

Cooperative Federalism under the Indian Constitution

Dr. S.MADHURI PARADESI

Associate Professor

Department of Law

Sri Padmavati Mahila Vishwavidyalayam

TIRUPATI

Abstract

A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights. The method through which federalism attempts to reconcile the apparently inconsistent claims of national sovereignty and of state sovereignty involves the formation of a constitution under which the ordinary powers of sovereignty are divided between the central government and the separate states or provinces. This division powers me, however, vary under every different federal constitution but largely the general and core principle on which it should rest remains the same. The term federalism originated from the Latin word “foedus”, which means treaty or agreement. Therefore, a federation is a new state policy combining the principle of centralisation and power of non-centralised units. India comprises different states with diverse cultures where adaptation of federalism is pivotal. The idea of Cooperative Federalism in India enhances the centre-state relationship as well as relationships between states and local governments.

Key Words: Goods and Services Tax, GST, Federalism, Fiscal Relations, Centre-State Relations, Fiscal Federalism,

Introduction

Federalism is a system of government in which powers have been divided between the centre and its constituent parts such as states or provinces. Read about Federalism in India at the linked article. Here is an extensive discussion on this topic that entails every detail required to cover the UPSC syllabus on this aspect.

Cooperative Federalism in India

Cooperative Federalism in India reflects an ideology of a stable relationship between the centre and other units. It guides all the governing bodies to come forward and cooperate to resolve common social, political, economic and civic problems.

Background of Cooperative Federalism in India

1. This idea of federalism may be something new to the world, but it existed in India since ancient times. The central power used to adopt a non-intervention policy in local matters due to the diversity of this subcontinent.
2. However, tendencies to centralise power were partly evident during some Mughal monarch rule. But after the Revolt of 1857, the British Government terminated its intervention policy.
3. The origin of cooperative federalism in modern India was rooted in the Regulating Act of 1773. Herein, the Crown rule of England supervised the East India Company and left the governing power to the local government.
4. The Government of India Act of 1919 anticipated a dual government system called ‘dyarchy’. According to this, the power will be divided between the hands of a British governor and local government. The Government of India Act of 1935 was made to attain this dual government system.
5. The responsibility of the constitutional framework from 1946 to 1950 lied upon the eminent leaders of Indian Independence. They formed a Constituent Assembly to frame the draft of India’s constitution. They aimed to build a political idea to unite a disintegrated and subdivided society. The Assembly’s members, therefore, opted for an intense centre with residual power.

6. The principle of centralising power became prominent during the 1980s. However, the distribution of power from union to state and state to panchayat was later escalated. This is how India's cooperative federalism met the constitution's objectives like unity, social justice, and democracy.

Cooperative Federalism in India: Articles of the Constitution

The Constitution makers endeavoured to create synergistic governance by distributing essential powers and responsibilities to the Centre and states. Nevertheless, they vested power on the decision of Parliament and judgement of the Supreme Court. Thus, the Centre is provided with more specific powers keeping the essence of Cooperative Federalism.

7th Schedule

The 7th Schedule of Indian Constitution divided all the power between central, state and concurrent lists giving some residual powers to the Centre. Article 249(5) authorises the Indian parliament to amend those subjects of the state list. However, the resolution must pass an in-state council with a 2/3 majority to make a change.

All India Services

All India Services caters for a unified judicial system to establish the Centre and state laws. Article 312 of the Indian constitution manifests this provision that works on integration under cooperative federalism in India. Article 263 talks about an inter-state council to consider common interest factors between the states and the Centre.

Full Faith and Credit Clause

Article 261 emphasises full faith and credit to all records, public acts and judicial proceedings of the Union and states throughout the Indian territory. This step encourages faith and cooperation between the Centre and states.

Zonal Council

There are 5 zonal councils for each zone like central, north, south, east and west to promote coordination. These are designed under the State Reorganization Act of 1956 while the northeast zonal council is made under a distinct act.

NITI Aayog

The Planning Commission was replaced with NITI Aayog to attain more cooperative federalism. This organisation advises the Centre and states to look after the discussion and coordination between these 2 powers.

GST

101st Amendment Act of Indian Constitution passed unified taxation called GST. It is a unique tax that manufacturers impose directly on the consumer which obtains a "one nation, one tax" goal.

