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## Federalism and the COVID-19 Pandemic in India

Research Article By: -

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### Abstract-

'India is a federal country'. Whenever we open our class 6 textbooks, we always are able to read this phrase. However, when we become a bit mature, only then we come to realise that no, it may not be a federal, but a quasi-federal country. But, has anyone thought that there can be many more other types of federalisms too? Though right in the front of our eyes, but, we may not notice them. This article strives to apply a gradual, scientific and illustrative approach to explain the various new types of federalisms which are prevalent during the Corona Virus times. Moreover, we will see a graphical representation of the ways in which the Rights of the public are taken care of (if), during the various types of federalisms, with respect to time. Alluding to certain recent stories from the news, we will also look at the ways in which these new concepts had worked in our nation. We will also be introduced to a new concept, i.e., Perfect Federalism and understand how it is different from the other types, predominantly Cooperative Federalism. The readers shall be exposed to new definitions, concepts and perspectives towards the already existing umbrella term of 'federalism' and be made to understand that how we make some major mistakes while trying to understand the federal concept. We will also look into a new concept called federalistic and anti-federalistic federalisms, whereby the various types would be put under these two categories accordingly and we will see that why do they fall under them. Finally, we must understand one important thing that every nation's Federalism is the product of its own history, yet some minimum universal standards can be set to avoid any nation becoming completely unitary.

### Keywords-

Federalism, Cooperative Federalism, Credit War Federalism, Exploitative Federalism, Suspended Federalism, Perfect Federalism, Confusing Federalism, Conflicting Federalism, Federalism Graphs, COVID-19

### Introduction-

When we think of the term 'federal', the first word that comes to our mind is 'respect'. It is really obvious for us to think of federalism in terms of respecting each other's powers. Whereby, the powerful, or the dominant, are acknowledging the existence and independence of the one's less dominant and provide them with an equal say. However, if this doesn't happen, then there will be a reign of 'Matsya Nyaya', or fish justice. Whereby, the more dominant will overpower or silence the lesser ones and make them function according to their wishes. If we look at the current COVID-19 pandemic, then it is quite clear that the federalism of India had undergone several changes during the lockdown which lasted for two and a half months. Many people may think that this transition happened gradually, but no. Sometimes, the changes in the federal structure were quite simultaneous. Now, the question pops-up that what do we mean by this 'simultaneous change'. It means that although on paper the Government was following a particular type of federal structure, but, in reality, another type of federalism was being practiced, either by the Central or any of the State Governments. It is really interesting to note that how, at the same point of time, contrasting structures can exist, either due to infrastructural, political, or any other reasons, as we are going to look forward. It won't be wrong to say that Bharat, i.e., India, played the role of a stage, where various exhibits involving different types of federal structures were displayed during the time of this pandemic. We shall not only define them, but also look into how each one of them had worked and how it had affected the Rights of the public. But, first let us have a look at the meaning of federalism and whether India is really federal or not.

