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# **COOPERATIVE FEDERALISM – AN INDIAN PERSPECTIVE**

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## **INTRODUCTION**

Corwin defines: “The States and National Governments are regarded as mutually complementary parts of a single governmental mechanism all the whose powers are intended to realise the current purposes of government according to their applicability to the problems in hand<sup>1</sup>” “Co-operative federalism is an idea wherein the central government, state government, and nearby government collaborate co-operatively and share their duties in the administration.<sup>2</sup>” It takes into account for all the types of Governments which are working in India whether it could be national government, state government at state level, district levels at the municipalities are working or village level panchayat raj system. So, together this cooperative federalism includes all. National, state and local governments interacting cooperatively with each other for some common issues, and make a common law rather than making the laws separately. Its basically that all the government should come together interact with each other, cooperatively, collectively sit together to solve a common issue and make a common law which should float throughout the Indian territory. We also know that the federal structure of the Indian constitution is one of the salient features. Centre has been given some more power as when compared to the states. Centre tries to supersede all the laws which are made by the state government and even it can supersede the states. So, here the power lies in the hands of the states. “This term federation nowhere has been used in the constitution of India. India is the Union of states not federation of states but the constitution has provided a

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<sup>1</sup> H.M.SEERVAI CONSTITUTION OF INDIA, VOLUME 2

<sup>2</sup> Co-operative Federalism: An Indian Perspective, The Law Blog (2019), <https://thelawblog.in/2018/01/16/co-operative-federalism-an-indian-perspective/> (last visited Oct 15, 2019).”

structure of governance<sup>3</sup>” The constitution has provided such a governance which is essentially federal in nature<sup>4</sup>. There are two kinds of mechanisms both forms the basis of the Cooperative federalism. This concept of cooperative federalism has taken from the Australian constitution.

## **HYPOTHESIS**

It is hypothesized that the structure of Indian Constitution facilitates an environment for Cooperative federal structure to flourish. Whether Cooperative federalism has prevailed in India, If so in what instances?

## **RESEARCH QUESTIONS**

Whether the Cooperative federal structure prevails in India provides space for Cooperative federalism?

## **CHAPTER II - COOPERATIVE FEDERALISM IN INDIA**

A pertinent question always arises that whether Indian Constitution can be characterised as truly federal or not. Some scholars use the epithets for it as quasi federal, unitary with strong federation or federal with strong unitary features. It is to be noted that the Indian federalism was not a result of a close-packed between sovereign units but a conversion of a unitary system into federal system. In *West Bengal v. Union of India*<sup>5</sup>, the Supreme Court took note of this process and rejected the clam of the states that they shared sovereignty with the centre. India represents diverse cultural, ethnic, social and economic beliefs which changes from state to regions, they cannot be accommodated only in federal structure but need cooperative and constructive federalism. In Indian Constitutional context the term ‘cooperative federalism’ is extremely vague, although the centre and state claims to work together but the fracture polity robs the citizen of consensus-based nation building.

### **2.1 PRE-INDEPENDENCE ERA**

In the earlier stage of British rule, the colonial administration kept an arm’s distance from the Indian Subjects. The British Government through Regulating Act, 1773<sup>6</sup>, Pitt’s India

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<sup>3</sup> Chandra Pal, Centre-state relations and cooperative federalism 89 (1985).”

<sup>4</sup> O. P Tiwari, Federalism and centre-state relations in India (1996)

<sup>5</sup> AIR 1963 SC 1241

<sup>6</sup> 13 Geo. 3 c. 64

1784 and various acts supervised Indian subjects. The continuous interference of British in affairs of Indian subject led to the first war of independence. After the war, it became a stated policy of the British of not interfering in the local affairs. Through the Montague- Chelmsford Reforms in 1919 and Government of India Act, 1935<sup>7</sup> Some kind of provincial autonomy was given at that time.

## 2.2 POST-INDEPENDENCE ERA

The presence of Seventh Schedule of Constitution, authority of the centre to make legislation for two or more states, decentralisation of power through municipalities and panchayats is a testament of our constitution incorporation of Cooperative federalism. The state Reorganisation Act, 1955 is the foundation of this cooperative federalism concept in India. And the development of five zonal councils<sup>8</sup> to cooperate between states and centre if there is any conflict arise. This a first step regarding to Cooperative federalism. Then gradually the planning commission and national development council was established. Interstate cooperation ideas for better functioning and machinery was recommended by Administrative Reform Commission<sup>9</sup>. “In 1970, Rajmannar committee has also recommended the effective functioning of Cooperative federalism through Article 263.”

