



Towards Cooperative Federalism: The Legal Perspective

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Abstract: Indian federalism is at its peak at present. The nomenclature used in the Constitution of India i.e. 'India, i.e. Bharat is a Union of States' to denote the nature of Indian federation is still debated. The legacy of colonialism, partition and the aim of nation building all contrived to create a centralised federation, which still exercise a strong influence. Centralised planning as the development strategy adopted soon after independence, required further concentration of economic powers. On the other, the economic liberalization since 1990, has changed the traditional Indian economy to market-based development and the accompanying opening up of the economy to the global economy have brought the contradictions of centralized federal arrangements to the limelight.

Keywords: Indian economy, Indian Federation, Supreme Court

Introduction:

It is true that during the last seventy three years, strong centralising tendencies emerged in India. To a large extent, this was due to the fact that for long one political party, the Congress Party, was in power at the Centre as well as in all the States. The supremacy of one political party for long did inevitably generate centralising trends. But at present things have changed. The Congress Party has lost its decisive position; it has lost its monopoly of power. Many political parties having regional, rather than national, perspective have emerged having different political ideologies and some of them have captured power in some of the states. Further, even the Central Government is composed of a coalition of several political parties. This political development has checked the generation of centripetal forces.

The States in Indian Federation at present are in a much stronger position to assert themselves, to exert pressure on, and to bargain with, the Centre. This is resulted in the emergence of a more balanced federal system in India. The Supreme Court has played a vital role in this process through its decision in Bommai case by putting some restraints upon the exercise of powers under Article 356 of our Indian Constitution. The Supreme Court has declared federalism as basic feature of the Constitution. Thus, whatever the Constitutional provisions, the evolution of the Indian federalism for some time has now been towards a more balanced system with accent on State autonomy and cooperative federalism.

Federalism is not a static but a dynamic concept. It is always in the process of evolution and constant adjustments from time to time in the light of the



contemporary needs and the demand being made on it. Constant discussions and negotiations between, the Centre and the States on various platforms can help in removing the frictions and difficulties in the area of inter-governmental cooperation and for sorting out these differences with a view to making the Indian Federalism a more robust and viable system so that India may successful to meet the great challenges of defence, external and internal security and socio-economic development.

Significance of the Study:

Indian federalism is at its peak at present. The nomenclature used in the Constitution of India i.e. 'India, i.e. Bharat is a Union of States' to denote the nature of Indian federation is still debated. The legacy of colonialism, partition and the aim of nation building all contrived to create a centralised federation, which still exercise a strong influence. Centralised planning as the development strategy adopted soon after independence, required further concentration of economic powers. On the other, the economic liberalization since 1990, has changed the traditional Indian economy to market-based development and the accompanying opening up of the economy to the global economy have brought the contradictions of centralized federal arrangements to the limelight. On the political front, the end to single – party rule at the Centre and States, the emergence of coalition governments at the Centre, and increasing importance of regional parties in the political affairs of the country have brought into focus various contentious issues in the efficient governance of the federation.

The challenges thrown up by market-based development in a globalizing environment require the various state governments in Indian federalism to act in a manner that provides cost-effective physical and social infrastructure, creates the proper enabling environment for growth and efficiently regulates, the market forces where necessary. This is a challenge for any single government, and the Central, State and even Local governments in India must accomplish this with some degree of coordination. However, in practice, present institutional arrangements involve acute, often destabilizing, political and economic competition. For instance, the emergence of regional parties in pivotal roles at the Centre, and the present Bharatiya Janata Party led coalition government at Centre ignores the opinion of State governments, the recent developments relating to power sector is an example which led to confrontation between Centre and States. The present Central government under the leadership of Prime Minister Narendra Modi has unilaterally taken power sector decisions, inspite of strong opposition from some of the state governments. So also under the present Carona pandemic situation there is a difference of opinion in between Centre and States with regard to determination of containment zones as rea zones and buffer zones. Later, the Central government has given authority to State governments to take decisions on matters relating to the effective containment of Carona pandemic. A. H. Birch and others have defined 'cooperative federalism' as an administrative cooperation between the Centre and States, and a partial dependence of the States upon payments from the Centre. In the words of Indian Constitutional expert Granville Austin,



despite a strong centre, cooperative federalism does not necessarily result in weaker States; rather, the progress of the entire country depends upon active cooperation between the Centre and States.

Objectives of the Study:

The main aim of this research study is to find out various measures to strengthen Union – State relations and realize cooperative federalism in India. Though several Research papers, Dissertations and Thesis have been submitted on the concept of federalism, the concept of cooperative federalism is emerging one and it needs new perspectives. The other objectives are:

1. To examine the formation of Indian federation,
2. To examine the nature of India federation,
3. To examine the working of Indian federation,
4. To examine the relations between Centre and States,
5. To examine the scope for realization of cooperative federalism,
6. To examine the reports of various commissions on Union – State relations and
7. To find out the ways and means to transform Indian federation into cooperative federation.

