

THE EFFICACY OF COMPETITIVE AND CO-OPERATIVE FEDERALISM IN INDIA AND ITS IMPLICATIONS

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ABSTRACT

Every democratic government relies on constitutional principles for its existence and progress. In a multicultural society, the growing relevance of devolution of power cannot be undermined, if the governments are generally and sincerely committed to the freedom of various groups in society. Along with this, the pressure of aspiring groups and primordial loyalties in traditional societies is far more complex than it first appears. Democratic governments can use coercive force against its own people only to a certain extent, but the risk might be large. Thus modern governments must avoid threat perception from the state authorities to its citizens, but rather play the role of cooperation and cohabitation with marginalized and sectarian groups. The goal is to discourage any kind of threat to the very existence of nation state, and governments must intervene to give beneficial treatment to all sections of the population. Thus both cooperative and competitive federalism are becoming increasingly important in the functioning of modern states.

Keywords: Democratic governments, Co-operative federalism, Competitive federalism, Ease of doing business.

INTRODUCTION

There is comparatively little analysis on the topic of cooperative and competitive federalism in India. In the face of failures in market model of liberalism, the governments face the problem of managing and accommodating the coercive elements. The problem is rather internal than any externality, hence some kind of corrective measure is the only option. The corrective measures must begin with the principle of giving more autonomy to the regions and perhaps this principle should provide the basis for a more equitable distribution of income and wealth and about what governments ought to be concerned with.

The Principle of Cooperative and Competitive Federalism

The principles of cooperative and competitive federalism are based on the idea that people value freedom more highly and markets or governments cannot exist without acknowledging that. The situation becomes worse in the newly democratic countries, where resources are scarce, and this is a disturbing or threatening fact. For the future, India could imagine for new form of choice of cooperative and competitive federalism that are designed to improve governmental efficiency. The most prominent concerns India face, stem from four foundational commitments: welfare, autonomy, freedom, self government. It is exceedingly important to bring the idea of cooperative and competitive federalism into practice in the modern Indian scenario.

Objectives of the Study

This paper for the purpose of study and orientation would give a more detailed outline of the potential of the concepts of cooperative and competitive federalism in the context of India and analyse its implications. This paper would historically outline the principle of cooperative federalism in the working of Indian Constitution. The paper would further give a detailed account of the significance accorded to the concept of cooperative federalism in the Indian Constitution. Thus, the major focus of this paper is to analyze how the concepts of cooperative and competitive federalism are becoming increasingly important and relevant in the Indian context. The following provisions are analyzed:-

1. Inter-state Council
2. Zonal Councils
3. Seventh Schedule

The Evolution of Cooperative Federalism India

As per Article 1(1) of the Constitution, India consists of 'Union of States'¹. The Constitution of India do not use the term federal at all but the working of Indian Constitution after Independence has been on the pattern of cooperative federalism where by it gives ample opportunity for the states to be self reliant, and at the same time achieve a spirit of cooperation with the Union and also in interaction and cooperation with other states. This two way cooperation between the Union and the States for the development and autonomy is a right that has been given by the Drafting committee in the constitution and therefore it is a way to dive deep into the depths of the minds of the constitution makers and their vision of what sort of relation 'Union of States' and Union shall take in the course of its journey. There are many examples to validate the vision of the constitution makers.

Initially under the Union of India, the States were classified into four categories² Parts A, B, C, and D of the First Schedule and consisted of 10 Part A States, 8 Part B States, 9 Part C States and 1 Part D State. After the Constitution (7th Amendment) Act, 1956, all the States of the Indian Union were placed on the same footing as per the States Reorganization Act, 1956. Now, the territory of India consists of the following categories under Article 1

1. States;
2. Union territories;
3. Territories as may be acquired by Government of India at any time³.

The word federalism has been derived from the Latin word 'foedus' which means a covenant. Federalism is not simply a structural arrangement of State formation, but rather an agreement or covenant for power sharing under a common platform of unity. This concept of federalism is borne out of the fact that as independent units, the regions are not in a position to thrive in the larger context of world politics. Thus a federation is a conglomeration of equal partners for power sharing by preserving each units fundamental political Integrity. In the bargain, the federal units are bound to surrender certain independent identity to the center and in its relation to other federal units. In this notion of surrender, begins the idea of cooperation and the concept of cooperative federalism and hence the realization that each set of federal units as subordinate and coordinate to the other units while maintaining respective spheres of autonomy.

