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Cooperative Federalism in India: A Constitutional Reality or a Myth?

Pawanpreet Singh

ABSTRACT

Division of powers amongst the Central and State/ local unit of the country are one of the crucial and landmark features, which almost every Constitution of any country possesses in modern democratic era. Even from historical perspective, Indian subcontinent has been ruled by various rulers at various times and for the ease of governance and to check any possible chances of rebellion, the rulers used to grant certain powers to the local heads at very grass root level, which ascertains the very fact that federalism or division of powers prevailed since ancient times. Post Independence, a tedious task of uniting 565 princely states, commonly called native states was performed and India was declared as a Union of States vide Article 1 of the Indian Constitution. Separate Chapter and Articles were contained and prescribed in the Constitution governing the Centre-State relations and Schedule 7 along read with Article 246¹ of Constitution provided for various subject matters upon which centre, state or both centre and state could make laws. In the light of various judicial pronouncements, the principle of cooperative federalism was given importance and considered as one of the crucial elements of the Indian Constitution. But, in the recent decades, with the emergence of single political party as the ruling political party in the centre and differing political parties governing at local or state level, the principle of cooperative federalism has undergone a significant check and has shaken the very basic idea of the principle.

Keywords : Governance, Rebellion, Union of States, Cooperative Federalism, Indian Constitution, Political Parties, Schedule 7, Article 246, Article 1.

¹ Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

INTRODUCTORY/ FEDERALISM IN INDIA

There is no denying the very fact that in India, Federalism is "*an indestructible union of destructible states*". It was perceived at the floor of the constituent assembly that states must be integral part of India denying any right to secede. Therefore, a need for strong union was anticipated and the constitution gave dominant power to the central government. However, adequate powers were also relegated to the states in order to administer and govern the local government with much efficacy. Such arrangements have been exhibited in the Union, concurrent and state list of seventh schedule. In order to streamline the development process and enhance the progress of all the regions, cooperation between center and state is utmost necessary. Such form of cooperative federalism is required more so in case of India, due to its vastness, enormity and extreme diversity. India's cooperative federalism, however has greatly affected by the report of Simon commission and resultant Government of India Act, 1935². Indian constitution has heavily drew its features from this 1935 act. Cabinet mission³, which divided India in Group A, B and C; was another prominent factor enabling India to adopt federalism.

HISTORICAL DEVELOPMENT

Seeds of cooperative federalism can be traced right from the Regulating Act of 1773 which set up a system whereby the British Government supervised (regulated) the work of the East India Company but did not take power for itself. The Government of India Act, 1919 provided for a federal India, however superficial, by envisaging a dual form of government called 'dyarchy'. The Report of the Indian Statutory Commission of 1929 gave a federal solution by proposing to introduce dyarchy at the centre and to advance from diarchy to fully responsible government in the provinces. The same was sought to be achieved by the Government of India Act, 1935. In 1937, after a great deal of confrontation, Provincial Autonomy commenced. From that point until the declaration of war in 1939, Lord Linlithgow tirelessly tried to get enough of the Princes to accede to launch the Federation. The Cabinet Mission of 1946 provided that Union of India should deal with Foreign Affairs, Defence and Communication and all subjects other than Union subjects and all residuary powers were to vest in the provinces. Jawaharlal Nehru, while moving his Objectives Resolution on

² Repealed by Constitution of India, 1950

³ Cabinet Mission of 1946.

13 December, 1946, reiterated that the need for a measure of uniformity in regard to apparatus 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.'

CO-OPERATIVE FEDERAL AGENDA IN INDIAN CONSTITUTION

The spirit of co-operative federalism in India is observed by following

1. Distribution of Powers,
2. Supremacy of the Constitution,
3. A Written Constitution,
4. Rigidity and
5. Authority of Courts.

Under this arrangement in the Constitution, Center has got dominant power as evident from following:

- States must exercise their executive power in compliance with the laws made by the Central government and must not impede on the executive power of the Union within the States.
- Center can even usurp the legislative discretion of state with the permission of Rajyasabha
- Governors are appointed by the Central government to oversee the States.
- The Center can even take over the executive of the States on the issues of national security or breakdown of constitutional machinery of the State..