Research Methodology:

To make a comprehensive research upon the topic viz. "Towards Cooperative Federalism : The Legal Perspective" , it is desirable to choose the historical-cum-analytical approach. As Federalism is the salient feature of Indian Political System,

historical approach is found necessary to trace out the evolution of Indian federal system and its working and analytical approach is useful to study recommendations of various commissions and judicial pronouncements towards the realization of Cooperative Federalism in India. The researcher has felt that doctrinaire approach would be more rewarding than the empirical approach.

Hypothesis of the Study:

- The framers of the Indian Constitution took due note of the emerging trends of Federalism in the older federations of the world.
- The framers of the Indian Constitution realised that, governments in a federation are to be arranged horizontally, so that common policies among the various governments can be promoted not by dictation but by, a process of discussion, agreement and compromise.
- The ideological differences between the political parties have led to the disputes between the Centre and States.
- The competitive nature among the States leads to disputes,
- The personality and egoistic nature of some prominent political leaders is an hindrance in the way of cooperative federalism.
- The role of the State Governor in the State administration is an hindrance in the way of cooperative federalism.
- The border disputes and water disputes between various states are now become an important hurdle towards the realization of cooperative federalism.



Findings of the Study

Article 01 of the Constitution declares that India, that is Bharat, "shall be the Union of States". In our Indian Constitution, instead of the word federal, the word "Union" was used.

In the words of Dr. Ambedkar, the Chairman of the Drafting Committee, the purpose of the word 'Union' in our Constitution thus ".....though India was to be a federation, the Federation not being the result of an agreement, no state has the right to secede from it, The federation is a Union because it is indestructible.

- The idea of cooperative federalism is as old as the modern federal models. Elements of cooperative federalism are found in the federation of the United States which is chronologically the first of modern federations.
- The elements of cooperative federalism were further elaborated in the federations of Switzerland, Canada, Australia, the German Republic and Republic of India.
- By this research study it is possible to speak of a continuous process of evolution of federalism as a system of government during the last two hundred and seventy years and to point out the salient feature of this process is the incorporation of a more and more number of cooperative devices into federal constitutions.
- In terms of 'cooperative federalism spirit' the Constitution of

India may be said to be superior to that of any other federal constitutions.

- Several suggested proposals and recommendations made in other federations to bring about a larger amount of cooperation between the Centre and the States and among the States themselves have actually been incorporated in the basic frame-work of India Constitution.
- Cooperation federalism is an alternative to classic federalism to curb the evils arising out the competitive trends of the classic federalism. Competition of powers between the Centre and States and among States themselves is inherent in federalism.
- The concept of cooperative federalism has been developed on the basis of three main factors : (a) the exigencies of war when for national survival, national interests takes precedence over the concept of centre-state division of powers; (b) technical advancements in the form of information technology makes the means of communication faster; (c) the emergence of the concept of social welfare state.
- The concept of cooperative federalism arose to help the federal system, with its divided powers, to act in co-ordination; to minimise conflict and promote cooperation among the states of the federal union so that they can pool their resources to 'achieve certain national goals to satisfy public demands for various social welfare services. It has come to be realised that the various governments in a federation are interdependent and that they should act; not at across purposes, but in



cooperation so as to promote and maximise the public welfare.

- The other matters which make cooperative federalism necessary by their nature are matters relating to the distribution of river waters following through several states, irrigation projects, hydro-electric schemes, conservation and preservation of natural resources, safe drinking water supply, sewage disposal, prevention of river water pollution, control of floods, cyclone, famine and the protection of the life of wild animals, welfare of women and children, implementation of Heath schemes, providing education, generation of employment opportunities, look after the life of migratory workers and their families, public distribution system, providing housing to all, universal immunisation programme for children, effective containment strategy for the control of epidemics and pandemics are some of matters which can be efficiently administered only by joint action through cooperation of the Centre and States and the States inter se.

- Financial resources have been the most dominating factors in the emergence of the concept of cooperative federalism. The Centre with its huge financial resources is in a position to give finance to the states which are always in need of it to satisfy the growing demands on them for social welfare programmes in their legislative ambit, and this brings the central and state governments act together.

- The framer of Indian Constitution have incorporated the federal principles in our Constitution in a modified form in the light of

experience of federations and in view of the peculiar requirements of our country and this modification is surely towards establishing the cooperative federalism.

- H. Birch and other political scientists have defined 'cooperative federalism' as essentially by administrative cooperation, between the Centre and the States, and a partial dependence of the States upon payments from the Centre. In the words of Indian Constitutional law expert Granville Austin despite a strong Centre, cooperative federalism does not necessarily result in weaker States; rather, the progress of the Indian Republic depends upon active cooperative between the Centre and the States.

