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Cooperative Federalism in India: An Analysis in Light of Centre-State Relations with special reference of Covid Era

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ABSTRACT

Cooperative Federalism in India reflects an ideology of a stable relationship between the centre and the states. It allows all the governing bodies to come forward and cooperate in the matters of their common interests and national development. Though the Constitution of India does not explicitly contain the word 'cooperative federalism,' the various provisions of the Constitution itself implied Indian Federalism as 'cooperative federalism.' To ensure Cooperation in a vast country like India with lots of diversity, the Constitution provided for a two-tier system of government, the Union Government and the State governments, later in 1992 the third tier of federalism was added in the form of 'Panchayats' and 'Municipalities to ensure good governance by dividing power between various units. In this regard NITI Aayog, Inter State Council, GST, Inter State Water Dispute Resolution Mechanism, Centrally Sponsored Schemes are some of the notable examples. The recent global pandemic due to covid 19 has effectively revived and strengthened the federal spirit in India. The glaring examples are imposition of nationwide lockdowns, regular meetings with the state government, handling the migrant workers crisis, vacation programs etc. Through this research article the author mainly focuses on the concept of Cooperative Federalism, its Historical Roots, Constitution provision regarding federalism with recent developments, along with obstacles in the path of Indian cooperative federalism. The author has also attempted to analyse India's cooperative federalism during covid period. Finally this article endeavours to provide some fruitful recommendations to ensure more cooperation between centre and state and effectiveness.

Keywords: Cooperative Federalism, NITI Aayog, Inter-state Council, Goods and Services Tax, Covid 19.

***"We are one team. Let us bring openness in governance, come closer and work together."
(Pehle Pass Paas Aaiye; Phir Saath Saath Chaliye.)***

- PM Narendra Modi

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I. INTRODUCTION

India is the largest democracy and one of the most diverse land in the world with their unique culture, tradition, language and religion. Though the Constitution of India does not explicitly contain the phrase 'federalism', the framers of the constitution being well aware about the diversity of the nation accepted a unique federal system with some unitary bias where article 1 of the constitution of India refers "India, that is Bharat, shall be a Union of States" on the other hand powers have been divided among central government, state government and other local government. The objective behind such division is to ensure smooth governance by increasing cooperation between centre and state government.

The term 'Cooperative Federalism' refers to the harmonious relationship between the union and the states that allows them to work together as a team on issues of their common interests and national development. According to **Repetzer**, "*cooperative federalism is a concept of federalism in which national, State and local governments interact cooperatively and collectively to solve common problems, rather than making policies separately but more or less equally or clashing over a policy in a system dominated by the national government.*" In the case of **State of Rajasthan v. Union of India**,² The honourable Supreme Court of India mentioned the Indian model of Federalism as predominantly '**Cooperative Federalism**'.

II. EVOLUTION OF COOPERATIVE FEDERALISM IN INDIA

The idea of cooperative federalism is not new, it has existed since ancient times. The origin of cooperative federalism in modern India can be traced back in the Regulating Act of 1773. Herein, the queen of England supervised the East India Company and provided the governing power to the local government. The Government of India Act of 1919, for the first time separated the state and central subjects from each other for legislative, financial and administrative purposes. The Simon Commission Report which was published in May 1930 recommended complete autonomy in the provinces. The Government of India Act, 1935 introduced a dual form of government called 'diarchy'³. The Cabinet Mission of 1946 provided that the Union of India should deal with important matters such as Foreign Affairs, Defence and Communication and all subjects other than Union subjects and all residuary powers were to vest in the Provinces. Also, Jawaharlal Nehru, while moving the 'Objectives Resolution' on 13 December, 1946, ingeminated that the need for a measure of uniformity in regard to apparatus

² State of Rajasthan vs Union of India, AIR 1977 SC 1361

³ Prajjwal, 'Cooperative Federalism', (November 02, 2023 10.00 am), <https://www.legalserviceindia.com/legal/article-4882-cooperative-federalism.html>

and machinery of government at the Central level was to be considered in “cooperation and consultation with the states”, and that “all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people”. The Constitution of India which finally emerged is not fully federal in its classic sense but it contained all the important federal features. As expressed by Dr. B.R Ambedkar, "it is unitary in extra-ordinary circumstances such as war and other calamities and federal under normal circumstances."⁴ However, the distribution of power from union to state and state to panchayat was later introduced. This is how India’s cooperative federalism is running successfully to meet the constitution’s objectives like unity, social justice, and democracy.

III. CONSTITUTION OF INDIA & COOPERATIVE FEDERALISM

Cooperative federalism is a horizontal relationship between union and states that shows no one is above the other. The Indian constitution has incorporated instruments to ensure cooperation between the centre and states to ensure that cooperation is necessary for the proper growth of the country. Therefore, few are the listed provisions in the constitution which reveals Indian Federalism as 'Cooperative Federalism'. These are:

7TH SCHEDULE

It talks about three lists such as central list, state list and concurrent list. As per Article 246 of Indian Constitution, Parliament and state legislature have exclusive power to make laws with respect to any matters enumerated respectively in list-I and list-II. For the matters listed in the Concurrent List, the Centre and the state both can jointly legislate. Residuary powers also have been kept in the dominion of the centre.

