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A Study of Cooperative Federalism

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ABSTRACT

The constitution provides a dual system with Union at its centre and state governments on outside. Every entity is gifted with sovereign authority to act in sphere that the constitution has allotted to it. In this paper, we will see how the cooperative federalism is actually impacting our nation and its working. We will also focus the critical evaluation of federalism in this prospective and comparison with the American Federalism.

I. INTRODUCTION

This is a new concept, where center and state come in a horizontal relation with each other. The notion cooperative federalism is very important in order to have a balanced government, but before heading forward it has to made very clear fact that our country have separation of functions not separation of powers as seen in other countries like U.S. where there is absolute federal system, and our country follow quasi-federal system. This concept of federalism is however somewhere similar to the Canadian federalism.

Indian System is ‘extremely Federal’ (Paul Appleby)². It is a ‘bargaining federalism’(Morris Jones)³. Indian system is a federation with high tendency to centralize itself (Ivor Jennings).⁴

Ivor Jennings also coined that, the Indian Constitution is primarily federal, with one-of-a-kind safeguards for ensuring social cohesion and development.

Cooperative Federalism is necessary, because Center and state has to work together in order to achieve welfare of country.

In our Constitution schedule 7, talks about the divisions of authorities among Union and State via three different lists. Article 24 of 7 Schedule talks about legal topic enacted by parliament and by state legislation(s). Other mechanisms, such as the inter-state council and the Zonal Council, have been included into the Indian Constitution to guarantee this interaction between the central and the states.

¹ Author is a student at GLA University, Mathura, India.

² Paul Appleby: Public Administration in India, 1953, P.51

³Morris Jones: The Government and Politics in India,1960, P.14

⁴ Ivor Jennings: Some Characteristics of the Indian Constitution,1953, P.1.

II. BACKGROUND

In India's early years of independence, cooperative federalism did not predominate, but after 1990, the spirit of federalism was enhanced by a coalition at the center and the development of regional political parties in several states.

Mutual disagreements and selfish political objectives, on the other hand, hampered India's journey to cooperative federalism, preventing a beneficial outcome. As a result, squabbles between central government and state government agencies have grown commonplace in the nation. Federalism is the distribution of authorities among the federal and state governments in order to guarantee the country's governance is stable and effective. Both units are required to work together on matters listed in Schedule 7 of the Constitution. Cooperative Federalism, also recognized as marble-cake federalism, is a form of federalism whereby the federal government, state governments, and local governments try to solve basic problems instead of creating policy independently but just about similarly or conflicting over a strategy in an awareness raising by the federal government.

India's federalism is indestructible union of destructible state. Center government can change certain things in states with simple majority. Whereas, U.S. have federalism which has federalism of indestructible union of indestructible state. India follows Canadian Federalism, as India possesses more power over center government.

III. ANALYSIS

Article 356 of Indian Constitution lays down provisions that in the event that the constitutional machinery in states fails, the President, on Governor's recommendation fulfills the situation whereby state's government cannot function as per statutes, president's rule may be announced.

On October 11, 1991, then-President made a proclamation u/Art 356(1) sacking Meghalaya's administration and dissolved the legislature. This article is better understood as 'State Emergency'. Under this provision President has authority to suspend state government and impose President's rule. There would have been no Council of Ministers if this regulation were implemented.

The state will be directly controlled by Central government, and Governor will continue to preside over proceedings on behalf of President who is also the state's Head. The imposition of such rule has to be approved by Parliament.

It may be extended for six months if granted. The imposition, however, can't be prolonged for more than 3 years and must be presented to both chambers for approval every 6 months.

The Sarkaria Committee said in 2015 that it has been utilized over 100 times since independence. It was nearly always employed for political reasons rather than to solve a real issue.

Former PM Indira Gandhi utilized Article 356 27 times to depose majority governments based on political stability, lack of a comprehensive majority, or loss of support, among other reasons.

- When the Janata administration became the government for the first time in 1977, they dismissed nine state Congress administrations. Due to the state's profoundly fractured internal politics and extended periods of conflict, Manipur has seen the most frequent use of Article 356.
- With their fractured polities, politically important states UP and Bihar have been on the center's radar. In *S.R. Bommai v. UOI*, the SC established several principles to avoid the abuse of Article 356.

On House floor, majority of Council of Ministers will be put to test. The Centre should send the state a warning and give it a week to react. The court cannot call into doubt Council of Ministers' advice to President, but it may call into question the evidence that led to the President's satisfaction.

It is the President's authority that is limited by Article 356(3). As a result, unless the proclamation is confirmed by Parliament, the president may not take any irrevocable action, such as dissolving the assembly. Article 356 is only justified when the constitutional mechanism, not the administrative apparatus, fails. The center should employ Article 356 carefully; otherwise, it risks destroying constitutional arrangement among center and states.

Article 356 was seen as diverging from its original aim prior to his historical judgment. Following this declaration, Article 356 seems to have chosen the correct course, resulting in a new metamorphosis of the center-state relationship. The constitutional implications of this decision have enhanced the Indian Constitution's federal character. Because federalism is an element of the Indian constitution's basic framework, dismissing a legally elected state parliament might be viewed as a breach of the constitution's genuine meaning.

IV. CRITICAL EVALUATION

Alexandrowicz⁵ stated India is *sui generis* (i.e., unique character).⁶ Granville Austin⁶ called Indian federalism as “COOPERATIVE FEDERALISM”. He said though India's supreme

⁵ C.H. Alexandrowicz: *Constitutional Development in India*, 1957, PP. 157-70

⁶ Granville Austin: *The Indian Constitution – Cornerstone of a Nation*, Oxford, 1966, PP.33-34

document established a powerful central government, it did not weaken state governments or reduce them to the level of administrative agencies charged with carrying out the central government's programs. Indian Federation, he said, is a "new sort of federation to address India's unique demands."