## Are we Federal or laredeF?

The answer to the question is quite conflicting, in the sense that the above debate has been an age-old one. However, there were two primary schools of thought upon this doubt. One school of thought regarded India to be a federal nation. They further said that we had a special provision in the times of an Emergency, where the focus shifted to the Central Government. The another school of thought said that India was a partially federal, or a quasi-federal nation, whereby the provisions of the Constitution were such that it had a focus upon the Central Government more, rather than the State Governments. They argued that in many matters, the Central Government was given a preference. For instance, Doctrine of Repugnancy as talked about clearly under Article 254 of the Constitution, says that if any law made by the Centre on any entry in List III conflicts with a law made by a State on the same Entry, then, the law made by the Centre shall prevail. In case the Centre hasn't made a law under that topic, then, the State law shall continue to be under use. In a similar manner, the fact that the Centre has the sole Right to name a State and allocate the land areas of the States is in itself quite unitary in its nature. However, I would like to provide with an ideal definition of federalism. In my opinion, 'Federalism is an administrative arrangement between the various levels of Governmental administration, including the three organs of the Government, in such a manner that each level is not dominated by a superior one, has an independent existence to function, not being considered to be subordinate to any level and all the levels are controlled solely by the Constitution, UNDER ALL CIRCUMSTANCES.' This can be considered to be Perfect Federalism. One interesting point is that I have included the other two organs of the Government, too. When we talk about federalism, we only take into consideration the Government, i.e., the Parliament and Legislative Assemblies' relations. However, we always forget to think about federalism in the other two wings of the Government, i.e., the Executive and the Judiciary. Moreover, another interesting point that we miss out upon is that whether a country is perfectly federal or not, is a matter which is put to the test of time. Only under disastrous and chaotic situations, like the current pandemic, we may understand the true nature of the country's federal polity. Being perfectly federal, theoretically, is possible. However, in a recent update by the Central Government, where it declared that although certain guidelines have been issued by them, the States are independent to act accordingly, is an example of a cooperatively federal structure. Although the situation is dire, but, still, the independence and say of the States had been honoured by this decision. However, we are looking at the transition of the federal polity of the country, where we are trying to see how this concept had gone for a toss. Let us look at the various scenarios in details.

### Suspended Federalism-

The first and foremost phase of federalism during this pandemic was what I prefer to call 'Suspended Federalism'. When I define suspended federalism, I like to put it as follows: 'When, at the instance of a serious threat to the country, the Central Government or the top tier Government feels that it is necessary to suspend the normal structures of coordinating with the State Governments or lower tier Governments, for the purpose of effective administration, then, this type of federalism is termed to be suspended federalism'

For the purpose of the above definition, the phrase 'serious threat' shall be construed to be any threat, disaster, calamity, or danger or anything of that sort towards the nation, which can be political, economic, terroristic, biological, biochemical, technological, psychological, etc. This list is not exhaustive in its nature and may include any other potential danger, if the Centre feels, which maybe a product of the time.

An interesting question which many people may ponder upon would be that why am I using the term federalism for denoting the above scenario and will use to denote for the concepts to come, in which the very basic requirement of federalism, that is division of powers and recognition of independence would be suspended. I would like to answer by saying that federalism, at the end of the day is for the people. Whether a country is quasi-federal, perfectly federal, dictatorial, etc., depends upon the society and the people of that country. Thus, in the definition it is clearly mentioned that the Central Government indulges into suspended federalism when there is 'a need for better administration, during the time of a serious threat to the country.' In one way, though people may condemn this, it is a very practical approach. In situations like the present pandemic, we may see that applying the traditional approach of waiting for the opinions of the State Governments and then, making a policy and then implementing it, is going to be very ineffective, in the sense that by the time this process is completed, the situation may become worse. Thus, taking over the helm of the boat and navigating strictly like a leader is supposed to be the best approach for such situations.

When initially, the lockdown had been declared and strict impositions were made by the Central Government, many people had regarded it to be ‘unfederal’, where the Government was exercising its own will. But, many people failed to see that because of the practice of Suspended Federalism, today India stands at a far better position in comparison with nations like China, America, Italy, United Kingdom, etc. where lacs of people have died, whereas the number being 6,075 for India as on the 4<sup>th</sup> of June, 2020 at 4:44p.m.

But, the biggest loophole of ‘Suspended Federalism’ is that it is good for a short term, but, it wrecks havoc if applied for a long term. During this complete restraint of all activities, we have seen that many businessmen, shopkeepers, traders, advocates, medical practitioners, labourers, transporters, etc., lost their livelihood significantly. Due to their work being solely dependent upon the day-to-day working activities which **can’t be accomplished online**, unlike the other jobs like those of teachers, desk-job holders who were able to work through the various online platforms available to them, they lost on a significant amount of income due to the lockdown. Another important problem faced by them is that the market has to be revived from afresh, which may not be possible for non-essential dealers, like clothing, toys, furniture, etc. The uncheck on corruption played the biggest foul during this pandemic, where the dealers, only to take the advantage of the public’s situation, were selling commodities for two to three times the original price.