Cooperative federalism in India is practiced under following norms:

- Article 263 of the Constitution has provided for the setting up of an Inter-State Council for investigation, discussion and recommendation for better coordination of relation between the Centre and the States.
- The Zonal Councils set up under the State Reorganization Act 1956 provide another institutional mechanism for centre- state and inter-state cooperation to resolve the differences and strengthen the framework of cooperation.
- The National Development Council and the National Integration Council are the two other important forums that provide opportunities for discussion to resolve differences of opinion. Central councils have been set up by various ministries to strengthen cooperation.

DEVELOPMENT OF CO-OPERATIVE FEDERALISM IN INDIA POST INDEPENDENCE

Cooperative Federalism in The 1950s:

- The first fifteen years after independence under Nehru were marked by a democratically elected regime with a comfortable majority coupled with idealism and freshness of hope having just gained independence.
- The States Reorganisation Act, 1956 under Nehru, creating linguistic states, fulfilled a demand that was being made vociferously and was a victory of popular will. Five Zonal Councils were set up vide Part-III of the States Re-organisation Act, 1956 with the object, in Nehru's own words, to "develop the habit of cooperative working". The Zonal Councils have so far met 105 times since their inception but have not been adequately utilised.
- Nehru's period also saw the creation of other significant institutions of inter-governmental cooperation. The Planning Commission was set up by a Resolution of the Government of India in March 1950 to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country.
- The National Development Council was created in 1952 by an executive order with the aim to impart national character to the entire process of planning. Its first substantive meeting was held in 1967 after almost half the larger states passed into the hands of the opposition.

Confrontationist Era Between 1960s To 1980s:

- Mrs Indira Gandhi humbled the Congress machine, re-established the supremacy of the parliamentary party over the party organisation, broke the power of state Chief Ministers, and established a new balance or rather, imbalance between the Centre and the States. And her personality cult slowly converted Congress into a coterie party.
- All this however could not stop the formation of new parties which were born outside the Parliament, based on ideology, like the DMK in Tamil Nadu, TelguDesam in Andhra Pradesh and Communist Party in Bengal.
- In 1969, Chief Ministers of Andhra Pradesh, Orissa and Kerala met at the Chief Ministers' Conference as they were dissatisfied with the issue of centre state relations. In the 1970 Conference, the then CM of Maharashtra challenged the very competence of Planning Commission to set norms for giving special assistance to certain states forming their non-plan commitments. The states were totally opposed to handing over the administration of agricultural income tax to the Centre.
- In 1971, the North Eastern Council was set up by the North Eastern Council Act, 1971. Comprising 8 states i.e. the seven sisters and Sikkim, it was to serve as the nodal agency for socio-economic development of NE region.

- It was due to Mrs Indira Gandhi's misadventures that in **Kesavananda Bharti v State of Kerala, 1973**,⁴ the Courts evolved the 'basic structure' doctrine to save the Constitution from the misplaced establishment sovereignty of the Union Parliament. Chief Justice Sikri clearly stated that the federal character of the Constitution was a feature of the basic structure of the Constitution which was, hence, not open to whimsical amendments.
- Federalism came heavily under pressure with the declaration of emergency on 26th June 1975 under ominous conditions. Apart from damaging the federal structure, it also sowed the seeds of secessionist militant movement among the Sikhs in Punjab.
 - However, it must be kept in mind that declaration of emergency in itself is not an attack on federalism. But if the same is done under questionable circumstances not in sync with the spirit with which the provision for it was enacted, then federalism is surely under attack.
 - This led to the rise of the Janata Party, India's first alternative to the Congress, which won in 1977 elections, marking a watershed in Indian politics.
 - Mrs Indira Gandhi returned to power in 1979. Her highhandedness further invigorated movements for autonomy within the existing states and movements for separation from the Union as in Andhra, Assam and Punjab.
 - In 1983, the Conference of non-Congress ruled states was held. It paved the way for the formation of Council of Chief Ministers for Southern Region. They expressed that states should discuss mutual problems at their own level amongst themselves. Centre should be approached only if they fail in solving the issues at their own level.
 - Mrs Gandhi was assassinated in 1984. But Congress came to power again due to sympathy vote for her son Rajiv Gandhi. Steady deterioration of centre-state relations had come to head under Rajiv Gandhi. Meetings of the NDC became acrimonious.
 - With the economic liberalisation of the 1990s, State leaders came to demand partnership in the federal policy making processes that concern multilateral agreements with international organisations. This brought out into the open the economic and regional disparities making the same a matter of significant concern all the more for the federal government.