It is undoubtedly correct to say that federalism can thrive only in a democracy as it is a matter of sharing the territory, political power and financial resources of the region on a mutually agreed platform. As a democracy, USA is the best example of a working federation as the US Constitution of 1787 was born out of the common agreement of a vision of federating units to share the resources on a mutually agreed covenant, here the declaration of independence. The agreement is borne out of greater ambition to thrive in a political union. But the question in India is that whether the states in India have been able to achieve that dream? Is the development pattern and economic growth uniform in India? Has some States thrived at the cost of others? How far the power and sharing of economic resources been on a uniform basis? The functioning of Indian democracy in its vivid forms outlines examples of cooperative federalism in much intensity and form in a systematic way. Nevertheless, we also see evidences of unitary and centrist tendencies in this journey and the non recognition of States demand on an equal footing.

Inter-state Council

Under Article 263, the President of India can appoint an Inter-State Council and define its organization, procedure and duties. The main idea is to create permanent machinery for inter- governmental consultation and coordination. But very little has been done on this front. The President has constituted Central Council of Health and the Central Council of Local Self Government. As per the recommendations of the Sarkaria Commission Inter-State Council has been constituted on May 28, 1990 by the Inter-State order, 1990 under Article 263.

Zonal Councils

As per the States Re-organization Act, 1951, five Zonal Councils have been set up namely the Central Zone, the Northern Zone, the Western Zone and the Southern Zone.³ Zonal Council is only an advisory body and has no legislative or executive function.

River Water Disputes

Disputes or complaints with respect to the use, distribution and control of river water has arisen between States of Karnataka, Tamil Nadu and Kerala eroding base of a federal set up. The Inter-State Water Disputes Act, 1956 has been enacted under Art. 262, which empowers the Parliament to provide by law to adjudicate on any dispute or complaint with respect to the use, distribution or control of waters of any inter- State river or river valley ⁴.

Seventh Schedule

The Seventh Schedule, which is a list of items under seventh schedule of the Constitution of India as an annexure divides the power to both the center and State government lists to legislate upon. It comprises of the Union list, State list and Concurrent list and clearly identifies the spirit of cooperative federalism.

There have been various other statutory bodies set up for promoting Center-State cooperation and coordination. Some of the few important bodies are:-

1. University Grants Commission
2. Damodar Valley Corporation
3. Drugs Consultative Committee

The Planning Commission and National Development Council were set up as administrative bodies giving wide powers for consultation, allotment and coordination of economic planning. The States are given wide powers for participation in the planning process through NDC.

Competitive and Co-operative Federalism as an Imaginative Desire

There have been basically two kinds of concerns addressed by the present NDA government under Prime Minister Narendra Modi for creating an environment of cooperative federalism.

1. Central government has addressed questions concerning more autonomy to the states as they have important and practical implications for cooperative federalism.
2. The Central government has come out with new policies forgiving more financial autonomy to States with respect to fiscal reforms. The financial autonomy given to States in the 'Make InIndia' initiative and the introduction of GST are examples of competitive federalism.

The concept of cooperative federalism vis-a vis its relation to the center and between states makes sense only with an analysis of the working of the constitution. Let us now focus on the dynamics and tension created by the asymmetrical relation between the center and some states. The first kind of tension relate to central policies protecting national interests that have taken center stage recently. The second kind refers to cooperation between different States in India by safeguarding each State's regional identity and liberty. Let us now consider some constitutional principles to illustrate our point of view. Concerning the commitment to a strong center Article 355 of the Constitution states:-

“It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution”.

