

CO-OPERATIVE FEDERALISM IN INDIA

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Abstract

The complexity and plurality of India gave our constitution a federal appearance with a unitary character. For smooth functioning of federalism in India emphasis is being given on cooperative federalism, where political dispensations at centre and state belong to different ruling parties. The essence of cooperative federalism is that the centre and state government should be guided by the broader or national concerns of using the available resources for people's benefit. Different promises are made by the dispensation at the centre to maintain cordial relations with the state where other parties are in power but the scene is different.

Key Words

Cooperative, Confrontationist, Coalition Govt., Degenerated, Concomitant, Negotiating, Opportunistic.

Introduction

India is the largest democratic, the largest pluralist and largest federal country of the world. The complexity and plurality of India gave our constitution a federal appearance with a unitary character. Only through federal design the multi-religious, multi-caste, multi-lingual, multi-regional and multicultural nature of Indian society could be integrated. The princely states too could be integrated more smoothly through federal structure of India. Nation building could not be possible in a continental sized country like India with vast areas and population with multiple identities. Hence our constitution makers incorporated federalism as basic features of Indian constitution and also considered it as booster to Indian democracy¹. While democracy represents the majority opinion, federalism accommodates that of minority giving a flavor of social justice which ensures harmonious functioning of the entire system. Federalism and pluralism have given India's political system great flexibility and capacity to withstand stress through accommodation. However, continuation of the same requires not simply federalism, but cooperative and collaborative federalism.

Constitution has provided for a structure of governance which is essentially federal in nature. All the features of a federation, i.e. two sets of governments, division of power, written constitution, supremacy and rigidity of the constitution independent and impartial judiciary are duly present in India. However, it also contains a large number of unitary or non-federal features. i.e. strong centre, single constitution, single citizenship, flexibility of constitution, integrated Judiciary, appointment of the governors by the centre, All-India services, emergency provisions of the president, and so on. Even centre can rule over the state under president's rule on the issues of national security or breakdown of constitutional machinery of the state². Article 1 of the constitution describes India as a "union of states" which implies two things, one under, Indian Federation is not the result of an agreement by the states; two, no state has the right to secede away from the federation. So, the Indian constitution has been differently described as 'federal in form but unitary in spirit,' 'Quasi-federation,' 'semi-federation', 'pragmatic federation' or a 'federation with strong unitary features'. Thus, within this basic framework of federalism, the constitution has given overriding power to the central government.

Keeping in view, the overriding power of the centre, the spirit of cooperative federalism has become essential to supervise the relations between the centre and the states on the one hand, among different states and between the states and the local self-governments on the other. Both the government at the centre and state should be guided by the broader national issues while using the available resources for the common good of the people should be the essence of cooperative federalism. Again this calls for a harmonious and cooperative spirit between the central government and state governments and among the various state governments themselves. A strong centre is necessary for strong states and vice versa is the essence of cooperative federalism.

DEVELOPMENT OF COOPERATIVE FEDERALISM IN PRE-INDEPENDENT ERA-

Historical roots of cooperative federalism can be traced back to ancient period, where kingdoms and empires ruled over India practiced federal policies as their chieftain and his vassal state were left free in their internal affairs. This non-intervention in the local affairs was a practical necessity because of natural diversities of the people and that they could only be made a part of such a vast empire if common set of beliefs was not imposed upon them. India witnessed the disintegration of mighty Maurya and Mughals empires as their rules tried to impose common code of behavior that offended many of their subjects. Hence, after the revolt of 1857 the British decided to grant a certain kind of autonomy to Indian princes confirmed the pattern of Government that was already age old. Further the spirit of cooperative federalism developed with Vallabhai Patel's method of political mobilization by which he could successfully persuade 492 princely states to join in the Indian Union while simultaneously maintaining the unity of the nation. Seeds of cooperative federalism can be traced right from the regulating Act of 1773 by which the British government supervised the work of East India Company, The Government of India Act 1919 which envisages dual form of Government called dyarchy. The same was sought to be achieved by the Government of India Act, 1935 whereas provincial autonomy commenced in 1937. Up to declaration of war 1939 Lord Linlithgow tirelessly tried to get enough of the princes to accede to launch the federation. Under the cabinet mission plan of 1947, foreign affairs, defense and communication were kept under union govt. and all subjects other than union subjects and all residuary powers were to vest in the provinces. In moving objective resolution Jawaharlal Nehru, reaffirmed the need for a measure of uniformity in regard to apparatus and machinery of central government was to be considered in "Cooperation and consultation with the state" and that "all power and authority of the sovereign independent India, its constituent parts and organs of government are derived from the people."

The members of constituent Assembly did a commendable job by envisaging a cooperative federalism set up which would ensure that the needs of security, defense, urge for a welfare state and meeting the economic crisis are catered to along with addressing the demands of the country's constituent states, as a result of which India as a nation would last.