The court in State of Rajasthan v. Union of India<sup>10</sup> quoted that Indian Constitution was perhaps the first constituent body to embrace from the start the value of cooperative federalism. The court in S.R. Bommai v. Union of India<sup>11</sup> used the term pragmatic federalism, to define legislative relation between state and centre. Due to increasing conflict between state and centre the era marked the establishment of Justice R.S.Sarkaria Commission<sup>12</sup> in 1983 for the study of centre and state relation. It gave more than 247 recommendations among which the appointment of Governor was significant. It asked the centre to deliberately use Art. 248 for the effective running of the nation. It maintained that it is necessary to keep Art.365 but it should be used with great caution. It rejected the demand for repealing Art 356 and merger of

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<sup>7</sup> 26 Geo. 5 & 1 Edw. 8 c. 2

<sup>8</sup> The idea of Zonal Councils was mooted by Pt. Jawaharlal Nehru during the course on debate on State Reorganisation Commission. The idea was to create a ‘Advisory Councils’ for each zone to promote cooperation between the states in the area of governance and policy making

<sup>9</sup> The first Administrative Reform Commission was constituted by the Ministry of Home Affairs under Government of India by resolution no. 40/3/65 AR (P) dated 5 January 1966, Chaired by K.Hanumanthiah.

<sup>10</sup> AIR 1977 SC 1361

<sup>11</sup> AIR 1994 SC 1918

<sup>12</sup> To review the working of the existing arrangements between the Union and the States in the changed socioeconomic scenario, the Government constituted a Commission vide Ministry of Home Affairs Notification No.IV/11017/1/83-CSR dated June 9, 1983 under the Chairmanship of Justice R.S. Sarkaria with Shri B. Sivaraman and Dr. S.R. Sen as its members.

Finance commission. Many of its recommendation were accepted and implemented by the governments. In this period the courts also interpreted Constitution in light of cooperative federalism. In *Dabur India Ltd v. State of Uttar Pradesh*<sup>13</sup> the court recommended that the centre should consider the feasibility of establishing inter-state under Art 263 which shall be a permanent body to resolve disputes between centre and state. In *D.C.Wadhwa v. state of Bihar*<sup>14</sup>, although constitutional validity of repeated promulgation of ordinance was upheld, the court emphasized that it cannot be a tool to serve political interest. The election of a new government in 2014 has given a new meaning to the term ‘cooperative federalism’, the formation of NITI Aayog the devolution of more funds to the states under the recommendation of 14<sup>th</sup> finance commission. In order to understand the Cooperative structure, we first have to analyse the features of Indian constitution and other laws. It will give us a wider understanding of relationship between centre and state.

### **CHAPTER III- LEGISLATIVE RELATION**

The Constitution under Seventh Schedule have demarcated the areas of law making between centre and state. The legislative relations are mentioned under the provisions Article 245 and 255. Cooperative relations are necessary in this legislative sphere. The states through resolution empowers the central government to make laws on state subjects. Here the need for cooperation arises for better growth. Various situations are there where the state needs centre help. The Bombay High Court judgement in *RMD Chamarbaugwala v. State of Bombay*, which struck down the regulation on lotteries and prize competition, obviate the need to regulate lotteries and other games. Several state legislations passed resolution authorizing centre to make law on the subject. It resulted in passing the Prize Competition Act, 1955.<sup>15</sup>

#### **3.1 INTERNATIONAL TREATIES**

Entry 14 of the Union List confers Union Parliament exclusive power to make laws with respect to entering into treaties and agreements with foreign countries and implementing of the treaties, agreements with foreign countries. All the international treaties have to be ratified before it becomes the law. But here the question arises the state has to follow the laws as well not only centre. The consent of the state is missing here. The state must be given equal rights as centre to give its opinion. For e.g. India has given an ‘Intended Nationally Determined Contribution’

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<sup>13</sup> AIR 1990 SC 1814

