CHAPTER 32

Indian Co-operative Federalism to Competitive Federalism:
An Analysis

Dr. Geeta
Assistant Professor, School of Law, Lovely Professional University, Phagwara, Punjab.
geeta.26154@lpu.co.in

Abstract

With the liberalisation, privatization and globalization, the Indian federalism started shifting from co-operative federalism to competitive federalism to achieve overall inclusive development. But, being a land of diversities and uneven development and different political parties at Centre and States, some issues like GST Compensation to states, farmer issues and withdrawal of consent for co-operation to Central Bureau of Investigation and fear of threat to unity and integrity of nation have emerged with changing trend of Indian federalism. In this context there is a need to examine the concepts of competitive federalism a country like India. The present paper focuses on to examine competitive federalism and to suggest means while adopting doctorial research methodology in the furtherance to overall development and promotion of unity and integrity of India with a futuristic approach.

Key Words: Good & Services Tax, Farmer issue, Central Bureau of Investigation, Combative Federalism, Unity and Integrity of India, Combating Federalism

1. Introduction

The term ‘Federalism’ is derived from the Latin world “Foedus” which means an ‘agreement’ to share powers between the States and Centre government (Shah, 2007). The term is defined as a "form of Government in which sovereignty or political power is divided between the Central and local Governments, so that each of them within its own sphere is independent of the others" (Paleker, 2006). Indian federalism is a combination of both federal government and unitary government (S.R.Bommi vs. UOI, 1994). Indian country witnessed the trauma of “the great divide” and “freedom at midnight” at the cost of destruction of property and thousands of lives. Therefore, it had been priority of our political leaders to bring British India and Native States together to attain the Dominion Status and to explore the possibilities for bringing the two principal communities together in a workable political system (S.P.Aiyar and Usha Mehta, 1965).
Initially, for securing the unity and integrity of country, the founding father of our Constitution accepted the need of a strong centre. Indian federalism may be address as an outcome of early history of independence, administrative work, partition, transfer of powers, food crisis, need of integration of the Indian States, partial autonomy of the Provinces and other adverse economic condition of the country (R.C.S. Sarkar, 1986).

In the words of Mr. N Gopalaswami Ayyangar-

“...one of the essential principles of a Federal Constitution is that it must provide for a method of dividing sovereign powers so that the government at the Centre and the government in the units are each within a defined sphere, co-ordinate and independent…”

(Constituent Assembly Debates, 38).

Gradually, federalism found a significant place in the Constitution of India as a unique feature of the Constitution. Dr. Ambedkar stated that-

“The use of the term 'Union' is deliberate. I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the states to join a federation and that the federation not being the result of an agreement, no state has the right to secede from it.”(Constituent Assembly Debates, 43).

As per the requirement of the time, quasi- federalism with the strong centre was found to be most suitable for a country like India to create strong bound between the different units (Jain And Subhash C. Kashyap, 1972). For the purpose, Inter-state Council under Article 263, Recognition of public acts, records and judicial proceedings under Article 262, free inter-state trade, commerce and intercourse throughout the territory of India under Article 301, adjudication of inter-state disputes involving legal rights by the Supreme Court under Article 131, exclusive legislative powers of the Parliament in relation to matters of national interests under Article 249, implementation of foreign treaties under Article 253, common interest of states with their consent under Article 252, and exclusive powers of direction for the administration of states under Article 256, Article 257 (The Constitution of India, 1950) with financial arrangement have been arranged for promotion of Co-operation between the Centre and State and amongst states.

But, during the period, with liberalisation, privatization and globalization, Indian federalism started to shift from co-operative federalism to competitive federalism to achieve overall inclusive development. As a result thereto, being a country of diversities, notable issues pertaining to Good and Service Tax (GST) compensation to the states, farmer enactments and withdrawal of consent for co-operation to Central Bureau of Investigation giving threat to unity and integrity of nation have emerged with changing trend of Indian federalism. Therefore, present paper focused on to analysis the shift from co-operative federalism to
competitive federalism in India and to suggest the suitable type of federalism for the country like India with the help of doctrinal research methodology.

2. The Indian Constitution & Co-operative Federalism

2.1. Inter-state Council
Inter-state Council came into existence on May 28, 1990 with the Presidential Ordinance of Mr. V.P. Singh, the then President (K.M Munshi, 1959). Specific functions, “to inquire and advice with regards to inter-state disputes, to investigate and discuss upon the matters of common interests of states and recommendation therewith and power to propose recommendations with regard to ‘coordination of public policy or action’ for better efficiency thereto have been entrusted to the council[19]. During the period, the council purposed significant recommendations. But, the council remained unsuccessful in attaining the desired objectives for lack of frequent meetings, ignorance of the states interest and none binding nature of its decisions (Government of India, 2008).