The Government failed at one point to understand the plight of the people, due to its lack of communication with the respective State Governments and strict adherence to the concept of Suspended Federalism for a prolonged period.

Moving on to the next topic, now let us have a look at another scenario which happened.

### **Conflicting Federalism-**

This is an age-old scenario in India, not only limited to the COVID-19 pandemic. But, for our purposes, we shall look into it with a perspective of the pandemic. Firstly, let us have a definition of Conflicting Federalism. It may be defined as, ‘When the different tiers of the Government, for reasons not limited to, but solely dependent upon political scenarios, conflict with one another, so as to “supposedly” save the federal structure of the country, it is nothing but conflicting federalism.’

Just by going through the definition, the readers must remember a number of scenarios where this has happened. When the Central Government is of Party A (say) and some of the States have a Government of Party B and one State has a Government of Party C, then always there are chances that, in an attempt to save their ‘independence’, the State Governments refuse to follow the directions of the Centre.

Now, we must look at this very perspective in two ways. Firstly, sometimes the Central Government does try to disturb the effective workings of the State Government, so that people are drawn towards the ruling party on the basis of their successful activities. Under such scenarios, the State Governments revolt to make sure that the political intervention stays out of the overall federal principle. However, sometimes it may also happen, that the State Government may construe the Central Government’s direction to be hegemonic. In such a scenario, they may unnecessarily rebel, so as to protect themselves from the apprehended accession. The reason why this happens is that people themselves aren’t really aware of what is federalism actually. They always think that federalism is an obligation of the ‘superior’ Central Government over the ‘subaltern’ State Governments, to provide them with equal recognition. This very philosophy needs to change. While approaching federalism, we think of the States being subordinate, only because they control a smaller amount of land in comparison to the Central Government. When the true nature of federalism is understood by the people, only then conflicting federalism can be extinguished. Dividing the structure into levels doesn’t mean that one is subordinate to another. Just because a cell is only a unit of the body, it doesn’t mean that it is subordinate to the body. Millions of such cells come together and take the shape of a fully functional person, who depends upon the A.T.P. (Adenosine Triphosphate) produced within them.

However, it is quite disturbing to note that even currently, when what the country requires is unity, still there are some Governments who are practicing Conflicting Federalism. Whether in a good or bad faith, that is for them to understand.

Recently, it was alleged by the Central Government upon the Government of West Bengal, that the State Government was not cooperating with the Central teams sent by them in order to assess the COVID-19 situation in the State.<sup>1</sup> The Centre had termed it as ‘non-cooperation’ on the part of the West Bengal Government. However, recently the West Bengal Government had conveyed that it was cooperating with the Central team. Former Lok Sabha Secretary General and Constitutional expert, Mr. Subhash Kashyap said that it is a Right of the Centre to give directions to the States in such a situation, under Articles 256 and 257 of the Constitution. Moreover, the National Disaster



Management Act, 2005 empowered the National Disaster Management team to take appropriate actions for the effective troubleshooting of the situation so, the States should cooperate with them.

We may see from this recent example that the Governments conflict sometimes in these manners, so as to save their political interests.

### **Confusing Federalism-**

Although being the funniest form of Federalism, it is also the most frivolous, irritating and a form in which the main sufferer is the public at large. As the name suggests, Confusing Federalism is also a type prevalent during the COVID-19 times, under which there is a generation of confusion amongst the various tiers of the Government while trying to give orders for the people. Confusing Federalism may be defined as, 'When the different levels of the Government are trying to communicate and cooperate with each other, but, there is either a lack, misinterpretation or false presentation of the information sent due to the fault of either the senders or the messengers of that information, then, it results into confusing federalism.'

