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COOPERATIVE FEDERALISM IN INDIA

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ABSTRACT:

In this era of globalisation and information it is very hard to cope up with the world nations which are developing at a faster pace every minute. A good political system acts as a catalyst to the development of nations. India has been adapting to many new political and social concepts since independence. Being a third world country, it was hard to adapt to the globalising world. But the constitutional makers made sure that India adapts to the changing world at a fast rate with best systems and institutions in play. The framers of the constitution dedicated to the nation the most comprehensive, elaborate and adaptive Constitution. They aimed it to endure the fabric of time and society and to serve all the generations to succeed. The Constitution has not belied their hopes. But now and then there have been failings or shortcomings. The shortcomings are mainly due to the people who follow it or execute it. A constitution is the legally permitted matrix for exercise of power and access to power. It establishes and institutions and dictates the working of a nation. Our Indian constitution has been the source of many revolutionary concepts in the country like rule of law, judicial activism. Our constitution is a transformative constitution yet not ambiguous. One of the major aspects which contributed to this transformation is cooperative federalism. Cooperative federalism integrates the nation and puts the nation on the world map together as one unit. It ensures that all the various states despite differences are working on the common goal of development and welfare of people. This paper tries to find out what are the recent scenarios prevailing in India where cooperative federalism was threatened and what is the way forward.

Keywords: Constitution, competitive federalism, cooperative federalism, centre-state relations, federalism, legislative and administrative relations.

INTRODUCTION:

Indian polity and Indian governance systems are one of the most complex systems in the world. But the constitution guarantees and directs to operate this complex system in an orderly manner through various characteristics. Indian constitution is basically federal but with some unitary features. It establishes a dual polity, which consists of the union at the centre and the states at the periphery, each endowed with sovereign powers assigned to them by the Constitution. The framers of the constitution were not compelled by theoretical presumptions but by pragmatic considerations, to make India into a federal state. Federalism became a dynamic concept. Indian federalism adapted to the cotemporary needs from time to time while balancing it with the development. The constitution over the years initiated some new trends to in the area of federalism like quasi-federalism, centralized federation and cooperative federalism, etc. One of the main aspects of any of the concepts of federalism is the division of functions between the Centre and the states. Although the constitution earmarks each of their areas of control and competence, it is not correct to assume that the governments act in water tight compartments. As both the governments act side by side in the same country, many types of relations arise amongst them. There are many instrumentalities to promote the inter-governmental cooperation come into existence. This trend of cooperation is nothing but cooperative federalism. The concept of cooperative federalism helps the nation to act in unison with divided states. It minimizes friction and promotes national interest on the whole. But there are many challenges and problems to put this into implementation. In a country like India where centre overpowers the state and with looming national parties' politics, the states suffer a lot and cooperative federalism can never see the dawn of the day. Cooperative federalism is very much needed for a developing country like India and no political agenda should be limiting the scope of development.

COOPERATIVE FEDERALISM:

The originality of federal system lies in the concept that power is at a time both concentrated as well as divided. It is centralized in some of the administration and legislative aspects along with decentralization in other aspects. India also follows the same. The constitution makers have observed the working of various federations and incorporated the needful features in the constitution. They learnt a great deal from the experiences of these existing federations, their mistakes and their solutions attempted. Now Indian federal system breaks the norms and Indian constitution has some novel provisions which the other federations do not have. India has been

characterized as the union of states¹. The fabric of Indian federal system stands on three pillars, strong central government, flexible federal system and cooperative federalism. The strength of centre lies in the legislative and financial powers and the emergency powers. The flexibility lies in the concept where centre can assume powers if the contemporary situation demands. The power to amend the federal structure is also not as rigid as other federations. The concept of cooperative federalism has been worked out in many constitutional provisions and has been implemented through many administrative and legislative actions. Cooperative federalism like already mentioned is the equal footing given to the state and central government unlike competitive federalism. Cooperative federalism itself evolved from competitive federalism. Due to competitive federalism there is a lot of internal conflict and the units resented centre overpowering their domain. The states were very conscious of their rights and powers. That is when the concept of cooperative federalism evolved especially in the early federations. The strong factors which promoted this change in all those federations are the times like exigencies of war when national survival is more important than centre-state division of powers, technological advances to make communications faster and the emergence of concept of social welfare state where the welfare of people is more important than any power greedy units. Therefore to have a full flourished welfare state it is important to have cooperative federalism and cooperation between the states and the centre on the whole. Money has also been one the strongest factors in bringing about this change in the older federation. The centre-sponsored schemes make it necessary to have a cooperative federalism without which many of the states' needs would be left unattended.