- The Constitutional experts opined that cooperative federalism is the solution to the contemporary complex problems of the world. Hence to make cooperative federalism successful there shall be some checks upon the necessary growth of powers of the Centre.

- The factor which hampered the 'cooperative federal fabric' in India are politically motivated. The Constitution has provided for a federal system of government with an exceptionally strong Centre. This has made the States apprehensive and suspicious of the policies of the Central Government.

- Since long, India is under the dominance of one party rule. The partisan attitude adopted by the Central government towards various states has been responsible for tension between the Centre and States.



- The ideological differences between the party in power at the Centre and the party in power at the State level has also been responsible for decline of concept of cooperative federalism.

- The selfish role and fissiparous tendency of some political parties is responsible for deterioration of concept of cooperative federalism. The political parties intentionally raised certain disputes and saw to it that they were not amicably settled, so that they could continue to lead the agitation and make selfish gains.

- Despite of cooperative federalism frame work in the Constitution itself, political compulsions create bad precedents in the Centre – State relations. For example no standard set of guide lines are followed in the appointment and dismissal of Governors. Governors are dismissed without allowing them to complete their tenure if in between a different party comes to power in the Centre.

- The whimsical action, acts of expediency to tackle narrow partisan interests or regional considerations and political motives would tend to vitiate the nation of cooperative federalism and cause irreparable damage to the time tested Indian federal structure.

Important Suggestions:

1. To reflect the notion of cooperative federalism, Article 01 of the Indian Constitution shall be amended as “India, that is Bharat , shall be Union of States with cooperative working spirit.

2. To achieve ‘cooperative spirit’ in between Centre and States and among States, there

should be a specific constitutional mechanism called ‘National – State Cooperative Council’ as Prime Minister as its chairperson and all Chief Ministers and Administrators of Union Territories as its members. This council shall meet once in every three months compulsorily. All the Chief Ministers including Prime Minister shall attend to these meetings without fail. Neither the Prime Minister nor the Chief Ministers shall sent their proxies. They shall attend to these meetings in person, by ignoring their political ideology.

3. Apart form ‘National – State Cooperation Council’, other bodies like National Integration Council, National Development Council and Inter-State Council shall ensure constant consultations and interaction between the Centre and the States and encourage greater cooperation and devolution of power from the Centre to the States and from the States to the Local self governments units.

4. The newly constituted ‘National Institution for Transforming India [NITI] Aayog shall be accorded constitutional status on par with the Finance Commission of India. The present NDA government under the leadership of Prime Minister Narendra Modi at the Centre had announced the abolition of Planning Commission should not be repeated with NITI Aayog. The allocation of funds by the Planning Commission to the States was deeply resented by the States and various government departments. Some times it was criticized as an extra constitutional force.

5. The Niti Aayog shall put an end to slow and tardy implementation of polices and by fostering better inter ministry co-ordination. The Niti Aayog shall help a



shared vision of national development priorities and shall foster cooperative federalism recognizing that strong states make strong centre and vice-versa.

6. The proposed Interlinking of Rivers (ILR) projects shall be completed within the time bound period by the Government of India. This project will control droughts in the water shortage areas and floods in the water excess regions. This project shall be taken on the lines of 'Namani Gange Programme', which aims to restore the purity and flow of water in the Ganga River through abatement of pollutants and treatment of discharged water. It has ensured cross-state cooperation as well as settlement of water disputes between the States.

7. To realise the concept of cooperative federalism border disputes between the states shall be resolved through the process of 'Arbitration and Conciliation'. All border disputes shall be resolved amicably through the involvement of all concerned parties as soon as possible.

8. At present agitations are going on in some regions of the country in favour of statehood status to their region. They are Harith Pradesh, Purvanchal, Bodoland, Saurashtra, Gorkhaland, Kongu Nadu and Vidharbha. The past experiences have shown that these movements have adverse impact on the peace and tranquillity of the region. So, the central government shall create a task force on these demands and made it clear, is there any feasibility to create or not? These agitations shall not become an hindrance in the way of cooperative federalism.

9. The National Judicial Appointments Commission and All India

Judicial Service shall be constituted as early as possible to protect and promote cooperative federalism in India.

10. While using Article 356 of the Constitution, the President of India shall be abide by the guidelines given by Supreme Court of India in landmark S.R. Bommai case.

Conclusion:

Terrorism, organised crimes, problem of internally displaced persons, refugees – all these require the coordination between Centre and State governments to tackle the situation. Both Centre and State governments must have the commitment to the task of preserving our nationhood through constructive cooperative federalism which requires a great deal of commitment.

References:

- K.C. Wheare – Federal Government
- M.P. Jain – Indian Constitution Law (2014)
- A.K. Ghosal, "Federalism in the Indian Constitution", 1953
- Kashyap, Subhash C., Union – State Relations in India, New Delhi, 1969.
- Pandey, J.N., Constitutional Law of India, Allahabad, 2016.