We must, at the back of our minds always keep the concept that all the administrative activities are being done for the people. The Government is sending the information for the people so that they are able to understand their strategies and goals during this crucial period. In such a scenario, when the news channels, newspapers, social media platforms, news websites, etc., play a very important role in the dissemination of the concerned information, if they do not take due care while telecasting or broadcasting or publishing the notices of the Government, then, it becomes really conflicting and confusing for the public at large. On one news channel, it is being shown that in the same State (say), 50 people have died due to CORONA. On the very next channel, the number being displayed is to be 150. It must be clearly understood that ample access to information has not clarified our knowledge. On the contrary, it has distorted it even more.

But, the most important aspect to be taken into consideration is that it leads to the loss of livelihood and revenue of the public, predominantly. For instance, let us consider a Micro-Scale unit owner. He has been short of his livelihood for almost two and a half months by now. He is ardently surfing the news channels in a hope to get the knowledge of the Centre's proper directions and relaxations (if any), concerning his business. But, due to the distorted or useless information provided by the channels, he is unable to understand what is going to be the actual situation. Many may say that he has a smartphone, so can access Google. But, what if he doesn't? Or even if he does, Google itself provides a huge list of search results, from where you have to choose the concerned option. Hence, it may be very confusing for him. Thus, in this manner, due to ineffective dissemination of the information by the different Governments, people suffer and often miss out upon some very important information.

Many incidents have happened recently that caused displeasure to the public, the biggest one being the declaration of the nationwide lockdown. The lockdown had been imposed suddenly, without any prior notice to make the necessary arrangements, as a result people suffered to a great extent when their flights and trains had been cancelled suddenly, without any prior intimation on the part of the Centre. Even very recently, a flight from Mumbai got cancelled suddenly and thereby, stranding the passengers on the Mumbai airport.<sup>3</sup> The news of the same was given on a news channel, where it showed that the people were stranded on the airport, waiting for their next flight, scheduled for the next day. It was really interesting to note that although the flights had been cancelled suddenly due to the suspension of the interstate travel, just two days ago the incident occurred, it was declared that Maharashtra was going to allow interstate movement, the same being informed through television.

A possible solution for this problem could have been the Central and State Governments making a separate platform altogether for exchanging information regarding the pandemic, accessible by the public. If such measures are taken, it would be really possible for the authorities, i.e., Governments to communicate and remove confusion from the minds of the people. Let us proceed towards our next type.

## Exploitative Federalism-

This is a very problematic form of federalism, where the Rights conferred upon the people are suspended through the excuse that a disastrous situation needs some relaxations in order to make sure that the progress of the country isn't hampered. If we sought to define exploitative federalism, then, it means, 'When the Governments, in accordance with each other, agree to suspend certain Rights or laws protecting people, for better administration and progress, it is termed as exploitative federalism.' Very recently, in the times of the pandemic, three State Governments, i.e., Uttar Pradesh, Madhya Pradesh and Gujrat, saw a drastic alteration of their labour laws.<sup>2</sup> When asked that why did they take such harsh steps, they answered that it was primarily due to two reasons. Firstly, because they wanted to stop the M.N.C.s from going over to China by relaxing the labour laws, so as to allure them to stay in India and secondly, relaxations were necessary, as it wouldn't have been possible for the country to progress and develop back, if the strictness was maintained. However, one thing is common between the States who did this and the Centre: their ruling party. Thus, we may see this as a joint venture on the part of the Centre and the respective States, to prevent their so-called hindrance in development. But, the question that arises is that what did these three States do, in order to infringe the very basic Rights of the workers? Let's have a deeper look.

### Uttar Pradesh-

Uttar Pradesh saw a drastic suspension of almost all the labour laws, except these-

1. Building and other Construction Workers' Act of 1996.
2. Workmen Compensation Act of 1923.
3. Bondage Labour (Abolition) System Act of 1976.
4. One Section of the Payment of Wages Act will be applicable.