2.2. Zonal Councils
Five Zonal councils “to bring out national integration; to arrest the growth of acute state consciousness, regionalism, linguism and particularistic tendencies; to enable the Centre and the States to co-operate and exchange ideas and experiences; and to establish a climate of co-operation amongst the States for successful and speedy execution of development projects” established under the State Re-organization Act, 1956 (Ministry Of Home Affairs, 2022).

2.3. Recognition of public acts, records and judicial proceedings
All the enactments, records and judicial proceedings are recognised throughout the territory of India (Constitution of India, 1950) to minimize the inter-state disputes and to promote inter-state co-operation amongst the different units.

2.4. Free inter-state trade, commerce and intercourse across the nation
For promoting co-operative federalism and ensuring economic unity provisions for “free trade, commerce and intercourse throughout the territory of India” have been incorporated under Part XIII of the Indian Constitution. However, Parliament and State Legislatures both are restricted for making any discrimination amongst the states and preference to one state over another except in case of scarcity of goods in the states (Constitution of India, 1950).

2.5. Inter-state water dispute resolution mechanism
River Boards Act, 1956 and Inter-State Disputes Act, and 1956 have been enacted to resolve the water related issue amongst the states by the Parliament (1992). River Boards Act, 1956, was enacted to facilitate inter-state co-operation over the water resource development, which became a ‘dead letter’ due to adequate mechanism (1992). Inter-State Disputes Act, 1956, provided a mechanism through an ad hoc tribunal set up by the central government for the purpose of adjudication of water related disputes amongst the states (Inter-State Water Dispute Act, 1956).

3. Co-operative Federalism & Recent Trends
Cooperative federalism has been a policy mantra for the government for remarkable development of the nation. For the purpose, structural reforms viz., recommendation for enhancement of share of the states in divisible pool from 32 percent to 42 percent, formation of NITI Aayoge with enactment of Goods and Services Act, 2017 etc have been adopted in the furtherance to co-operative federalism by the present Government.

3.1. NITI Aayog
To actualize the aims of the co-operative federalism, Niti Aayog came into existence with the objectives “to foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation”. The most appropriate agenda i.e., “Sabka Saath Sabka Vikas aur Sabka Viswas” and “Team India” is adopted for whole over growth of the nation by the Government (2022).

3.2. Good and Service Tax
Goods and Services Tax has been a step in the furtherance to co-operative federalism and for strong economic integration of the country with a hallmark of ‘Unity in Diversity’ (GST Promotes Cooperative Federalism, 2017).
Mr. Narendra Modi, Prime Minister accepted GST as a tool to bring the states closer and an example of strength of Team India. He stated that “it is not a success of any party or any government. It is the result of everyone's effort. The scope of the GST is unlimited to financial system. Now, India will move in a new direction. With the launch of the GST, we are ensuring the progress of the country. The launch of the GST is not the achievement of a particular party or a particular government; it's a collective achievement” (ANI, 2017).

3.3. Covid-19
Recently, the entire world comes under the garb of pandemic i.e., “Covid 19”. India joined the battle in January, 2020, As a result thereto; a nationwide lockdown was imposed on March 25, 2020 by invoking Disaster Management Act, 2005 for ensuring “consistency in the application and implementation of various measures across the country” along with Epidemic Diseases Act (Prajwal, n.d.).During the period, co-operative federalism started to shift from co-operative federalism to competitive federalism for all over development of the nation. Hon’ble Prime Minister highlighted the significance of comparative federalism for the growth of entire nation (Cooperative Federalism, n.d.).

4. Competitive Federalism: A Picture
Concept of competitive federalism attracted the attention of all the stockholders. The trend of competitive federalism considered to be a device for economic and social development of the states and country as well. Most of the states of the union of India started a way to attract Foreign Direct Investments for economic well-being thereto.
4.1. Business Reforms Action Plan


4.2. Populist Policies

A Trend to ensure reservation for local population in private sector to attract investors has been started by the state governments after the pandemic. States of Haryana (Second Haryana Investor Summit in 2018: Khattar | Business Standard News, 2016) Jharkhand (Explained: The Jharkhand Bill That Reserved 75% Jobs in Private Sector for Locals | Explained News, The Indian Express, 2021) Madhya Pradesh (Anshuman, 2020), Tamil Nadu and Andhra Pradesh took initiative for their population. However, decision of Andhra Pradesh for reserving jobs in private sector for locals under Andhra Pradesh Employment of Local Candidates in Industries / Factories Act, 2019 challenged before the SC for violation of Article 16(2) and (3), the Indian Constitution (75 per Cent Quota for Locals May Be Unconstitutional, 2020). Moreover, competitive federalism brought a new opportunity for the states to understand their competitiveness and capacity to bring new economic reforms and to improve tools therefore; states are in the race to attain the same.
5. **Competitive Federalism to Combative Federalism**

No doubt competitive federalism brought economic reforms for the overall development of the country, but also attracted other issues like GST compensation to States, Withdrawal of states co-operation with Crime Investigating Bureau (CBI), Farmers Laws and other tensions shifting competitive federalism to combative federalism.