Several organisations have tried and failed to settle centre-state feuds making cooperative federalism in India difficult. Some ways to strengthen Cooperative Federalism can be states' independence on making laws, fiscal support from the centre and decentralisation of power.

The free movement of goods and services will give a fillip to employment opportunities and give consumers a wider choice and better prices. This economic integration will not only boost economic growth but also bind the nation better. It is an idea whose time has come and would not have materialized but for the spirit of co-operation displayed by the Centre and the States.

Legal Framework for Cooperative Federalism in India

Article 1 of the Constitution of India states that India is a 'Union of States', which means that the states are not part of the country under an agreement and have no right to secede from it. Although India is not called a 'federation of states', other provisions of the Constitution and judicial

pronouncements highlight the characteristics of federalism, especially cooperative federalism. Few provisions also highlight instances where cooperative federalism doesn't apply at all.

Constitutional Provisions Embodying Cooperative Federalism

Article 245 vests legislative power in the Parliament to make laws for the country and states legislatures to make laws for their respective states. Article 246, read with Schedule VII, demarcates the subject matters upon which the Centre and states may enact laws. In addition, matters of governance are divided into three lists—the Union List upon which the Parliament may solely legislate, the State List upon which the state legislatures may legislate and the Concurrent List, both the Centre and the state may legislate.

Further, Article 261 provides full faith and credit to public acts, records and judicial proceedings of the Union and the state, promoting cooperation and faith. And Article 262 allows the Parliament to adjudicate inter-state water disputes. Further, In *T.N. Cauvery Sangam v. Union of India*, the Supreme Court clarified that the Parliament could appoint a Tribunal for such adjudication.

Article 263 enables the establishment of Inter-State Councils, which are empowered to investigate those matters that interest both the Centre and states. Article 80 provides for the Council of States, representing states in the legislative process, and Article 54 affords the representation of states in the President's election.

Article 312 facilitates the All India Services, common to the Union and states. India also has an integrated judicial system and hierarchy for the enforcement of both central and state laws. The State Reorganisation Act, 1956 enables establishing five Zonal Councils—statutory bodies that facilitate cooperation and coordination between states.

In *State of Rajasthan v. Union of India*, the court identified cooperative federalism as the system of constitutional governance in India.

Provisions Obstructing Cooperative Federalism

Contrary to the spirit of cooperative federalism, the Parliament can legislate on matters that don't fall under any List. The Parliament can also legislate upon issues in the State List after the Rajya Sabha passes a resolution deeming it necessary in the national interest. Further, it can also legislate during the Proclamation of Emergency, with the consent of the states or in furtherance of international obligation.

Furthermore, where there is an inconsistency between a law made by the Parliament and the state legislature, the latter will be rendered invalid to the extent it is repugnant to the former.

While Article 263 allows the Inter-State Council to make recommendations, it does not empower it to enforce or implement them. And while Article 253 empowers the Parliament to enact laws to give effect to international agreements, the Centre does not consult or represent the states while entering such agreements.

Article 155 enables the President to appoint the Governors of states, made on the advice of the Council of Ministers. The Governor holds office till he enjoys the President's pleasure. Article 80 provides for the establishment of the Council of States. However, states are not represented equally but rather by the strength of their population.

The most criticised provisions that break away from cooperative federalism in India are related to the imposition of the President's Rule in a state. And the President's power to assent to bills of a state legislature when referred by the Governor.

The Praxis of Cooperative Federalism in India

Throughout its political history, India has witnessed the manifestations of various forms of federalism. For instance, where a single party has formed governments at the central and state level, there has

been a cooperative form of federalism. However, if the majority party at the Centre did not reflect the interests of various states, there has been competitive federalism. It is crucial to look beyond constitutional provisions to determine whether the goal of cooperative federalism has been realised. And assess whether the actions of the central and state governments reflect the spirit of such federalism.

Since the advent of the National Democratic Alliance's rule in 2014, numerous steps have been taken to promote cooperative federalism, which is its goal. In 2015, the Planning Commission, the centralised policy-making body, was replaced by the National Institute for Transforming India, the NITI Aayog. The latter was touted as a think tank that aimed to enhance cooperative federalism by adopting a bottom-up approach and involving state governments in the policy-making process.

