
CO-OPERATIVE AND COMPETITIVE FEDERALISM: CONSTITUTION'S APPLE OF DISCORD

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ABSTRACT

In the recent past, the phrases, Cooperative and Competitive Federalism entered the dominant discourse, especially in context of boosting economic progress of the states. Though, the suggestion of the highest echelons of the RBI that competitive federalism must be fostered is absolutely noble, is India, with all its diversified resources and the huge power differential between the states, ready for a paradigm shift from Co-operative to Competitive Federalism? How well has the system functioned on the outlines of Co-operative Federalism? Is Competitive Federalism the need of hour? Further, how well do these concepts bode with the principles enshrined in the Constitution of India? The quest for the answers makes it imperative to analyse the connotative content of both these concepts and identify their contours and the successive connexion. This article is an attempt to identify the significance of both the concepts and finding a middle ground which could pave a way for the economic prosperity in India and also comparing the these institutions with foreign federal powers. (Srikrishna, 2015)¹

¹ Srikrishna, B., 2015. Co-operative Federalism, New Delhi: Vidhi Centre for Legal Policy.

Introduction

The scheme of federalism in India has been a topic of debate since the framing of the Constitution. With due respect to the views of the intellectuals whose shibboleth is the rule of law, it could be safely determined that the Constitution of India envisages Indian federalism as a means of decentralisation of Government, especially on two levels, i.e. the Centre and the States. The Federalism in India strives to create a harmonious balance between the centripetal idea of unity and cultural diversity of regions. And for the purpose of keeping India unified, it is essential that the Centre holds more power than the states. This is one of the reasons that India is not a pure federal state, albeit, it is quasi federal where the bias is strongly unitary. (Srikrishna, 2015) (Ackerman, 1983) ²

If we throw in the concept of co-operative federalism in the mix of Indian federalism, that would mean that the Centre and the states will not contest for power and in fact they would engage in co-operative scheme of operations and assimilate their resources, so as to achieve the common goal of economic prosperity. However, competitive federalism paints a slightly different picture than its former counterpart, as in competitive federalism the state governments would compete with each other and the Union would be responsible for framing the ground rules for the contest and nothing more. (Jain, 2011)³

Given the exponential pace at which the world is progressing, both the schemes could be deemed to be essential for the development of India. However, the path comes with its fair share of thorns, since, in a diverse nation such as India, the planning on paper is a lot easier than the implementation.

Co-operative Federalism

Co-operative federalism, essentially involves the distribution of authoritative powers between the Federal (Union) and the states. The concept often allows the states and their respective agencies with the unanimous discretion to implement broad Central policy goals and relative guidelines.

² Ackerman, S. R., 1983. Cooperative Federalism and Co-optation. Yale Law Journal, 92(7), pp. 1344-1348.

³ Jain, M., 2011. Federalism in India. ILI Journal, 15(6), pp. 354-379.

A critical advantage of a cooperative federalism approach is that it sets forth a basic federal framework while allowing states to experiment within certain contours. To put it plainly, the advantages of cooperative federalism as a system for “democratic experimentalism and implementation” fall into four fundamental classes:

- Respecting long-standing state interests and their independence;
- Fostering and tapping local resources and support which actuates participation and more accountability
- Taking into consideration interstate challenge;
- Depending on the economy of local resources of the State. (Basu, 2001)⁴

This system works effectively, particularly for circumstances where there are various conceivable solutions, depending on state offices where the states can offer an appropriate solution in contrast to the danger of receiving a Central order that might steer an inappropriate course as it may not bode well for the local needs. Co-operative Federalism, over the years has worked really well, when it comes to maintaining the political system and also for peaceful changes in the administration. Hence, the best part about our Constitution has been its flexibility.