5.1. **Issue of GST Compensation**

Centre Government passed a legislation i.e., The GST (Compensation to States) Act, 2017 to compensate the states for the period of five years (2017-22) for the loss of revenue due to implementation of Goods and Service Act. On July 15, 2021 Nirmala Sitharaman, Finance Minister, stated about the release of Rs. 75,000 Crores in lieu of Goods and Service Tax (GST ) to the states as first instalment for entire year. States are still waiting for the balance i.e., second half of year 2021-22 (*Centre Releases Rs 75,000 Crore to States as GST Compensation Shortfall, 2021*). Moreover, about 27 states and UTs have been in the row for their dues i.e., a sum of Rs. 81,179 crore for 2020-21 (Rs 81,179 Crore Due to States as GST Compensation for FY21, 2021).

5.2. **Withdrawal of Co-operation for CBI**

Central Bureau of Investigation (CBI) authorised to investigate a case within the jurisdiction of the state with the consent of concerned state (Delhi Special Police Establishment Act, 1946). As per CBI manual, “the central government can authorize CBI to investigate such a crime in a state but only with the consent of the concerned state government, The Supreme Court and High Court, however can order CBI to investigate such a crime anywhere in the country without the consent of the State” (CBI Crime Manual, 2020).

During the period, States viz., West Bengal, Chhattisgarh, Rajasthan, Kerala, Maharashtra, Jharkhand, Andhra Pradesh and Mizoram withdrew their general consent for authorising CBI to investigate matter connected with the states. However, Punjab withdrew its consent in relation to specific cases (November 6 et al., 2020).

Supreme Court observed that “not obtaining prior consent of the state Government under section 6 of the Delhi Special Establishment Act, 1946 (DSEP ACT) would not vitiate the investigation unless the illegality in the investigation can be shown to have brought about the miscarriage of justice or caused prejudice to the accused”(*State Government’s Consent Mandatory for CBI Investigation in Its Jurisdiction, 2020*).

5.2. **Battle on Farms Legislation**

In September, 2020, farms laws i.e., (i) Farmer’s Produce Trade and Commerce ( Promotion and Facilitation ) Act, 2020 (ii) Farmers ( Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 , (iii) Essential Commodities ( Amendment ) Act,2020 have been passed as a reform in forms. Some of the states, Punjab, Rajasthan and Jharkhand showed their disagreement for the
same (Farm Laws 2020 Explained, 2021). States of Chhattisgarh (From Competitive to Combative Federalism, 2020) and Punjab enacted their own legislation to counter the Centre legislations (Vasudeva, 2020). However, the issue was resolved by the Central Government thereafter.

6. Conclusion
It is not denied that a unique federalism with strong centre was adopted for the country by the constitutional framers as per the demand of that time. Inter-state Council, Zonal Councils, Recognition of public acts, records and judicial proceedings, free inter-state trade, commerce and intercourse, adjudication of inter-state disputes and exclusive authority of Parliament pertaining to the matters of national interests, implementation of foreign treaties, common interest of states, direction for the administration of states and financial arrangement have been arranged for promotion of co-operation. But, with liberalisation, privatization and globalization co-operative federalism started to shift to competitive federalism to achieve overall inclusive development while inviting other issues i.e., GST compensations to states, farmer enactments and withdrawal of consent for Central Bureau of Investigation becoming a threat to unity and integrity of nation.

Supreme Court observed “that the states do not possess political sovereignty for making them coordinate with each other and independent of the Union, and the concept of superiority of the Union over the states in manifold aspects negatives idea of the political sovereignty of the states” (State Of West Bengal v. Union of India, 1963).

It is submitted that co-operative federalism is basic element for maintaining unity and integrity of India. But, competitive federalism is equally required for overall development of the country. Therefore, a balance approach is required for maintaining unity and integrity and economic development of the country. Hon’ble Prime Minister stated that, “co-operative federalism is the foundation of India’s progress. Cooperation and competitive federalism should be made more effective and taken to the district level. The country has succeeded in managing the challenges posed by the Covid-19 pandemic only because the Centre and the States have worked together in a spirit of partnership” (Meetings Of Governing Council | NITI Aayog, n.d.).

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