Niti Aayog's Governing Council comprises Chief Ministers of states and Administrators or Lieutenant Governors of Union Territories. It can also constitute specific subgroups of Chief Ministers who can settle complex policy issues.

In 2015, the Centre accepted the 14th Finance Commission Report to increase the states' share in Central tax revenues from 32% to 42%. In 2016, the Centre proposed one of the biggest tax reforms in history, the Goods and Services Tax (GST).

In 2016, through the 101st Constitutional Amendment Act, the NDA government introduced a single centralised tax, and it got implemented in 2017. GST removed all central and state indirect taxes, eliminated inter-state tariff barriers, but most importantly, it enabled every state to obtain a portion of the central government's tax income. This move allowed underdeveloped states with low taxation revenue also to obtain funds.

The Centre also re-formulated programmes like the Rural Employment Scheme (MGNREGA) that states implement at their discretion. The Central Government collaborated with the states to utilise resources and create infrastructure, similar to Amravati, the capital of Andhra Pradesh.

On the contrary, there have been numerous instances where the Centre exercised unreasonable control or interfered with the affairs of the states, which resulted in growing concerns of over-centralisation.

An oft-cited issue is the imposition of President's Rule in states on fallacious grounds. For instance, in 2016, the Supreme Court had struck down the emergency for lack of sufficient grounds in Uttarakhand.

There have been qualms regarding the appointment and dismissal of Governors based on political whims since time immemorial. Many states opposed the promulgation of centrally sponsored schemes like Aayushman Bharat, PM-Kisan and Aspirational Districts Programme. This was deemed problematic because states had no role to play in formulating these schemes. Thus, many sensed encroachment.

There is also widespread discontent over how inter-state water disputes like the Kaveri issue between Karnataka and Tamil Nadu and the SYL Canal issue between Haryana and Punjab got handled without any resolution.

March 2021 marks the most recent affront to cooperative federalism as the Centre sought to undermine the authority of the elected Delhi Government by giving more powers to the Lieutenant Governor through the Government of NCT of Delhi (Amendment) Act.

The legal framework in the Constitution of India and its exercise by the central and state governments indicates that while cooperative federalism has not been realised completely, it is not a myth either. The scheme of distribution of powers, representation of states in law-making and policy-making, and the establishment of bodies like Inter-State Councils, Zonal Councils, the Governing Council of the

NITI Aayog all demonstrate the conviction of the government to develop a unified framework of cooperative federalism.

However, one cannot deny the lack of balance of power between the Centre and states. Moreover, one must also consider the lack of cooperation among states themselves, owing to regional and political motives. All these factors have hindered the realisation of a cooperating federation in India.

In a nation like India, where interests are not aligned, state governments must be incentivised to cooperate and be involved in policy-making, governance and dispute-resolution to achieve amicable outcomes.

The Sarkaria Commission and Punchhi Commission on centre-state relations gave several recommendations to cultivate cooperative federalism and suggested actionable steps. Certain constitutional amendments can better federalism and its actualisation. To list a few:

1. the office of the Governor should be apolitical, and the terms of his removal should be altered;
2. restricting the use of President's rule under Article 356 to prevent excessive misuse by the Centre;
3. extending the mandate of the Inter-State Council beyond advice and recommendations;
4. laying down guidelines to prevent misuse of the President's veto of the legislation;
5. it's only fair to include states when the Centre enters into any international agreements.

Conclusion

Apart from everything mentioned above, facilitating cooperation between the Centre and the states, especially for the subjects in the Concurrent List, will also be helpful. When different political parties form governments at the Centre and State, often their interests don't align. In such situations, it is vital to adequately utilise the constitutional and statutory institutions set up to resolve such conflicts and further the welfare of the people, which is the ultimate goal of governance. We must also consider the spirit of our Constitution and the vision of the Constituent Assembly for India. The Assembly deliberately empowered the Central Government to a greater extent because they believed that a strong central government was required to unite and align the interests of all states and provinces in a country with diverse populations and interests. At the same time, the Constituent Assembly also provided autonomy to States, for instance, by allowing them to collect their taxes to meet specific needs. Thus, while India does not entirely mimic a cooperative federal system, it follows a quasi-federal system of governance. And for a smooth functioning federation, there needs to be cooperation, collaboration. But, additionally, it is also equally imperative that the Centre doesn't infringe upon the state's power.

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