The labourers had also been stripped of their Right of Representation in a way, as whatever laws do not fall within the purview of the above list, ceased to be applicable temporarily. This suspension was made under the 'Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020'. However, the UP Workers' Front had filed a petition in the Allahabad High Court that it challenged the Constitutional values, whereby a bench of Chief Justice of Allahabad High Court, Justice Govind Mathur and Justice Siddharth Verma passed an order, subsequently making the State Government revoke their executive order. The ordinance had made it possible for the factory employers to increase the working hours, shorten the breaks, hire and fire anyone at any time, increase the amount of overtime, etc. In the already poor working conditions, if the workers were made to undergo such conditions then it would have been detrimental to their health, as such. If they would have been fired at any time, then, it would have been extremely difficult for them to live their lives respectfully, which would clearly conflict with the Right to Live a Dignified Life in the Constitution. Moreover, the fact that they wouldn't have been able to enforce some of their Rights would violate the very principle of natural justice, i.e., *Audi Altarem Partem*, which means that both the sides shall be provided with a chance to be heard and should be heard.

### Madhya Pradesh-

Madhya Pradesh saw a relatively moderate approach towards the exemptions of its labour laws, following Uttar Pradesh. The changes that happened are as follows-

1. Like U.P., M.P. factory owners too could hire and fire people as per their needs.
2. The establishments with up to 100 workers are allowed to hire according to their needs.
3. The contractors who have not more than 50 labourers don't require any registration.
4. There was not going to be factory inspection for the next three months.
5. No inspection would be done for firms with less than 50 workers.
6. People could get themselves inspected by third parties and get the appropriate approvals.
7. Factory licences were to be renewed in 10 years.
8. Start-ups would require one-time registration and no renewal.
9. Shift durations were raised from 8 to 12 hours per day.
10. Overtime up to 72 hours was permitted, unlike the previous 48 hours.

These were the major changes that had taken place within these two States. Gujrat too had followed more-or-less on the similar lines as those of U.P. and M.P., thus, we don't need to look at it separately. But, the thing that is worth noticing is that just in the name of cooperation and development, the aforesaid Governments simply suspended the laws. It is understandable that the situation is quite alarming and we need to fight a lot, but such exploitative measures won't ensure the progress of the nation. As mentioned earlier, federalism is for the people's benefit. Not for the Government as a character certificate. The fact that the polity is federal means that there is good coordination

between the various levels of the Government to safeguard the interests of the people. But, if the coordination becomes a proponent of such exploitation, then, it takes the form of 'Exploitative Federalism'. The State Government being backed-up by the Centre and also having the liberty to make laws on the matters concerned can't simply take away/nullify the Rights of its subjects.

This is not good for the people. Let us now have a look at the next type of federalism, seen during the pandemic.

### **Credit War Federalism-**

This is indeed a very interesting type of federalism prevalent during this pandemic in India. The concept of Credit War Federalism is very simple and small. It may be defined as, 'When the different tiers of the Government work together towards a particular policy, coordinate, cooperate and support each other and thereby complete the task; but the credit of the whole venture is claimed by one of the tiers solely, then, it is termed as Credit War Federalism.'

This indeed is a very mysterious approach towards the federal concept. On one hand we have perfectly coordinating Governments who are helping each other in the developmental and socially beneficial processes and on the other hand, they simply refuse to accept the contributions of the other levels too.

In a recent report given on a news channel regarding the cyclone 'Nisarg', it was said that 'due to the diligence and swiftness of the Central Government, it had been possible to provide the necessary reliefs to the affected people at the time of the calamity in Mumbai.' Now, we must understand that we aren't condemning any media body or any Government. But, the claim that the Central Government solely took care of the situation and made sure that nothing bad happened is in itself quite uncreditable and discouraging towards the concerned State Government. It is not possible that the State didn't do a single thing. But, until and unless we acknowledge the same, this credit war federalism continues to go on. Let's look at a very simple example. In a dish, say curry, we put curry leaves for enhancing the taste and thyme for garnishing the same. Now, if we only recognise the beauty provided by the thyme to the dish and do not recognise the real taste of the curry leaf that has made the food item really tasty, we may do injustice to the same. In the similar manner, Governments shall recognise each other's contributions, because it may so happen that although the curry leaf won't stop giving its taste, the neglected Government stops to cooperate with others. Hence, we should take care of this aspect.