Cooperative Federalism in The Late 1980s:

- In 1989, Congress was replaced by a Minority Government called the National Front led by V. P. Singh. This marked the beginning of multi party system in India. In its election manifesto, the National Front argued for a serious commitment to, what it termed, "true federalism" by reversing the over centralisation brought about by the ruling party.
- In addition to revival of the NDC, the Inter State Council was set up as an apostle of federal comity on a permanent basis .

⁴ (1973) 4 SCC 225)

- It was created under Article 263⁵, a general Article under which any number of such bodies can be appointed to deal with various matters. Its genesis is Section 135 of Government of India Act, 1935.

Cooperative Federalism in The 1990s:

- The National Front coalition government of V.P. Singh fell. Chandrashekhar of Samajwadi Janta Party followed from 1990-91. And in the 1991 elections, P. V. Narsimha Rao was elected. The return of Congress and the five years rule from 1991 to 1995 under one party signified a desire among the people for stability, and the fact that federalism can survive only if the Centre itself is strong and competent.
- In 1992, the 73rd and 74th Amendment Acts⁶ were passed making India the first statutorily defined three tier system of democracy. It was envisaged as a way to destroy paternalism of the centre. A brainchild of Ramakrishna Hegde, it was first implemented in Karnataka in June 1987. This measure in many ways formed the core of the federalist, decentralised form of democracy.
- In 1996, the BJP Coalition was formed that lasted only two weeks as its vision was flawed. It was followed by the United Front Government under Deve Gowda from 1996-97 and then I.K. Gujral from 1997-98 of the Janata Dal.
- BJP came to power again from 1998-2003. It created three new states in 2000 to recognise the demands around tribal identities. It is important to note that these new states have emerged very much within the fabric of India which is a “Union of States”, reinforcing that our federalism is alive and kicking. Indian federalism has also experimented with sub state regional development councils to satisfy regional, ethnic and tribal aspirations.

Cooperative, Concomitant, Negotiatory And Opportunistic developments In The Last Decade:

- BJP lost heavily in the elections of 2003 due to its “Shining India Campaign” resulting in victory of the Congress with support from outside of the Left. It was a testing period for the Central Government as it had to play the balancing act very carefully. Soon after the Government was formed, it faced the threat of withdrawal from the DMK for not getting

⁵ Provisions with respect to an inter State Council If any any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better co ordination of policy and action with respect to that subject, in shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

⁶ Came into effect on April 24, 1993 and June 1, 1993 respectively.

plum posts. And it had to face the wrath of the Left over the Indo-US Nuclear Deal, though successfully, when it had to prove its majority on the floor of the House. In 2008, the Congress came to power without outside support.

- On April 27, 2007, the Second Commission on Centre State Relations was set up with Chairperson Justice M. M. Punchhi, to look into the sea changes that have taken place in the polity and economy ever since the Sarkaria Commission⁷ looked into the issue of centre-state relations two decades ago.
- Though the dominant party today effectively is BJP, yet there is hardly any possibility of an Indira Gandhi like confrontationist federalism to take shape because cooperative federalism today is the result of a complex interlay of multiple factors.

EXISTING CHALLENGES TO CO-OPERATIVE FEDERALISM IN INDIA

Unfortunately, in Indian administrative system there is no mechanism to solve the dispute between center and state or between two states. Though article 262⁸ provides the authority to the center to take initiative to solve the dispute but central government never took such initiative. That why so many disputes are still pending in Supreme Court specially the dispute regarding share of water of various rivers. In my opinion separate institute must be constituted for solving the disputes between center and state or between two states. As well as special mechanism must be setup for integral development of whole nation.

CONCLUSION

The relation between the centre, the states and the local tiers lies at the heart of India's sense of nationhood and is the pre requisite for India's progress. However, a strong political undercurrent runs through it. Every centre-state and every inter-state dispute is at its heart, a political dispute. This is the root cause of the problematic nature of centre state relations. Such a dispute slowly ripens into

⁷ Sarkaria Commission, Government of India, June 1983.

⁸ Adjudication of disputes relating to waters of inter State rivers or river valleys :

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter State river or river valley

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) Coordination between States

an economic one. Bad politics leads to bad economics. Unless stagnation in the economic field and unbalanced regional development are not addressed, integration and solidarity in the federal set up will not be complete. Both Centre and State governments must attend to the task of preserving our nationhood through constructive cooperative federalism which requires a great deal of commitment.