Article 356 gives immense power to the President to assume himself all or any of the functions of the government of the State in case of failure of constitutional machinery in States. This special power of the Union government continues to be a matter of great contention between the center and the States. Article 352, gives power to the Union to proclaim emergency, “in respect of the whole of India or of such part of the territory there of as may be specified in the proclamation”.

Under Article 353, the Union can enlarge its executive power and make laws and “shall also extend to any State other than a State in which or any part of which the proclamation of emergency is in operation”.

Article 256 says that, “the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State”.

Under Article 257 the Union can extend its control over States for administrative purposes. Also the governor as an agent of the Central Government is appointed by the President and holds office at his pleasure.

These constitutional principles clearly show that in the working of Indian democracy, Union has an unquestionable predominance over States and hence different modes of interaction with one another has been instrumental in the development of cooperative federalism. It is filled with tension and cooperation, trust and distrust in maintaining unity with the center and with other states.

Characterizing Indian Federalism as Cooperative Federalism

Equally, there is a strong commitment from the center indicating the spirit of unity and integrity of India as a nation. This desire has been the primary factor among other desires and has created tension between both at the center and between the States. In the working of Indian democracy, different modes of competition and capacity of interaction with one another has been instrumental in the development of cooperative federalism. It is filled with tension and co-operation, trust and distrust and avoiding unity with the center and with other States. The Union of India is the link that unites different political entities on a common thread of unity in such a way as each of the political units maintains its independence and autonomy and above all fundamental political integrity.

Trust between States as a Common Ground for Cooperative Federalism

Trust and mutual understanding between States are largely shared implicitly. States in India cooperate each other on a permanently shared social interaction process. In commerce and communication, their mutual trust is self evident through explicit cooperation between the people through a single citizenship with the Union. Freedom of movement, trade and commerce are some of the common ground for understanding the permanently shared social interaction and networking between states that takes a self reliant and mutually cooperative interaction with other States under the guidance of a strong central government. Conceptualization of cooperative federalism implies trust of the States between each other and at the same time rooted in a trust with the Union.

Central Authority in a Federal Relation

We find struggle for authority between the States and the Union in areas mainly finance and administration. The dynamics of cooperation and competition often take the form of the struggle for self reliance and recognition in which the States aspire to have an upper hand. But in India, the authority is always tilted towards the center which the Constitution makers envisaged as the direction of the federal set up in India. This is evident from Chief Justice B.P. Sonja's observation in *State of West Bengal v. Union of India*:

"The exercise of powers legislative and executive in the allowed fields is hedged in by numerous restrictions, so that the powers of the States are not coordinate with the Union and are not in many respects independent.... {t}he political sovereignty is distributed between, as we will presently demonstrate, the Union of India and the States with greater weight age in favor of the Union."⁵

Indian federalism is a unique open system, in which the center and the States compete in certain areas

but the center has overriding powers in the case of a deadlock.

In *Kuldip Nayar and Ors. v. Union of India and Ors.*, the Supreme Court observed:

"But then, India is not a federal state in the traditional sense of the term. There can be no doubt as to the fact, and this is of utmost significance for purpose at hand, that in the context of India, the principle of federalism is not territory related. This is evident from the fact that India is not a true federation formed by agreement between various States and territorially it is open to the Central Government under Article 3 of the Constitution not only to change the boundaries, but even to extinguish a State."⁶

Contemporary Challenges to the Concept of Cooperative Federalism

Clashes of responsibilities takes place in our federation, as commitment to keeping in within the boundaries of responsibility is a difficult task. Instead, differences often emerge without being noticed.

