



Constitutional arrangements towards Cooperative Federalism

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Abstract: The makers of the Indian Constitution well aware about the emerging trend of cooperative federalism in the older federations. They believed that governments in a federation were arranged not hierarchically or vertically but horizontally, that no rule of command comes from the Centre to the States, and that common policies among the various governments can be promoted not by command but by a process of discussion, agreement and compromise. The Constitution of India establishes a Federal Government with sufficient provisions for promoting the national unity and cooperation among the various governments. The Central Government and the State Governments are not independent of each other. The Central Government has been given enough power to control the State Governments. The State Governments have been made dependent on the Central Government for all types of assistance. Various provisions have been incorporated in the Constitution for administrative cooperation between the Centre and State Governments.

Keywords: Indian Constitution, national priorities, social and economic objectives

Introduction:

The makers of the Indian Constitution well aware about the emerging trend of cooperative federalism in the older federations. They believed that governments in a federation were arranged not hierarchically or vertically but horizontally, that no rule of command comes from the Centre to the States, and that common policies among the various governments can be promoted not by command but by a process of discussion, agreement and compromise. The States of India have a broader field of administration and decision-making and it becomes essential, therefore, to create institutions to co-ordinate inter-governmental action in those areas at least where the repercussions of a State action would be felt outside the State as well, or where national priorities demand a uniform approach. Also, when a number of governments with divided jurisdiction

function in the same territory, intergovernmental disputes and differences are bound to arise and it is important that institutional mechanisms be evolved to resolve and reconcile towards the realization of the social and economic objectives for the welfare of the people. Accordingly, the makers incorporated into the Constitution, a viable mechanism to promote cooperation and coordination, and reduce tensions, among the various governments. Several features and provisions of the Constitution have been purposefully designed to institutionalize the concept of Centre – State cooperation.

Towards Cooperative Federalism:

In a federal government, the powers are clearly divided between Central and State governments as explained in Article 249 and Seventh Schedule of the Indian Constitution with unique list defining the sphere of power



i.e. the Union list, the State list and the Concurrent list. The framers of the Indian Constitution were well aware that federalism was necessary to absorb vast diversity but simultaneously gave it a "Nation in the Making". This process of nation making was a "Nation making" powered by an innovative attribute of federalism termed as "Cooperative Federalism" by Granville Austin, which simply means cooperation between Union and States. However, Cooperative Federalism is not novel to India; its roots can be traced in the history.

The Indian Constitution set up dual-governments – Central Government and State Governments. It provides for division of powers of the State between the Central Government and the State Governments. The distribution of powers often results in conflict between the different Governments. In fact this is the basic drawback of Federal Constitution. The Central Government has no control over the subjects given to the State or regional Government. The Federal Constitution, thus forms a weak Central Government in theory and the weakness is seen strikingly during the times of Emergency or War. The framers of the Indian Constitution included in the Constitution many provisions to overcome these defects. Number of provisions have been incorporated in the Constitution to promote cooperation among the various Governments. This frame work is called 'Cooperative Federalism'.

The Constitution of India establishes a Federal Government with sufficient provisions for promoting the national unity and cooperation among the various governments. The Central Government and the State Governments are not

independent of each other. The Central Government has been given enough power to control the State Governments. The State Governments have been made dependent on the Central Government for all types of assistance. Various provisions have been incorporated in the Constitution for administrative cooperation between the Centre and State Governments. The subjects have been divided into three categories⁴⁹ - Union list, State list and Concurrent list. The Central Legislature (i.e. Parliament) has exclusive power to prepare laws. With respect to any of the matters enumerated in the Union List and the Legislature of any State has power to prepare laws for each State or any part thereof with respect to any of the matters enumerated in the State list. Parliament and State legislature both have power to prepare laws with respect to any of the matter envisaged in the Concurrent list but in case of conflict between a law prepared by Parliament and a law prepared by the State Legislature with respect to such matter, the law prepared by Parliament will prevail and the laws prepared by the State Legislature, shall, to the extent of the repugnancy, be void, unless the law made by the State Legislature has received the assent of the Parliament.⁵⁰ The residuary power has been vested in the Parliament.⁵¹ It is to be remembered that under the American Constitution the residuary power vests in the States. Besides the Central Legislature can prepare law with respect to any matter for any territory not included in a State notwithstanding that such matter is a matter enumerated in