### **Cooperative Federalism-**

This is the most effective form of federalism, considering the COVID-19 pandemic. As seen recently, the Central Government had declared certain guidelines on its side. However, it had allowed the State Governments to formulate their own policies in accordance with the situation in their respective States and had said that if they wanted, then they could follow the Centre's guidelines. If we try to define Cooperative Federalism, then, it can be said as, 'When the different tiers of the Government, try to understand each other's situation and collectively and cooperatively, try to formulate appropriate and helpful policies, then, it is termed as cooperative federalism.' It may be said to be similar to 'Perfect Federalism'. But, perfect federalism involves total independence of all the components, where everyone follows each other's decisions without a compromise. Cooperative federalism, on the other hand, involves the scenario that sometimes the Centre compromises for the States and sometimes the States for the Centre. Although not to be interpreted literally, but, there is a slight focus upon one of the components. Recently, the Central Government had organised meetings with the Chief Ministers of all the States, in order to formulate the most appropriate policies for the betterment of the public during Corona times.<sup>4</sup> This can be considered to be a perfect example of cooperative federalism, whereby all the Governments had joined their hands in order to formulate the most effective policies. We must say that cooperative federalism is a relatively slower approach, but, it is definitely a very effective one. As it involves the assessment of the ground realities of the States, it helps in an affective policy making process.

### **Federalistic and Anti-Federalistic Federalisms-**

Having understood the major types of federalisms that have been the product of the COVID-19 pandemic, let us now categorise these on the basis of their natures, being either federalistic or anti-federalistic. When we talk about federalistic or anti-federalistic, we must see that these refer to the respective types being either supportive for the public and its Rights, or not.

Exploitative, Suspended and Confusing Federalisms are clearly anti-federalistic in their nature. As discussed above, the public is clearly harassed at the times when such federalisms are exercised. It becomes difficult for the general public to thrive properly, when, either their Rights have been suspended, information is not being disseminated properly, or there is an exemption from certain protective laws. Credit war federalism and conflicting federalism too

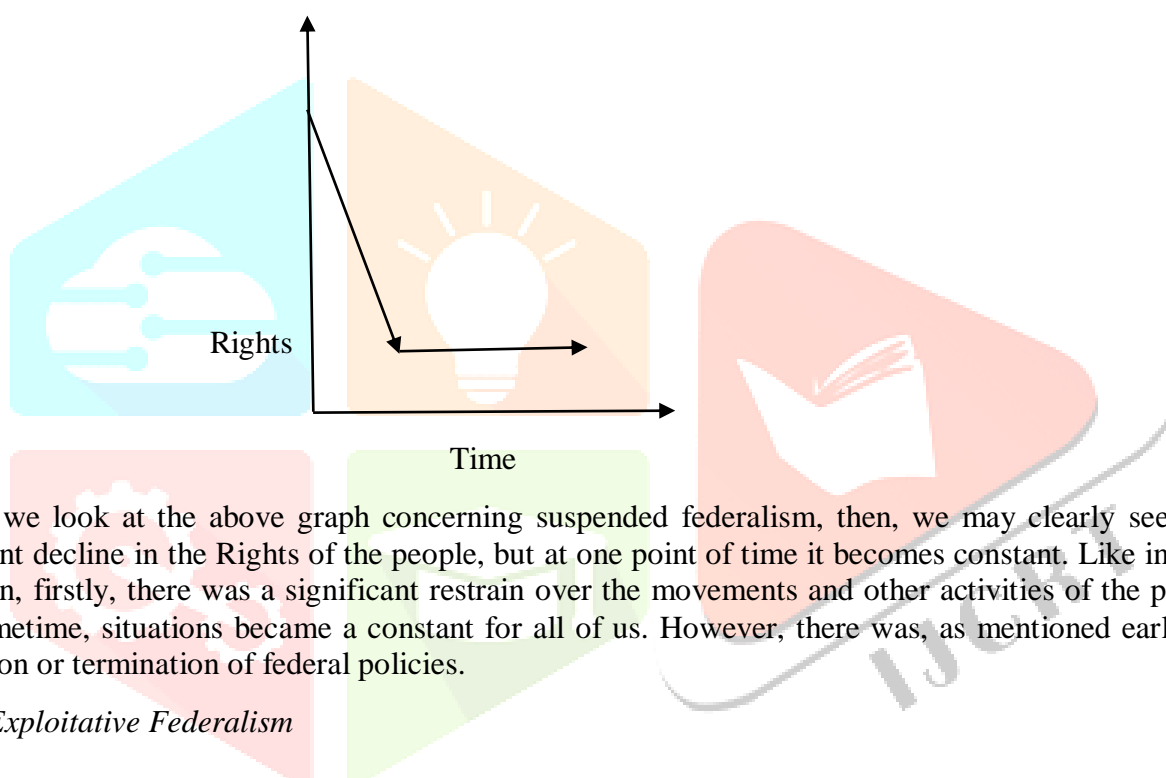
are quite anti-federalistic in their approach. Cooperation and independence of the spheres of the Government is the paramount concept of any federal polity. But, these two, although not as extensively as that of the above three, also cause conflicts and make the functioning of the Governments and lives of the public difficult.