<sup>14</sup> AIR 1987 SC 579

<sup>15</sup> V.N.Shukla, The constitution of India (Mahendra pal singh). Eastern book company, Pg 767-908

under its climatechange obligation for its being signatory of UNFCCC. Before taking this decision does the consent of state was taken because for fulfilling the commitment states will have equal responsibility.<sup>16</sup>

In Agreements Related on Trade-Related Aspects of Intellectual Property Rights, the India has committed to comply it Intellectual Property regime with the world, this has seriously affected the pharmaceutical industry of the country by escalating the cost of medicines<sup>17</sup>. This has serious repercussion on access to health and right of the citizens of the country. The public health<sup>18</sup> list is under the state list of the Constitution but international obligation of India has trampled this states' rights and obviated the states consent in such matters. This doesn't bode well for the effective cooperation among the centre and state.

The Centre's latest move in the "political logjam around the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Central Act), has been to look to the States to amend the law. Land Acquisition is in Concurrent List under Indian Constitution so legally state have the right to amend it after it getting presidents consent. Making state specific laws for land acquisition is the best way to promote Cooperation and harmony for the economic development. It will cater to the need of specific states vis-à-vis land acquisition.

#### **CHAPTER IV - ADMINISTRATIVE RELATION**

Indian Constitution provides some provisions where the states are independent and effective. The administrative relations between union and the state are governed under Art. 256-263 of the Constitution. It is an obligation on the state to ensure the legislation made by the parliament are enforced in the state, along with its executive power of the union.<sup>19</sup> The administrative relation provides for cooperation between centre and state for national interest. Protection of railways and communication critical for military or national interest under state jurisdiction have to be protected by the state. The adjudication of river-disputes and Interstate council are the best example for Cooperative federalism.

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<sup>16</sup> Status of Ratification of the Convention | UNFCCC, Unfccc.int (2019), <https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/status-of-ratification-of-the-convention> (last visited Oct 25, 2019).

<sup>17</sup> The detail agreement can be accessed [https://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/trips_e.htm) ((last visited on 11 October, 2019)

<sup>18</sup> Entry VI of State List under Seventh Schedule

<sup>19</sup> H.M.Seervai, The Constitution of India vol 1, Administrative relations pg 294-297

#### **4.1 INTERSTATE COUNCIL**

Art. 263 of the Constitution refers to the establishment of an Inter-State Council. It aims at providing an inter-governmental machinery which shall deliberate on the problems of inter-state relation and Union-State Relation. The Administrative Reforms Commission<sup>20</sup> and Supreme Court had also recommended the formation of an organisation that shall cooperate and coordinate between the states and the union provides for the creation of a body for solving problems arising out of interstate rivers. The development of National Development Commission and Planning Commission is also in consonance to the cooperative spirit of the nation.

Failure to comply with direction of centre: Art. 355<sup>21</sup> of the Constitution provides a duty on 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 provision of this Constitution. Art. 365<sup>22</sup> of the Constitution provides for the effect in case of failure of the state to comply with directions of the government. However, contrary to popular belief the provision like Art.355 promote cooperation among the states and centre, by making states accountable to the Constitutional principles. The Centre can dissolve a state government only if the government is being run contrary to constitutional principles. The provisions create an indirect responsibility on both centre and state to work closely keeping themselves within the Constitutional boundaries.

#### **4.2 ALL INDIA SERVICES**

One of the most interesting features of Indian bureaucracy is All India Services which are the continuation of Indian Civil Services, it is one of the best examples of Cooperative federalism where the bureaucracy serves for both centre and state. Art. 312 deals with the appointment of All India Services for both centre and states. The appointment of All India Servicemembers in the government creates a link between centre and state. The term of their employment condition put them under the complete control of centre but states have also some rights over the officers. The presence of these officers in the government reduces interstate-centre fissures and help in effective governance of the nation.<sup>23</sup>

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<sup>20</sup> A.R.C Report on Centre-State Relationship, pg- 32-35, 1969

<sup>21</sup> Justice MC.Singha, Manual on Constitution Of India, Vol 5, Lexis nexis. Pg 4655