Learning from these older federations, India did include some cooperative federalism characters into the Constitution. India is constituted with vast geographical, cultural and social structures and is a highly mobile and interconnected society. The States have a huge set of administrative actions and decision making vested in them. There is a need for inter-governmental cooperation especially when there are repercussions felt on the national interest and this needs uniformity. Their decisions affect the nation on the whole and make it stand out globally. Inter-governmental disputes and overpowered centre are the inherent risks of federalism and cooperative federalism acts as a check on the same. The other utility of cooperative federalism is it may help in pooling

¹ INDIA CONST. art. 1.

the resources available within the country and all the states for the realisation of social and economic goals of the country. To meet these objectives for the welfare of the people the framers of the constitution deliberately incorporated into the constitution many features and provision to promote cooperation and coordination and minimize tension between various governments.

COOPERATIVE FEDERALISM IN CONSTITUTION AND LEGAL PRECEDENTS:

The Indian concept of cooperative federalism is based on the American counterpart². Article 4 of the American constitution is about states, citizenship and new states. Section 1 of article 4 addresses something different, the states' relation with each other, also known as horizontal federalism. The Full Faith and Credit Clause, requires every state, as part of a single nation, to give a certain measure of respect to every other state's laws and institutions. The first part of the Clause, largely borrowed from the Articles of Confederation, requires each state to pay attention to the other states' statutes, public records, and court decisions. The second sentence lets Congress decide how those materials can be proved in court and what effect they will have. The current implementing statute, declares that these materials should receive "the same full faith and credit" in each state that they have in the state "from which they are taken."³ On the same model India has Article 261(1). Articles 245 and 246 define the powers of the states and union respectively according to the list but that difficulty is removed by article 261. Article 261(1) states that Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State. Articles 261 to 263 ensure there is cooperative federalism in the country. Article 262 talks about water disputes. The inter-states water disputes Act, 1956 has been enacted under this article to resolve water disputes between the states. Article 263 gives provisions regarding establishing an inter-state council to resolve any disputes between the states and by such establishment public interest is served, then the President may appoint such council. These are the provisions which expressly state the cooperative federalism incorporated in the constitution. One of the major components in a country which requires cooperation is planning. Planning is provided for in the concurrent list on

² U.S.A. CONST. ART. 4 Sec.1: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

³ Interactive constitution, <https://constitutioncenter.org/interactive-constitution/interpretation/article-iv/clauses/44>

which both states and centre can take action. It is given under entry 20 of the list. Planning makes inter-governmental cooperation necessary as in a federal system the governments are not arranged hierarchically and there is no line of command. The decisions should be taken through discussion, agreement and compromise amongst the Centre and states.

Judicial interpretations are one of the major source for proving cooperative federalism exists in the country. Some of them are:

In the case of *State of Rajasthan v. Union of India*⁴ the concept of cooperation in a federation was discussed. In this case CJ Beg says that federalism has been largely watered down to match the needs and progress of the country which has to be nationally integrated, politically and economically coordinated and socially and spiritually uplifted. In the case of *S.R.Bomma*⁵ the court held that democracy and federalism are the part of basic structure of the constitution. Federalism in India is not a matter of administrative convenience but one of principle. In other cases it was held that Indian constitution is semi-federal⁶ and quasi-federal and it is more unitary than federal⁷.

RECENT ACTIONS AND COOPERATIVE FEDERALISM:

Politics has sabotaged the government structure given by the constitution. India was running as a democracy and federal state for seven decades. But there have been many shortcomings and before it's too late these shortcomings need to be corrected by the lawmakers. The greedy politics dumped the economics and public interest and trumped over the concept of cooperative federalism. The multi-party system and the proliferation of parties was once the reason which reduced the concentration of power with the centre. But once there has been a single party which won the majority without any assistance or alliance, this makes it tougher for other governments to work. These are the testing times for cooperative federalism, when one party, one nation and such agenda incapacitate cooperation and coordination. In the recent times there have been many

⁴ 1977 SCC (3) 592.

⁵ AIR 1994 SC 1918.

⁶ *State of Haryana v. State of Punjab*, (2004) 12 SCC 673.