Cooperative and Perfect Federalisms are clearly federalistic in their approach. Keeping people as the centre of their functions, they are really good for making sure that their Rights and the Federal structure of the country have not gone for a toss.

### Graphs Showing the 'Importance of Rights v/s. Time' for various Types of Federalisms-

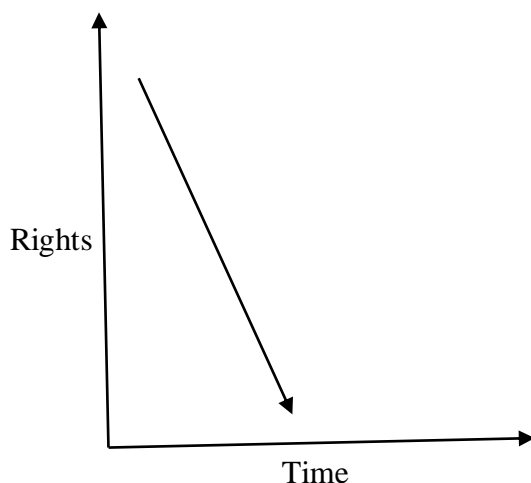
Let us look at some of the possible graphs, whereby we see that how the Rights of the people are affected with respect to time in the respective federal structures.

#### 1. *Suspended Federalism*



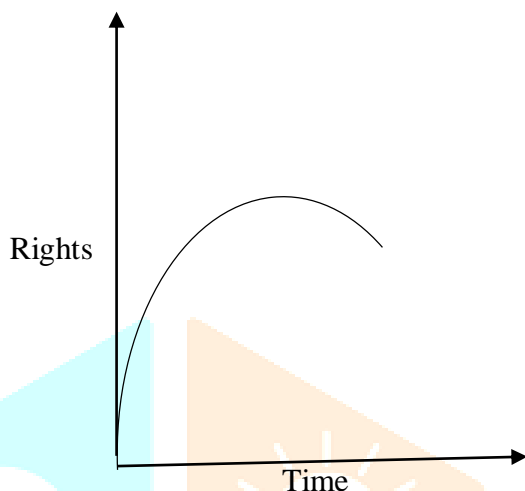
Now, if we look at the above graph concerning suspended federalism, then, we may clearly see that there is a significant decline in the Rights of the people, but at one point of time it becomes constant. Like in the case of the lockdown, firstly, there was a significant restrain over the movements and other activities of the people and then, after sometime, situations became a constant for all of us. However, there was, as mentioned earlier, a complete suspension or termination of federal policies.