DEVELOPMENT OF COOPERATIVE FEDERALISM IN POST INDEPENDENCE PERIOD

In the post-independence period the changing dynamics and the varied experiences that the Indian state has had like one party rule, the rise of regional parties the Formation for coalition Governments, Judicial activism have shaped the trajectory of federalism from cooperative to confrontationist and vice versa. The cooperative framework worked very well in India so long as the central and state governments were ruled by the same political party. But when different political parties are in power in centre and states and in coalition government there are confrontation and tensions between the centre and the states.

Trends so far :

(i) Cooperative in the 50's and 60's

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. To develop the habit of cooperative working, institutions like zonal Council, Planning Commission and National Development Council, were set up.

Confrontationist from 1960s to 1980s-

The supremacy of the centre bothers the power of states and established a new balance or rather, imbalance between the centre and the states. Indira Gandhi's personality cult slowly converted congress into a coterie party. Formation of new political parties like DMK in Tamil Nadu, Telugu Desam in Andhra Pradesh and Communist Party in Bengal proved double edged weapon to the interest of federal spirit of India. The policies like centralization, politicization, corruption and dictatorship degenerated the federal and democratic structure of the country.

(ii) Cooperative federalism in 90's-

The decade was marked by regime of coalition government of national and regional parties which were cooperative in nature. The return of Congress rule from 1991 to 1995 under P.V. Narasimha Rao signified a desire among the people for stability, and the people realized fact that federalism can survive only if the centre itself is strong and competent.

(iii) Cooperative, concomitant, Negotiating and opportunistic in the last decade-

The current trends emphasize cooperation and coordination, rather than demarcation of power between different levels of and interdependence among them is the basic theme of today's federalism especially In the era of coalition politics.

The regional parties articulated aspiration of the people and emphasized the need for democratic decentralization and devolution of powers, goals that were enshrined in the preamble of the constitution³.

In this direction, a number of suggestions of Sarkaria commission have been implemented. The National Commission to Review the Working of the Constitution (HCRWC) established by NDA government paid sufficient attention to the issue of centre state- relations. In April 2007 UPA Government established another commission under the chairmanship of justice M M Punchhi to take a fresh look into the role and responsibilities of central government and various state governments. The commission which submitted its report in 2010 concluded that 'cooperative federalism' would be the key for sustaining India's Unity, Integrity and social and economic development in future. Again it observed "The principles of cooperative federalism thus may have to act as a practical guide for Indian polity and governance"⁴.

The commission in its recommendation focused on the role, responsibility and jurisdiction of the centre vis-a-vis states as below :-

- (i) During Major and prolonged outbreaks of communal violence cast violence or any other social conflict leading to prolonged and escalated violence;
- (ii) In the planning and implementation of the mega projects like the inter-linking of rivers would take 15-20 years for completion and hinge vitally on the support of the state;
- (iii) To ensure within a specified period of time effective devolution of powers and autonomy to panchayat Raj and local bodies under the 6th schedule of the constitution;
- (iv) To promote the concept and practice of Independent planning and budgeting at the district level; and
- (v) In linking central assistance of various kinds with the performance of the states⁵.

Emerging challenges today:-

The liberalization, privatization and globalization have given rise to new extend considerable pressure on the federal principles and in the centre-state and inter-states relation. River Teesta and border agreement between India and Bangladesh suffered a lot due to tough stance adopted by West Bengal. Tamil Nadu passed a resolution seeking imposition of economic sanction on Sri Lanka in 2011. Jammu and Kashmir and Punjab pressurizing the centre to take them on board while discussing water issues with Pakistan. The proposal for FDI, establishing National Counter-Terrorism Centre (NCTC), the lokpal bill, the amendment to the railway police force Act and border security force bill extending the power of Para-military forces ,etc have been pending with centre due to opposition from regional political parties and the affected states with strong arguments while interpreting the Federalism in the changed circumstances.

Again, there is no demands for restricting centre-state relation on the basis of equitable taxing powers considering the social sector obligation of the state instead they concentrate on getting the state specific discretionary package from the centre. This attitude supports the new 'giver-taker' approach which again demands electing center-friendly governments for more development which restricts the choice of electorate for plurality in the federal set-up. The discretionary elements in devolution of funds from the centre⁶ to the states and conditions imposed thereby are symptoms showing the emergence of a coercive federal structure.

The new challenges facing 21st Century federalism have further necessitated the pre existing need for cooperative federalism, thereby making its practice as a form of governance all the more indispensable.

• **Multi Party System**

The states today have acquired sufficient political weight of their own through a pluralised party system enabling individual states to embark onto bilateral negotiations with the union bypassing the institutionalised bodies of collective policy framing that have proved to be ineffective, thus lending a negotiator character to our federalism.

• **International Treaties**

India is making strides in the global sphere and the local governments that promote shared partnership in development have come to be noticed today. Hence, whenever development programs or any other interests of states are touched by international agreements, the well conceived demands of states should be met in order to promote truly cooperative, coordinative and multi dimensional centre state relations.

• **Environmental factors**

Environmental Challenges of global nature like climate change do not recognise state frontiers. Pollution and conservation issues reflect the uncomfortable tension between decision making process of the governments at the centre-state –local levels. Disaster Management transcends inter-state boundaries too.