For instance, the U.S Constitution, with its history of more than 200 years has been amended just 27 times whereas the Indian Constitution boasts of 125 amendments in 69 odd years, since its inception. That, actually is the strength of Indian Constitution. The 73rd and 74th Constitutional amendments bring about the making of the Panchayati Raj or third level of Government in provincial zones and chosen urban bodies is held out for instance of such adaptability, which would not have been accessible under any rigid pattern of separation of powers. Implementation of GST is a brilliant illustration of cooperative federalism where states and Centre have ceded their capacity to duty and devise a solitary expense framework to realize the idea of one Economic India with 'One Market'. In this manner, GST has demonstrated Unity in Diversity of Indian Society.

⁴ Basu, D., 2001. Constitutional Law of India, New Delhi: Prentice Hall of India Pvt. Ltd.

However, the sweet story ends just here. For, there is no doubt about the efficiency and the intention of the political wisdom behind co-operative federalism, it is the huge vertical as well as horizontal imbalance between the Centre and the States. Be that as it may, Constitution still gives a lot of leeway to states to levy tax as well as non-tax duties. Article 302 enables Parliament to confine facilitated commerce between and inside states on grounds of public interest. Likewise, Article 304(b) permits state councils to limit exchange and trade on grounds of public interest. Obviously, states can just force these restriction in territories that are either on the state or concurrent list. The substance of these arrangements is that both the Centre and the States have numerous opportunities to limit exchange and trade that obstruct the formation of one India. Such strong powers are actually absent in the International encounters. (Pal, 1981) (Jain, 1962)⁵

Talking about the foreign powers, the United States has a solid interstate business proviso in the Constitution. In US, residuary forces are held to the states (and not the Union, as in the case of India), states are constitutionally banished from managing interstate exchange and business as it was felt that such power would in a general sense hamper organized commerce and development. (Dye, 1990)⁶

Even under European Common Market, it is presently acknowledged that nations inside the EU must not, aside from under very tight circumstances, limit the four freedoms of movement: of products, administrations, capital, and individuals.

Not only this, there are a huge number of cases which highlight the anomalies in the Constitution as against Cooperative Federalism. A broad reading of Articles 245 to 255 would make it clear that the Centre has larges legislative as well as residuary powers. Infect, even in the matter of executive authority, the Constitution gives abundant capacity to the Central Government to issue certain directions to the State Governments and issue orders to the States to not create any hindrance on the executive functions of the Union. It can, in this way, be maybe reasonably contended that, regardless of the purported federal type of the Constitution, it is really unitary disguised in federal structure. (Srikrishna, 2015)

The Central Government enjoys the authority to charge corporate salary, individual pay, remote exchange, production and administrations sector including other significant mineral resources.

⁵ Pal, C., 1981. The Problems of State Autonomy. *Cochin Law Review*, 16(9), pp. 331-353.

⁶ Dye, T. R., 1990. *American Federalism: Competition among Governments*. Massachusetts: Lexington Books.

The States have a relatively smaller capacity to raise charges on land income, deals on merchandise and other local taxes, for example, property tax. Taxation powers present the major bone of contention and it is without a doubt that the Central government has won the vast majority of the debates absolutely because of express arrangements in the Constitution. (Granville, 1966)⁷

In the Goods and Services Tax (GST) scenario, States have surrendered some taxation powers (octroi, section expense, extravagance and diversion charges, and so forth.), however, they do have the authority to exact assessments through panchayats and regions. Such powers can bring about an abnormal circumstance of a transaction coming under the purview of GST laws and a local law, and this is yet to be tried in court. (Ananth, 2018)

The southern States have been vocal about the bogus positives and negatives from assessment sharing and this instrument is generally dependent upon the proposals of the Finance Commission (FC) and activity by Parliament. State levied taxes and State GST end up being a part of a State's income. Under Article 269A (1) the GST Council and not the FC has the forces to make suggestions in connection to sharing of taxes in Inter-State transactions. (Jain, 2016)⁸

Inconsistencies in the interpretation of the constitution as against the taxation laws:

ARTICLE 269A (1): Under Article 269A (1), the GST Council and not the Finance Commission, has the forces to make suggestions in connection to sharing of charges from between State exchange. This is significant, since States have a vote in the GST Council.