<sup>22</sup> Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution

<sup>23</sup> Sarkaria Commission Report, Pg 223

## **CHAPTER V- FINANCIAL RELATION**

One of the most concrete proposal of cooperative federalism ever given was the devolution of financial power to the various tiers of the government. The financial tussle between centre and state is the biggest obstacle for effective cooperation between centre and state. The history of financial relations can be traced back to the period of Lord Mayo and Lord Ripon who advocated for the proceeds to the centre. The Government of India Act, 1919 and the subsequent acceptance of Lord Meston Award for division of resources was one of the legislative frameworks for the devolution of finances to states. The Government of India Act, 1935 also considered a flexible mechanism of distribution of resources. The Constitutional Assembly appointed Sub-Committee on finances recommended the distribution of resources on the basis of central control of consolidating and strengthening the unity of India. states are required to depend upon the Union for funds. The finance commission decides on distribution of revenue between centre and state and also panchayats. The fourteenth finance commission recommendation of providing state with 42% in untied funds have given states much leeway in terms of using their funds for their own development need. The working of the commission is one of the most enduring features of Cooperative federalism in our country. The working of finance commission for effective distribution of resources among states and panchayat not only increases capacity but promotes effective Cooperative between states and centres.<sup>24</sup>

### **5.1 GRANT IN AID**

Article 275 provides for two types of grants fiscal aid and specific purpose grant. Another glaring examples of effective distribution of revenue by between centre and state is Grants-In-Aid. As the name suggest it is aid given to the state by the Parliament. Art. 275 provides for two types of grants fiscal aid grant and specific purpose grant. These grants are fixed by the Parliament every five years on the basis recommendation of the Finance Commission. They are given to state in their need and assistance. Some specific purpose grants can also be given to state to undertake any scheme to undertake any scheme of Central government for promoting the welfare of the scheduled tribes.<sup>25</sup> There cannot be a better form of cooperative federalism other than grant-in-aid. Goods and Service Tax One of the biggest tax reforms being undertaken by the government in the post-independence area is the implementation of GST in India, to truly make India a uniform market. One of the

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<sup>24</sup> Reports of the Finance commission of India Chapter 2.3-2.4

<sup>25</sup> Shiva Rao, Framing of Indian Constitution-A study. 2<sup>nd</sup> Edition, Universal law Publications Pg 630

biggest flaws of tax structure in our country is the presence of plethora of taxes which sometimes have cascading effect on country's economy. GST aims to bring uniformity in indirect taxation structure in the country, it will subsume all other indirect tax like central sale tax, octroi tax, sales tax etc. GST is the most glaring example of cooperative federalism, where states and centre are cooperating to develop common and uniform taxation system in the country. The GST council comprising of union finance minister and state finance matter makes an effective team for the implementation of the act. The GST Act is the true example of Team India where all its constituent meets for the development of the country.<sup>26</sup>

## **CHAPTER VI - INSTITUTIONAL FRAMEWORK**

Cooperative federalism cannot be achieved unless institution plays an important role in it.

### **6.1 INTERSTATE COUNCIL**

Art. 263 provides that the president may by order appoint Inter-State council if it appears to him that the Council if it appears to him that public interest would be served by its establishment. The main purpose of the council includes advising upon disputes which may arise between states and making recommendation upon subject of disputes between the state and for better co-ordination of policy and action with respect to that subject. The role of the council is complimentary to the Supreme Court jurisdiction under Art. 131 to decide a legal controversy between the governments. The council plays both horizontal and vertical intergovernmental coordination and cooperation.<sup>27</sup> Under Art. 263 four regional council have been set up, in four zones of the country headed by an undersecretary to the government of India. The recommendation of the council is not binding in nature. But the provision under Art. 263 is the least used provision of our Constitution. The central government generally undermine its value by keeping it as an ad-hoc body. One of the recommendations of the Administrative Reforms Commission is to make Inter-State Council a permanent body. The provision under Art.263 is the best way to promote centre-state harmony and to incentivize cooperation among the governments. The recommendation of various committees for Inter-State Council should be given due thought. The Constitution provides for other central bodies like Art. 307 provides for the creation of an inter-state commerce body. An Inter-

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<sup>26</sup> KAILASH ROY, GOODS AND SERVICES. 2<sup>ND</sup> EDITION

<sup>27</sup> LOK SABHA DEBATES, December 23, 1955, Vol. I, 880

State Transport Commission has been established under Motor Vehicles Act.