• **Terrorism**

Terrorism, militancy, organised crimes, problem of internally displaced persons, refugees – all these require that the country as a whole comes together and the institutional bodies under state governments help the centre by collectively making available the necessary information and resources.

• **Voice of Separatism**

The increasing voices of autonomy and separatism have vitiated the political and social fabric of the federal structure. States are increasingly harbouring feelings of deprivation and alienation and have begun viewing all problems from a narrow parochial outlook. This not only weakens the nation but also makes the land fertile for the growth of terrorism and insurgency.

• **Globalisation**

Globalisation has reinforced the need for concurrence between the geographical, climatic, environmental and technological diversities inter as well as intra states so that they may link with global processes for viable and sustainable development and growth. The experiences felt at the global level are also being felt at the local level.

The present BJP-led NDA government headed by prime minister Nanendra Modi has launched some policy initiatives which give hope to change the dynamics of cooperative Federalism. Firstly, recommendations of the 14th Finance commission have been accepted by Modi government with special reference to the statutory increase in the share of divisible tax pool from 32% to 42%. Non-statutory share from 21% to 26% has raised and about 68% of the division pool is to be transferred to the states.

Secondly, establishment of the National Institute for transformation India (NITI) Aayog on 1 January 2015 as a replacement for former planning commission has potential to better facilitate center-state policy cooperation, coordination and coherence the process of policy-planning has to change from ‘top to bottom’ of planning Commission era to ‘bottom to top’ by the NITI Aayog where planning will be made at the bottom and endorsed at the top. Now states would be allowed for setting their own development priorities and to develop effective mechanism to solve disputes among them. NITI Aayog aims to foster ‘cooperative federalism by bringing change in the planning and centre allocation of funds to the state. Active participation of the Chief Ministers of state in Aayog’s meetings and their regular interaction with the central government would help in policy and program formulation, design and their implications. This would ensure states more say in the federal set-up in the change circumstances. Both center and state would come together and resolve the common problems with each other’s cooperation.

Thirdly, the present government has shown urgency in implementing Goods and Services Tax (GST) and already been passed by parliament. GST is the largest ever tax reform in the fiscal history of India that focuses on cooperation instead of self-interests and usher in fiscal federalism and which is said to enable both the centre and states to levy a sales tax on goods and services and thereby turn the whole country as a market and lead to uniformity in taxes on goods and services. It requires both centre and state government to sacrifice their fiscal autonomy in favor of a collective decision-making process. The collective action is significant given that the transitions and increasingly becoming global nature and not confined to the boundaries of the states. The GST overcomes the gap between the centre and the state, while the states will get the power to tax both the goods and services, the centre will be able to levy taxes beyond the manufacturing point, across the full supply chain. Again the tax provisions that restricted inter-state movement of goods within the country will now be dispensed with and it would make the tax system simple and efficient.

Fourthly, Modi government has undertaken initiative in generating resources from non-conventional sources like use of auctions and use state assets more productively. Thus Rs 2 lakh crore have been expected to generate from auctioning of coal blocks from 32 mines, most of which will be turned over to the concerned states, substantially improving their fiscal base.⁷

Fifthly, Prime Minister Modi's 'Team India Attitude' to take the country forward by emphasizing in his speech that the centre and states sink differences and work together⁸. This idea of prime minister was supported by West Bengal Chief Minister in Governing Council of NITI Aayog held in June 2018 was this "The centre and state need together, closely, if India's development and economic goals have to met."⁹ This is often forgotten in India's competitive political and polarized. The constitutional scheme provides for division of responsibilities. For example, law and order in which centre can provide broad direction, broad policy formulation in Delhi, but the initiation and implementation is in the hands of the state. Modi's 'Team India' vision rest on maintaining the right balance between the centre and state.

Conclusion:-

In order to face the above problems and challenges cordial relation between the centre and states are essential. No doubt Modi government has taken some initiatives to strengthen centre-states relations in a cooperative manner, but these initiatives have not yet translated into reality. It is the responsibility of the day to ensure equity, putting aside partisan considerations. In view of various endogenous and exogenous imperatives of change a directional shift is necessary from cooperative model to a collaborative model¹⁰ of federal governance. Collaborative institutions and deliberative process to achieve policy coordination institutional reforms are necessary for improving the quality of democracy. Three suggestions can be made here. Firstly, expansion of the existing structural and functional horizons of the Inter-State Council so as to enable it to function as quasi-judicial 'Collaborative Council'. Secondly, constitutional status to the newly formed NITI Aayog because constitutional mechanism can prevent issues and challenges faced by cooperative federalism. Thirdly the financial allocation function is to be transferred to a permanent Finance Commission which can ensure a balanced, transparent and distortion free system of inter-governmental fiscal relation. We can conclude with Granville Austin as he wrote "cooperative federalism produces a strong central government, yet it does not necessarily result in weak provincial governments that are largely administrative agencies for central policies. Indian federalism has demonstrated this." The present NDA government at the centre not to act on the basis of its absolute majority but in a conciliatory and consensus way with states to foster cooperative federalism.

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