ARTICLE 270(1)(A) and 270(2): They give that expenses exacted under the GST laws will be partaken in the way recommended in Article 270(2), which takes us to the Finance Commission and not the GST Council.

The conceivable peculiarity among jobs and powers of the Finance Commission and the GST Council has not been tried, yet it might make sharing of these incomes topic of the Finance Commission and Parliament instead of the GST Council, where States have more powers.

⁷ Granville, A., 1966. "The Indian Constitution; Cornerstone of a Nation" , London: Oxford University Press.

⁸ Jain, S., 2016. THE GOODS AND SERVICES TAX (GST) REGIME THROUGH THE LENS OF FISCAL FEDERALISM IN INDIA. ILI Law Review, 1(1), pp. 236-251.

Suggestions of the Finance Commission are put before Parliament and States have no say in the discussion.

There is additionally no arrangement for a wronged State to challenge the report of Finance Commission on specific grounds or look for required implementation of its proposals.

In a case, that a State is bothered by the proposals itself, a distressed State would need to dispute in the Supreme Court as it creates the impression that the GST Council is yet to set up an instrument for settling contrasts regarding Article 279A(11). (Ananth, 2018)⁹

Further, there is horizontal imbalance as well which alludes to the capacity of states to raise revenue which could cover their expenditure. Incidentally, the poorest and backward States are also the greatest in populace and that exacerbates the issue of horizontal balancing. Hence, Co-operative Federalism comes with its own share of flaws.

Competitive Federalism

With the kind of stifling which could be experienced while practicing the scheme of co-operative federalism, one would hope that competitive federalism would come to the rescue, since it provides much needed autonomy to the states.

The concept is relatively modern and it got a major thrust after inception of NITI Ayog. With the advent of the NITI Aayog (National Institution for Transforming India) instead of the 'socialist mindset' Planning Commission, and by consenting to the suggestions of the 14th Finance Commission, the legislature took the notable choice to significantly climb the portion of states in expense income and set up different protections to check the unbridled authority of the inside. This has come as a monstrous bonanza for the states.

On its substance, examples of competitive federalism are as of now obvious in the connection between states. As far back as the Modi government assumed control over, the Vibrant Gujarat Summit for worldwide speculators is being imitated in driving states, for example, Tamil Nadu and Mumbai. Tamil Nadu is arranging a comparable occasion to draw in ventures to the tune

⁹ Ananth, M., 2018. A reality check on cooperative federalism. [Online] Available at: <https://www.thehindu.com/opinion/op-ed/a-reality-check-on-cooperative-federalism/article25487968.ece> [Accessed 25 November 2023].

of 1 lakh Cr INR, with the UK, France and Japan affirming their cooperation in the summit. (India, 2017)¹⁰

Indore too has walked on the same line by organising global investors' summit, and Mumbai has announced designs to contend with Gujarat to draw in more speculations. As per the most recent information in the Economic Survey, Maharashtra as of now pulls in the most astounding number of speculation recommendations with business potential, trailed by Gujarat, Tamil Nadu, and Uttar Pradesh.

Be that as it may, these are just a bunch of wealthy states, and even the examples of between state rivalries in pulling in venture are too fundamental to even think about determining whether it will truly systematize really aggressive examples of speculation. Starting at now, what is passed on is essentially a pro-investment framework environment.

Competitive federalism transacts with the relationship between two or more states (and not between union and state) in the matters of investment, trade and commerce. The sole responsibility of the Union government is to make rules of this competition. States compete with each other to draw interests for funds and investment, which further, facilitates efficiency in management, supervision and enhances developmental activities. (Rangeet Ghosh, 2017)

The catch here is that investors prefer more developed states for investing their money. Union government entrust funds to the states on the basis of usage of previously allocated funds. Thus, there is a higher influx of investments flow from the central government and the private stockholders as well to those states which have practiced optimum and judicious use of previously allocated funds. Thus, competitive federalism ensures minimum depletion and maximum utilisation of resources. Healthy competition strives to improve physical and social infrastructure within the state. (Kelkar, 2019)¹¹

