as 'an attempt to institutionalize the participate of state in foreign policy'. Infact accommodating the multitude of voices and views of state government in the largest democracy like our through political bargaining may be in long run benefit of country.

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