⁷ *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192.

legislations and administrative actions where cooperative federalism was threatened. Some of them are as follows:

- Union budget 2020-2021: Financial and planning go hand in hand. The centre is financially powerful and should fund the states for various schemes to realise the goal of development and progress. But this recent budget presented has many infirmities, those which didn't go unnoticed by the states. The states weren't given their share of the taxes they paid. The Governments should rise above their political agenda while running a country and should not show favouritism to some particular states in the name of elections and vote bank politics.⁸
- Taxation powers and GST: Taxation powers are another area where centre and states should have an amicable relation. But in recent times there have been many misgivings by the centre as many of the southern states especially, have been neglected in the tax sharing system. Then GST came. The states had to surrender many taxes, and they were promised to be compensated. The goods and service tax has been misused many times by the Central Government since its inception. After the pandemic the actions of centre were completely derogatory and arbitrary and only some states were compensated and even in those states there was no complete compensation due to less economic activity.⁹ And many of the items to be included in GST were not there, states were not given any representation and there is no dispute resolution mechanism for the same.¹⁰
- CAA: Citizenship amendment act and NPR is another scenario where the states have shown their unwillingness to adopt what the centre passes. There have been a lot of protest but still the states cannot hold down the centre to perform its obligations given under constitution. The constitution has given more power to the centre, which can be seen from articles like 355 which say that centre has duty to protect the states form

⁸Livemint,<https://www.livemint.com/opinion/online-views/the-current-state-of-cooperative-federalism-in-india-11583339615557.html>

⁹Times of India, <https://timesofindia.indiatimes.com/business/india-business/non-bjp-states-unhappy-with-gst-relief-plan-may-forge-joint-strategy/articleshow/77828328.cms>.

¹⁰The Hindu, <https://www.thehindu.com/opinion/op-ed/a-reality-check-on-cooperative-federalism/article25487968.ece>.

conflicts both within and outside the states. Such articles give power and authority to the centre and overpower them.¹¹

- Pandemic and the Migrant Labour crisis: Pandemic has tested the whole country. Maybe with cooperation and coordination the country would have been in a better place but it has become too late now. Especially with regard to migrant labour crisis various states have adopted various policies and there is no cooperation between the states. This put lives at stake and the whole country was berserk.¹²
- Farm laws: The recent three farm laws have wreaked havoc all over the country, especially in the northern part. The centre should have taken consent from the states before it passed the acts. It also went overboard with the power assigned as farming falls under the state list.¹³ All the recent laws passed by the Rajya Sabha do not go through proper discussion or proper representation by the states. The procedure is hurried and in this process, centre threatens the constitutionalism of the country.
- NCT Delhi Act: the act confers upon the LG of the national capital tremendous amounts of power which violates both democracy and federalism.¹⁴

CONCLUSION:

The above scenarios signify that cooperative federalism is far from realization. Cooperative federalism like other constitutional principles is threatened in the country and it is going to become a dream reality. We are not going anywhere in the direction of cooperative federalism but are slowly turning into a coercive federalism. The centre should realise that without strong states the country is nothing and vice versa. There might not be any agreement between the states to cooperate to the centre, but all the states make and can also break the whole nation if this trend continues. Such actions as stated above berate the basic structure of constitution and violate constitutional principles. Without cooperation amongst the governments there is no participation and equal representation. Without cooperative federalism the country will just become another country lost in political crisis in the world map. Being a developing country India cannot afford

¹¹The Hindu, <https://www.thehindu.com/opinion/lead/towards-cooperative-federalism/article30729075.ece>

¹²Firstpost, <https://www.firstpost.com/india/centres-adoption-of-coercive-federalism-over-co-operation-with-states-has-hampered-response-to-covid-19-migrant-crisis-8376701.html>.

¹³ Newsclick, <https://www.newsclick.in/farm-laws-violate-democracy-and-federalism>.

¹⁴Bar and Bench, <https://www.barandbench.com/apprentice-lawyer/indian-federalism-and-the-national-capital-territory-of-delhi-amendment-bill-2021>.

political crises anymore, it should strive to protect constitutional principles. The true potential of cooperative federalism can only be realized when the governments truly cooperate for public good and socio-economic progress as agenda rather than political overpowering. Constant discussions and negotiations remove any frictions between the governments and make Indian federalism a robust and viable system so that India can successfully meet the greater challenges ahead.



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