States compete with each other and to maintain this healthy competition between the States, they are accorded greater responsibility and autonomy in issues related to policy planning and implementation. This also helps in states tapping their major resources and devising new way to make best use of them. It is nearly after sixty years of independence that India has recognized

¹⁰ India, G. o., 2017. From Competitive Federalism to Competitive Sub-Federalism: Cities as Dynamos, New Delhi

¹¹ Kelkar, V., 2019. Towards India's New Fiscal Federalism, New Delhi: National Institute of Public Finance and Policy

and realized that progress of the nation lies in the progress of its states. Hence, it means, that competitive federalism is not a part of the basic structure of the constitution, whereas, cooperative federalism is.

Competitive Federalism too comes with its own share of roadblocks. It is no doubt that the competition between states has reflected in the World Bank's Ease of Doing Business index, which in turn has generated a lot of furore and enthusiasm about the same, however, this has to be an on-going process.

It needs to be realised that there are few prosperous states like Maharashtra, Karnataka, Gujarat, Rajasthan and Tamil Nadu which are competing among each other and they too have their own share of problems.

One of the major concerns is the huge power differential in the economic prowess of the states. There are states which are bereft of natural resources and even if they have resources, they do not have adequate machinery to harness those natural resources. Hence, the potential of those states is not utilised because of the sparse amount of funding they receive. To compound their miseries, the populations of the states becomes a factor too. The states like West Bengal, Assam, Jharkhand, Bihar and Orissa have vehemently challenged the uniform methodology of financing taking in view the huge economic and social imbalance prevalent there. Without a separate subsidizing strategy, these states can't envision their investment in competitive federalism. (Sharma, 2015) ¹²

In spite of the fact that the states are furnished with monetary autonomy, it is a misrepresentation to accept that every one of the states would perform consistently during the time spent improvement in light of the fact that while a few states have positive components like talented work, capital and foundation, creative administration ventures different states falling behind. For that states with horrible atmosphere still need the assistance from Centre.

Further, the corrupt activities as against the funding do not help the State's cause. The issue of corruption in the broadest sense, which puts numerous developmental measures, such as, ease

¹² Sharma, G., 2015. Is competitive federalism stifling economic progress in India?. [Online] Available at: <https://globalriskinsights.com/2015/06/challenges-of-competitive-federalism-in-india/>

of doing business and less red tape, at risk and that represents a noteworthy hazard to the states' economies.

The reasonable restriction of even a portion of the wealthy states to the GST on the grounds of revenue loss unmistakably speaks of a political culture which shrugs off transitioning to a progressively straightforward and simple tax regime. (Bagchi, 2000)¹³

The inability to address this unequal development in the states is one of the real obstructions to good investments in specific states, in spite of an ideal strategy condition. Indian states with high degrees of political assembly are notable for unpredictable challenges against Special Economic Zones, particularly in land grab situations, unfavourable health and ecological dangers. This is quite evident in activation of Uttar Pradesh farmers against land acquisitions, as just as dissents against Koodankulam and Jaitapur atomic power plants in Southern states.

Conclusion

From the above discussion, it could be realized that moving on from co-operative to competitive federalism at this point of time is actually not a very sound idea, since, the states themselves are not in a position to fight on their merits, because of a huge difference in their resources. A lot of states are still in need of funds from the Centre. In fact, what India needs is a blend of both and most importantly, there has to be a strong political goodwill behind the actions. A political will would cater to curb corruption and implement progressive ideas for the states. Unfortunately, the avarice for power always trumps the welfare of the society. This is what needs to be changed. For, the anomalies mentioned in the Constitution will crop up at some point of time and the same would pose problems as against interpretation as well as implementation.

¹³ Sharma, G., 2015. Is competitive federalism stifling economic progress in India?. [Online] Available at: <https://globalriskinsights.com/2015/06/challenges-of-competitive-federalism-in-india/> [Accessed 25 September 2023].