Dr. B.R. Ambedkar ⁷after hearing debates in constituent assembly said, "The constitution is a federal constitution in as much as it establishes a dual polity. Both the union and the states are created by the constitution, both derive their respective authority from the constitution." While giving answer to criticism regarding extreme centralization in constitution, he said ' an actual complaint is registered on basis that there is extreme centralization and states have become equivalent to municipalities, principle of federalism is that legislative and executive authority is divided among center and state not via laws enacted by center but by Constitution itself.

Federalism in India is representative of arrangement among normal division of power under which state enjoys autonomy within its sphere, and urge for country's integrity and a stringent union government in special scenarios. Following circumstances in Indian political system's working reflects its federal spirit, like border fights among the states (Maharashtra and Karnataka over Belga

- um), Fights among states over river water, SC imposition of Article 356 i.e. Presidential rule in the state. And many such more cases. Federalism has a number of benefits also: Because states vary economically, demographically, socially, and geographically, federal rules that are one-size-fits-all are ineffective. The variety that occurs among states is accommodated through decentralization.
- State and local governments are better at recognizing needs of the people than federal agencies since they are closer to them.
- As states compete against one another to reduce administrative expenses and increase policy output, decentralized federalism generates a marketplace of new policy ideas.

Morton Grodzins ⁸coined the cake analogy of federalism in the 1950s and said : "The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the

⁷ Dr. B.R. Ambedkar's speech in the Constituent Assembly on 25.11.1949 reproduced in *The Constitution and the Constituent Assembly*; Lok Sabha Secretariat, 1990, P.176

⁸ Morton Grodzins. 2004. "The Federal System." In *American Government Readings and Cases*, ed. P. Woll. New York: Pearson Longman, 74–78.

American federal system.”

V. AMERICAN FEDERALISM

The Great Depression of 1930s drove country to its knees in ways it had never seen earlier. Among 1929 and 1933, unemployment levels were around 25 percent, commercial production fell by 1/2, stock market shares fell by above 50 percent, hundreds of banks failed, and GDP shrank by quarter. Because of high degree of economic downturn, federal government was pressurized to manage a strong national response with states.

The concept arose because of necessity and lasted into 20th century, since both federal and state governments benefited from it. In such paradigm, both levels of government managed their operations to address national issues. In contrast to dual federalism, it erodes jurisdiction related boundaries among states and centre government, resulting in layers of marble cake merging together. Age of cooperative federalism helped in slow encroachment of central authority into state powers, and also increase of centre government's role in parallel policies.⁹

Federalism in US has two surviving characteristics from the cooperative federalism period. First, federal legislative engagement aimed at resolving issues like market ineffectiveness, social and political injustice, and poverty resulted in a nationalization of politics. The nationalization process grew federal administrative machinery and boosted flow of federal subsidies to state and local governments, helping to defray the expense of running a variety of New Deal and Great Society initiatives. The second enduring feature is freedom with which federal social welfare programs were implemented by states and local governments. Administrative freedom, on the other hand, has resulted in disparities in benefit and coverage levels across states.

The notion after this is that decentralizing policies aggravate administrative efficiency, lowers total government expenditures, and improves policy results. General revenue sharing schemes were established during Nixon's presidency, which gave monies to state and local governments with little limits on how they were spent. Ronald Reagan's victory signaled the start of a "devolution revolution" in US federalism, with the president promising to restore power to the states in accordance with the Constitution.

VI. MERITS OF COOPERATIVE FEDERALISM

Because state and municipal governments have diverse economic abilities, federal government's engagement in state operations is required to provide some consistency in

⁹ Marbach et al, *Federalism in America: An Encyclopedia*.

delivery of public services to individuals in both affluent and poor states.

The issue of collective action, which prevents state and local governments from boosting regulatory requirements for fear of being penalized if others do so, is overcome by mandating state and local governments to meet minimum federal criteria.

Federal funding is required to guarantee that state and local initiatives which create positive impact are maintained. Environmental rules in one state, for example, raise gasoline expenses for people, while the externality of cleaner air helps adjacent states. This state, like others, would be unable to afford such programs without the help of the federal government.

VII. CONCLUSION

Cooperative federalism is a form of federalism in which national, state, and local governments collaborate rather than formulating laws individually but somewhat equally or feuding over a policy in a system dominated by the national government. India follows Canadian Federalism as India possess more power over center government.

The 73rd and 74th constitutional amendments deepened the foundations of cooperative federalism in India by introducing the Panchayati Raj (rural) and Municipality (urban) systems. The Indian Constitution's essential framework includes cooperative federalism, which parliament cannot change. NITI Ayog, is created with objective of making states a party to develop mental plan and policies of government. States has been given freedom to select central scheme as per their requirements and can effect change as per their needs. NITI Ayog supports objective of cooperative federalism with a new connotation related to it i.e competitive federalism.

Competitive federalism is concerned with the interaction between two or more states (rather than the union and the state), and the union government is solely responsible for establishing the competition's rules.. Matters like investment, trade, commerce State compete with one another to bring funds and investment which increase effectiveness. Basically, competitive approach is new approach or add on to cooperative federalism. As a result, competitive federalism guarantees that resources are used efficiently. The state that utilizes funds effectively then it will attract more investment from center who allocates funds for welfare of state. Hence, we conclude that cooperative federalism and competitive federalism goes hand in hand as per the requirements of present time.

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