#### 2. *Exploitative Federalism*



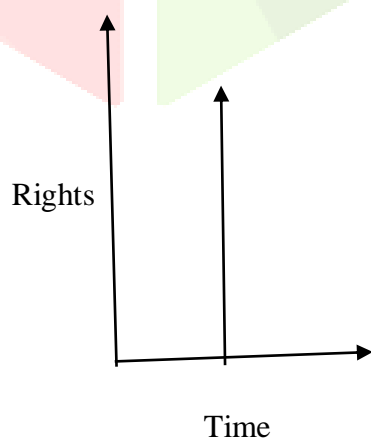
In case of exploitative federalism, we may see that there is a clear suspension of almost all the Rights of the people. However, the graph line is not touching the X-axis, as still some Rights are leftover. However, within a very short period of time, such a drastic suspension or termination of the Rights, as seen in case of the Labour Law amendments in Uttar Pradesh and Madhya Pradesh, specifically, can be very unconstitutional and inhuman. Just by wearing the garb of the pandemic, we can't let our own people suffer for some companies who may move out to China. Then, the very motive behind federalism, i.e., welfare of the people, is wronged tremendously.

### 3. Credit-War Federalism



When we look at Credit War Federalism, up to a certain extent, till the neglected Government is tolerating, there is a rise in the protection of Rights of the public. But, when the neglected Government realises that whatever it does, always the credit goes to the other Government, slowly and gradually it may stop being cooperative and thereby, there is decline in the Rights of the people being taken care of.

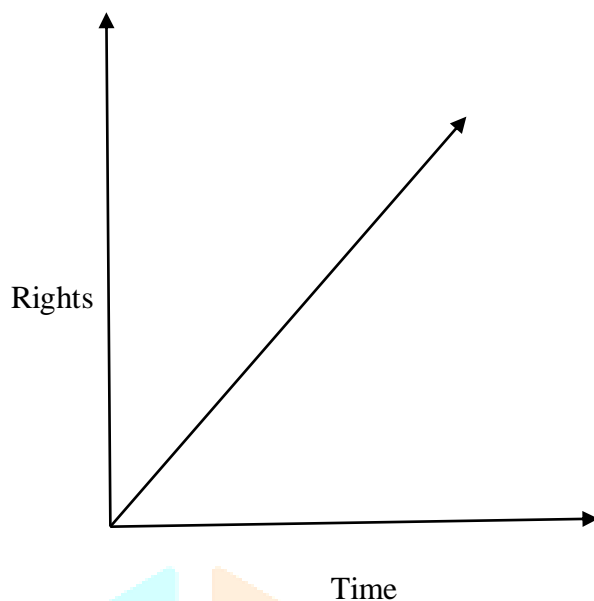
### 4. Perfect Federalism



When we look at Perfect Federalism, there is clearly cooperation and independence between the various tiers of the Government, thereby making it sure that at all times, the Rights are taken care of and the federal structure is maintained. Thus, even a slightest deviation from the federal structure makes a deviation from the perfectly federal structure of the polity.



## 5. Cooperative Federalism



In case of Cooperative Federalism, we see that there is a gradual realisation and care of the Rights of the public. As it is a type where all the participant Governments are discussing cooperating and compromising with each other, the graph isn't that steep and shows that it is a gradual, but, progressive process, where with the course of time, the various Rights taken care of increase in their number.

### Conclusion-

From the above article, we saw how the COVID-19 pandemic had created various types of federalisms within our country. The way in which the various types affect the realisation of our Rights, represented in a graphical form, helps us to understand the manner in which they work. The fact that the above types of federalisms can be divided into federalistic and anti-federalistic, is in itself an eye-opener to us that all of them do not promote the federal principle. It is important for us to understand one fact. Every country needs its own type of Governance. What is suitable for us may not be suitable for another. But, there must be a basic maintenance of certain federal principles, so that at least a primary base is set, upon which each country can build its own federal story.

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