⁴⁹ . Article 246 and Seventh Schedule

⁵⁰ . Article 254

⁵¹ . Article 248



the State list.⁵² In the exercise of this power Parliament can make law with respect to any territories. If the Council of State i.e. Rajya Sabha has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interests, that parliament should prepare laws with respect to any matter envisaged in the State list specified in the resolution, it shall be lawful for parliament to make laws for the whole or any part of the territory of India with respect to that matter⁵³ While a Proclamation of Emergency is in existence, Parliament can make law for the whole or any part of the territory of India with respect to any of the subjects envisaged in the State list.⁵⁴ If it appears to the Legislature of two or more than two States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the State except as provided in Article 240 and 250 should be regarded in such State by Parliament by law and if resolution to that effect are passed by all the Houses of the Legislature of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which is adopted afterwards by resolution passed in that behalf by the House or where there are two Houses by each of the Houses of the Legislature of that State.⁵⁵ Parliament can prepare law with respect to any matter including a matter envisaged in the State list for the whole or any part of the territory of India for implementing any treaty agreement or

convention with any other country or countries or any decision made at international conference, association or body.⁵⁶ If the President is satisfied that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Indian Constitution, he may by proclamation, declare that the powers of the Legislature of the State shall be exercisable by Parliament and then, Parliament can make law for the State with respect to matters envisaged in the State list.⁵⁷ Under certain circumstances the Central Government can interfere in the enactment of legislation by the State legislature on the matters envisaged in the State list.

Article 02 empowers Parliament to admit into the Union or to establish new States on such terms and conditions as it thinks fit. Article 03 provides that Parliament may by law form a new State, increase the area of any State, diminish the area of any State, alter the boundaries of any state and alter the name of any State. The administrative relation between the Union Government and the State Governments also indicate that our Constitution has placed much emphasis on Cooperative Federalism. There is distribution of administrative powers between the Union and State, however, the Central Government has been given sufficient powers to control the State Governments and compel them to comply with the law made by Parliament. According to Article 256 the States must so exercise their executive power as to ensure compliance with the laws made by Parliament and the Union Government can give such directions to a

⁵² . Article 246(2)

⁵³ .Article 249

⁵⁴ .Article 250

⁵⁵ . Article 252

⁵⁶ . Article 253

⁵⁷ Article 356



State as it may deem necessary for this purpose. If the directions are not complied with, the President can declare Emergency on the ground that the government of the State cannot be carried on in accordance with the provisions of the Constitution and can take over the administration of the State. Article 257 enables Union Government to have control over States in certain cases. The Executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union and the executive power of the Union shall extend to giving such directions to a State as may appear to the Government of India to be necessary for that purpose. The executive power of Union shall also extend to giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national importance or military importance, but this would not restrict the power of Parliament to declare Highways or Waterways to be national Highways or national Waterways. The Union can give directions to a State as to measures to be taken for the protection of the Railways within the State. Article 258 enables the Union to confer certain powers on States. It provides that the President may, with the consent of the Government of a State entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the union extends. It also provides that a law made by Parliament which applies to any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties or authorise the conferring of powers and imposition of duties, upon the

States or officers and authorities thereof. According to Article 258-A the Governor of a State may, with the consent of the Government of India entrust to that Government or to its officers functions in relation to any matter to which the executive power of the State extends. Article 261 provides that full faith and credit shall be given throughout the territory of India to public act, records and judicial proceedings of the Union and of every State. It makes it clear that the manner in which and effect thereof determined shall be as provided by law made by Parliament. It also provides that final judgements or orders delivered or passed by civil Courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

According to Article 262 Parliament may, by law, provide for the adjudication of any disputes or complaint with respect to the use, distribution or control of the water of any inter-State river-valley. The Constitution provides for All India Services with the object to promote inter-State cooperation and coordination. Parliament may by law provide for the creation of one or more All India Services including all India Judicial Service common to the Union and State.⁵⁸

In Emergency the Union Government assumes all the powers necessary to meet the situation and the Constitution impose duty on the Union Government to protect States against external aggression and internal disturbance. Article 355 makes it clear that it is the duty of the Union to protect every State against external aggression and internal disturbances and to ensure that the government of every

⁵⁸ . M.P. Jain, Indian Constitutional Law



State is carried on in accordance with the provisions of the Constitution of India.⁵⁹

The Constitution of India provides for distribution of revenue between the Union and the States. During Financial Emergency the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the direction and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

The Constitution provides for freedom of trade, commerce or intercourse throughout the territory of India.⁶⁰ Parliament can be empowered to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.⁶¹

Conclusion: The Constitution of India, thus, contains various provisions for inter-State coordinating and cooperation. Cooperation and coordination between the Union and States have been considered necessary for the development of the country. The Constitution of India, thus provides for Cooperative Federalism.

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⁵⁹ . Article 354

⁶⁰ . Article 301

⁶¹ . Article 302