## **6.2 ZONAL COUNCIL**

In between Centre and States, Zonal Councils<sup>28</sup> have been introduced in India by the State Reorganisation Act, 1956. Great heat and passion were generated when the country was organised on the linguistic basis which effected the unity of the country. Therefore, Zonal Council were created as instrumentsof inter-governmental coordination and co-operation mainly in socio economic fields. There exist five zonal councils consisting of Union ministers to be nominated by the central government and the Chief-Minister and two other ministers from each state to be nominated by the state.

## **6.3 RIVER WATER DISPUTES**

India has number of interstate rivers and river valleys. Indian Constitutional makers anticipated the disputes that may arise regarding of sharing of rivers.<sup>29</sup> The Constitution makers anticipated the disputes that may arise regarding of rivers. The Constitution makes special provisions for creating a suitable machinery for resolving such dispute. Art 262 empowers the parliament to provide by law for adjudication of any dispute or complaint with respect to the us, distribution or control of waters of any interstate or river valleys. The River Board Act, 1956 enacted by parliament under Entry 56, List I provide for the establishment of river boards for the purpose of regulation and development of water resources is on state, but due to conflict of interest among the states regarding the use of water the act was necessary. To facilitate adjudication in water disputes in water disputes cases Inter-state Water Dispute Act, 1956 have been established, which facilitated the establishment of tribunal under the Act.

## **EMERGING COOPERATIVE FEDERALISM IN INDIA**

Single citizenship, All India Civil Services, Unified Judiciary, single Election Commission, the Finance Commission, and the Planning Commission also establish the unitary character of our constitution. Indian Constitution is not laissez faire federal Constitution. Paras Diwan<sup>30</sup>, an eminent law writer said in his book, “It is essentially a cooperative federation, where two sets of governments are not antagonistically independent of each other but coordinate, cooperate and collaborate in each other’s efforts “to secure to all its citizens justice, social, economic and

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<sup>28</sup> Sarkaria commission Report, 240-243

<sup>29</sup> H.M.Seervai, The Constitution of India vol 1, Pg 3242

<sup>30</sup> Paras Diwan, “Union-States Fiscal Relations”, (Light and Life Publishers, 1981), p. 13

political, liberty of thought expression, belief, faith and worship: equality of status and of opportunity: and to promote fraternity assuring the dignity of the individual and the unity and integrity of the Nation.”(Preamble of the Indian Constitution)

Paul Appleby<sup>31</sup> calls the Indian Constitution as extremely-federal. The so-called autonomy of the states appears to be a myth or practically impossible in certain circumstances. The biggest threat to the autonomy of the states is the provisions like Article 356. The Sarkaria Commission which probed into the centre and state relations suggested exhaustive measures to improve the state autonomy and strengthen the cooperative federalism, the basic concept of our constitution.<sup>30</sup> With the advent of regional parties gaining popularity with their relentless fight against the misrule by Central Governments ignoring the needs of some states, the demand for more powers increased. Without doubt Indian constitution definitely provides an environment for Cooperative federal structure to flourish.

## CONCLUSION

In the 21<sup>st</sup> century the cooperation between state and centre has come severe strain due to various factors. The increasing voices of separatism, division on the basis of language or creed tears the very fabric of national unity. The acrimonious separation of Telangana and Andhra Pradesh was a blot on our cooperative spirit. Terrorism, organised crime all attacks our diversity which forms the very basis of ‘idea of India’. So, an effective mechanism that will take care of the of the problems of the constituents is the need of the hour. India is a beautiful melting of diversity which can only be preserved by way of effective cooperation between states and centre. The ‘idea of India’ needs to be valued and cherished and there is no better way to sustain it other than Cooperative federalism. Equity in growth, balanced development solidarity can only be achieved through Cooperative Federalism. In the words of Nani Palkhivala “WHO DIES IF INDIA LIVES AND WHO LIVES IF INDIA DIES” people of several state sink or swam together and that in the long run, prosperity and innovation are in salvation not in division, mutuality not conflict not competition.

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<sup>31</sup> Jain, M. P. “FEDERALISM IN INDIA.” *Journal of the Indian Law Institute*, vol. 6, no. 4, 1964, pp. 355–379., [www.jstor.org/stable/43950710](http://www.jstor.org/stable/43950710).