In *S. R. Bommai and Ors. v. Union of India and Ors* the court said:

"The fact that under the scheme of our constitution, greater power is conferred upon the center vis-à-vis the States does not mean that States are appendages of the center. Within the sphere allowed to them, States are supreme. The center cannot tamper with their powers....let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but are of principle of outcome of our own historical process and a recognition of the ground realities... enough to note that our constitution has certainly a bias towards center vis'-a-vis the States."⁷

Similarly in *State of Karnataka v. Union of India and Anr.* Justice Untwalla observed:

"Strictly speaking, our Constitution is not a federal character where separate, independent and sovereign State could be said to have joined to form a nation as in the United States of America or as may be the position on some other countries of the world. It is because of that reason that sometimes it has been characterized as quasi-federal in nature."⁸

Recent Trends in Competitive Federalism

The concept of competitive federalism has gained importance in India with the current governments initiatives, whereby, States are given freedom and opportunity to compete each other on a healthy basis to attract funds and investments. The following major initiatives by the government have helped in evolving and strengthening the concept of competitive federalism in India.

(1). Make in India Initiatives

Make in India initiative was started in 2014 on the vision of making India into a global design and manufacturing center. It envisages to transform India with drastic changes in policies towards, 'Minimum Government, Maximum Governance' in 25 major sectors of the economy. This has enhanced competition among States to improve their current ranking on the ease of doing business index and has helped to bring about competitive federalism to a new dimension. States such as Telengana, Haryana, Odisha, Chattisgarh and West Bengal have shown global competitiveness in various sectors.

(2). GST

Goods and Services Tax is a comprehensive, multi-stage one time direct tax for the entire country levied on goods and services both at the center and the State level on every value addition. GST has brought about the spirit of cooperative and competitive federalism in the country among States and also with States and the Union. It was a radical indirect taxation reform initiative by the government where by both the center and States have come to a consensus to share their powers to achieve uniformity in indirect taxation. This fundamental reordering of the federal fiscal relations in India has helped free the movement of goods and services across India, thus sharing the economic benefits on a new spirit of cooperation and competition in the liberal economic order.

(3). Niti Aayog

Niti Aayog has helped the States to work in partnership on a sense of competition. The idea of good governance has been brought into the forefront under Niti Aayog as States have become the key drivers in the implementation of programs brought out by the Union government. The current NDA government has initiated multiple programs in various sectors and has increased the share of States in central tax revenue from 32% to 42%. It has also increased competition among States by initiatives like Smart City, investment summits like Vibrant Gujarat, and Progressive Punjab. The government has also brought about amendments in Land Acquisition and Rehabilitation Act, 2016 to improve 'ease of doing business'.

Conclusion

Indian constitution and its basis of power sharing do not confirm to the general set up of a federation, is a fact we all have to agree with. Added to this is the fact that Indian constitution uses the phrase 'Union of states' instead of federation. Hence the constitution makers did not conceive India as a federation in its real sense of the term, but only a cooperative unit under a strong Union government given the peculiar geo-political situation of India. Thus, Indian federalism is a 'flexible federalism' or 'co-operative federalism' with strong union at the center as a thread of unity. Indian federation is not a federation in the true sense of the term, but only a 'co-operative federation' of convenience and necessity. It is incorrect to compare it with other federations especially USA, as Indian federation do not match such a comparison. Thus the concept of cooperative and competitive federalism is even more relevant in the Indian context.

Notes

1. However, federalism has been characterized as a part of the basic structure of the Indian Constitution.
2. The earlier demarcation of States was done on the basis of political and historical considerations while the State Reorganization Act, 1956 created States on linguistic lines.
3. See, Lok Sabha Debates, December 23, 1955, Vol. I, 880.
4. See, M. P. Jain, Indian Constitutional Law, Sixth Edition, Lexis Nexis, Wadhwa, Nagpur, 2012. pp. 781.
5. AIR 1963 SC 1241, P.397.
6. AIR, 2006 7 SCC 1.
7. AIR 1994 SC 1918.
8. AIR 1978 (2) SCR 1.

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