ALL INDIA SERVICE

An integrated judicial system under article 312 of Indian Constitution has been established to enforce both states as well as central laws for the promotion of cooperative federalism. All India services provide the core administrative framework to formulate and execute development projects, welfare schemes and to ensure smooth working of government machinery from grassroot level.

INTER-STATE COUNCIL

The Inter-State Council has been constituted under Article 263 with the Prime Minister as Chairman and Chief Ministers of all States and six Union Ministers as members. The object

⁴Aakshi Gupta & Prof.(Dr.) Rajesh Bahuguna, 'COOPERATIVE AND COMPETITIVE FEDERALISM IN INDIA: AN ANALYSIS', (November 03, 2023 8.30 pm) https://www.researchgate.net/publication/362634199_COOPERATIVE_AND_COMPETITIVE_FEDERALISM_IN_INDIA_AN_ANALYSIS

behind the creation of the Inter State Council was the establishment of an institutional framework to promote and support cooperative federalism in the country and bring together the union and the states by organising regular meetings to cope up all pending and emerging issues of Centre-state and inter-state relations.

ZONAL COUNCIL

Zonal Councils are statutory bodies established under the States Reorganisation Act of 1956. The act divided the country into five zones- Northern, Central, Eastern, Western and Southern and provided a zonal council for each zone. In the year 1972 North Eastern Zone was included in zonal councils. The Councils provide an excellent forum where irritants between Centre and States and amongst the States can be resolved through free and frank discussions and consultations.

FULL FAITH & CREDIT CLAUSE

Under Article 261 of Indian Constitution full faith and credit is given throughout the territory of India to public acts, records and judicial proceedings of Union and of every state which encourages more Cooperation between Union and the states.

ADJUDICATION OF DISPUTES RELATING TO WATERS

Article 262 permits parliament to adjudicate any disputes regarding use, distribution, control of waters in any inter-state river or river valley. If the issues are still not resolved parliament could appoint a tribunal for such adjudication . It is mentioned that the supreme Court or any other courts have no jurisdiction in respect to such disputes.

IV. RECENT DEVELOPMENTS

In recent years, several measures have been taken by the Indian government to promote cooperative federalism. Here are some examples:

NITI AAYOG

NITI Aayog is a policy of the government of India to bring all the states and union territories together as 'Team India' to work for national development. It was established in 2015, by the NDA government, replacing the Planning Commission. NITI Aayog takes various initiatives to ensure more cooperation between union and states which include meetings between the Prime Minister & Cabinet Ministers and all Chief Ministers, subgroups of Chief Ministers on subjects of national importance, policy support and capacity development of State and UT functionaries, launching of the Aspirational Districts Programme for development of backward districts, theme-based extensive engagements in various sectors, framing model laws for land leasing and

agriculture marketing reforms and area-specific interventions for the North-Eastern and Himalayan States and island development⁵. Basically it is a platform where State Chief Ministers have been given the opportunity to raise their voice for their needs. Through NITI Aayog the state governments are also playing a critical role in planning, it improves centre state relations and boosts the spirit of cooperative federalism.

GOODS & SERVICES TAX

GST is defined as an indirect tax on the supply of goods and services, which replaced multiple indirect taxes levied by the central and state governments right from the manufacturer to the consumer. The Goods and Services Tax in India has been introduced in 2017 with an objective to create a unified and simplified tax system. It is noted that the GST Council⁶ which is responsible for overseeing the implementation and administration of Goods and Services Tax in India is chaired by the Union Finance Minister and consists of state Finance Ministers as members. The GST council provides a platform for both the government to collaborate on tax policy matters. Thus, GST ensures a high level of collaboration and coordination between the union and the states.

CENTRALLY SPONSORED SCHEMES

Centrally Sponsored Schemes (CSS) are schemes that are implemented by state governments of India but are largely or partially funded by the central government. Examples of such schemes include the Mahatma Gandhi National Rural Employment Guarantee Act, the Pradhan Mantri Gram Sadak Yojana etc. These projects are implemented by the central government in partnership with the state governments. CSSs have been implemented via Article 282 of the Constitution of India, which enables the Union as well as the states to make discretionary grants, even beyond their respective legislative competences, for any 'public purpose'. At present, there are 30 centrally-sponsored schemes but these are 'umbrella programmes' and they are divided with so many sub-schemes.⁷

V. OBSTACLES ON COOPERATIVE FEDERALISM IN INDIA

1. OVER CENTRALISATION

⁵ 'Cooperative Federalism' National Portal Of India (November 05, 2023 9:00 am) <https://www.niti.gov.in/cooperative-federalism>

⁶ GST and Cooperative Federalism, my gov (November 01, 2023 7.00 pm) <https://blog.mygov.in/editorial/gst-and-cooperative-federalism/>

⁷ Centrally Sponsored Scheme, Business Standard, (November 04, 2023 8.30 am) <https://www.business-standard.com/about/what-is-centrally-sponsored-schemes>

The Central Government always enjoys more power than the states. It also noted that more important subjects are enumerated in the union list, residuary powers are with the centre and in the concurrent list the dominance of centre is very much visible. Even in national interest parliament can make laws on any matters enumerated in state lists. This often results in conflicts of interest between the Centre and states.

2. REGIONALISM:

India is a diverse country with so many different religions, languages, cultures, and traditions. Due to over centralisation, many states alienated from the mainstream of cooperative federalism. This sense of alienation gives rise to a strong feeling of regionalism. A strong feeling of regionalism makes it difficult for the Government to ensure cooperation because regionalism gives birth to secessionist forces, which threaten the very existence and identity of the country.

3. TAXATION:

Finance has always been a controversial issue between the state and the centre. In India State governments depend on the central government for funding, which often limits their fiscal autonomy. Article 280 of Indian Constitution talks about Finance Commission to evaluate the state of finances of the Union and State Governments, recommend the sharing of taxes between them, lay down the principles determining the distribution of these taxes among States but there is always a complaint against the central government that state governments are not given importance when several financial decisions are taken.

4. PRESIDENT'S RULE:

President's rule is the suspension of state government and imposition of direct Union government rule in a state. Under Article 356 of the Constitution of India, if a state government is unable to function according to Constitutional provisions, the Union government can take direct control of the state machinery. Unfortunately, it has been misused by the central government to dissolve state governments on many occasions. For instance Between 1947 and 1977, 44 times President's rule was imposed in various states. Finally in the case of **S.R. Bommai v. Union of India**⁸ The supreme court imposed certain limitations on the abuse of these powers but those have limited effect.

5. LIMITATIONS OF INTER- STATE COUNCIL:

The Inter-state Council was constituted as a platform to bring together the centre and states for consultation on common issues and development. The council proposed to meet thrice in a year

⁸ S.R. Bommai vs Union of India AIR 1994 SC 1918

but since its inception in 1990 till today there have been only 12 meetings held. The irregularity and lack of communication create obstacles in Cooperative Federalism.

6. UNIFORM APPROACH

The Centre while framing policies fails to take into account the heterogeneity of India. The 'One Size Fits All' had been followed previously in the planning commission and currently in NITI Aayog, without considering the diversity of the nation. And due to this uniform approach most of the needs and issues of the states were not addressed. This leads to difficulty in policy implementation and hampers the concept of 'working together'.

VI. COVID WAR & COOPERATIVE FEDERALISM

The Covid-19 pandemic was a litmus test for India's Cooperative Federalism. The Indian Constitution does not have any specific provisions for cataclysmic epidemic. Two legislations which have been used prominently to combat the Covid-19 outbreak were the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897. In this regard it is mentioned that as per 7th Schedule 'health' is a subject in the State List, whereas 'infectious disease control' is a subject in the Concurrent list but the pandemic asked for a collective effort of the Union and the state governments. The central government without consulting the states for the first instance announced a nation-wide complete lockdown for a few hours and from 25th March, 2020 for 14 days which continued to renew. But all the states without objection united themselves and played an active role to seal border areas, cancellation of flights, awareness programs, etc. The issues of migrant workers also prevailed. To tackle all the issues, regular virtual conferences between the Prime Minister and the Chief ministers of States, financial package of union finance minister, monitoring health infrastructure by central government, supply of masks, sanitizers, PPE kits, medicines etc. showed a great cooperation and collaboration between centre and the states. Even the collective efforts towards Covid-19 vaccination have been praised by the United Nations and World Health Organisation. Overall, the pandemic has renewed the concept of 'cooperative federalism' in India and promised collaborative governance for future.

VII. CONCLUSION & RECOMMENDATIONS

'Together We Are More Stronger'- this is the inner principle of Cooperative Federalism. But The provisions of Cooperative Federalism in the constitution is not enough; rather the core idea Cooperative Federalism needs to be implemented in practice. The following are some recommendations in order to make Cooperative Federalism in India more effective:

1. To make collaborative federalism work, more institutional reforms are required where states are equally represented in the policy making process.
2. State bills should be taken on a priority list for the assent of the President as the speedy procedure and it should be ensured that in concurrent list states are given enough sphere.
3. When the Centre formulates policy, it has to consider the diversity of the country and accordingly, without taking 'uniform approach' as per needs and interest of each region, a flexible approach should be adopted.
4. It has to be ensured that Article 356 of the constitution of India i.e proclamation of emergency in case of failure of constitutional machinery by states is not used for political gain.
5. Finance has always played a crucial role for good governance. Some financial autonomy is also given to states. At the same time the centre should not discriminate to grant funds among the states on political considerations.
6. The communication between the union government and state government should be increased.
7. There should be more transparency, accountability and participation of stakeholders in budget making procedure.
8. Participation of local government in governance should be increased. In this regard, more conferences, training programs and workshops will help to bring them together.

To sum up, 'Cooperative Federalism' aims to enhance the centre-state relations. Being the largest democracy in the world with mind-boggling religious, cultural and linguistic diversity, India is running its good governance with collaboration with all the state governments as 'Team India'. In this regard India's ability to fight Covid-19 pandemic largely rests on how well it manages its Centre-state relation, its really commendable.
