

**Challenges to Cooperative federalism in India**Komal Chauhan<sup>312</sup>

Research Scholar, USLLS, GGSIPU, Delhi

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**ABSTRACT**

All democratic governments depend on statutory principles for their continued existence and expansion. In multi-cultural societies, the growing relevance of decentralization of authority cannot be ignored if the government is consistently committed to the freedom of all community groups. A democratic government can only use coercive force against its citizens to a limited extent, although the threat may be substantial. Therefore, governments should work with marginalized and sectarian groups to prevent their citizens from perceiving state authority as a threat. The objective is to avert any threat to the nation's very survival, and the government should intervene with solutions that benefit all segments of society. Consequently, cooperative federalism is becoming increasingly vital to the functioning of modern state governments.

In cooperative federalism, the Centre and the state maintain a horizontal relationship in which they cooperate for the greater good of the citizens. It is a crucial device that allows states to participate in the formulation and implementation of national policy. As the Centre and the states are required by the constitution to cooperate on matters specified in Schedule VII, this research paper attempts to assess the extent to which cooperative federalism has been ingrained in the Indian constitution from its inception. The paper thus attempts to identify the various challenges faced by the Indian federal system and to discuss the judiciary's role in resolving these issues.

**Keywords:** Federalism, Cooperation, challenges, India Constitution, Centre-State.

**Introduction**

The term "federalism" stems from the Latin term 'foedus', which means a contract, accord, or agreement. Federalism is a paradigm that specifies a system in which the government shares its authority between the national and state levels. The Constitution of India provides for the federal form of government. However, it is not federal in the sense of federalism in the USA where there is a strict distribution of powers. It is a federation of its own type that leans towards the centre strongly<sup>313</sup>. At the time of the partition, separatist movements among states were relatively common; therefore, the Constituent Assembly established the central government fairly strong in order to combat these tendencies. India's model of federalism is cooperative as has been laid by the State of Rajasthan v. Union of India<sup>314</sup>. Although federalism relates to dividing powers so that the national and regional administrations are independent within their own regions, cooperative federalism entails that these functions are to be exercised cooperatively by the federal government and its units.

Despite being a cherished constitutional ideal<sup>315</sup> in India, cooperative federalism has not yet been fully realised because the federal government is intrinsically more powerful than the state government. Although India's constitutional structure in tandem with executive acts and measures demonstrates the existence of cooperative federalism.

With time, centralised power was exploited beyond the justification of lingering fears of partition. As a result, we have gradually seen a shift in the Centre's approach to states, resulting in the straining of the Centre-state relationship. Recent inroads into the state-reserved areas include the recently implemented National Education Policy, Goods and Services Tax compensation, Farming Laws, vaccine distribution during the Covid-19 outbreak, and Centre-run programmes. Therefore, it becomes crucial to examine the contemporary challenges to cooperative federalism.

<sup>313</sup> *S.R. Bommai v. Union of India*, AIR 1994 SC 1918

<sup>314</sup> AIR 1977 SC 1361

<sup>315</sup> *Swaraj Abhiyan v. UOI*, A.I.R. 2017 S.C. 3516 (India)

<sup>312</sup> Research Scholar, USLLS, GGSIPU, Delhi

**Research Objectives**

- 1) To examine the concept, nature and need for cooperative federalism.
- 2) To examine the key challenges to cooperative federalism.
- 3) To analyse the constitutional provisions which have been incorporated into the Constitution that promote cooperation between the centre and states.
- 4) To provide suggestions for strengthening centre-state relationship.

**Research Questions**

- 1) What are the key challenges of cooperative federalism?
- 2) What are the major areas of conflict between the centre and states in India?
- 3) Is centralization a barrier to cooperative federalism under quasi-federalism?

**Research Methodology**

The researcher has adopted a doctrinal method of research for the purpose of critically analysing the dynamics of Centre-State relations. The sources comprise literary sources of authoritative books, journals, reports, articles, newspaper articles and judgements of the Supreme Court. Electronic resources were also looked into.

**Cooperative Federalism in India**

It is now a well-established fact the scheme of the Constitution of India and the corresponding political set-up does not follow the strict principle of federalism which has led to some thinkers describing the scheme as being “co-operative federalism”. Prof. Granville Austin was perhaps the first scholar who called the Indian scheme of federalism as being cooperative. He stated that the constitution of India was perhaps the first constituent body to embrace cooperative federalism. Cooperative federalism is a type of federal government wherein the State Government and the local governments share their responsibilities for proper governance of the State. They are regarded as mutually complementary parts of a single governmental mechanism whose powers are intended to realise the current purpose of

government according to their applicability to the problems at hand<sup>316</sup>.

**Need for Cooperative Federalism in India**

In India, federalism is characterised as an indestructible union of destructible states. The constituent assembly felt that states should be integral components of India, with no power to secede. As a result, a strong union was envisioned, and the constitution accorded the central government pre-eminence. Nevertheless, the states were given enough power to efficiently oversee and run local government. These categories are reflected in the Union, concurrent, and state lists of the seventh schedule. Cooperation between the centre and the state is essential for streamlining the development process and accelerating the development of all regions. This sort of cooperative federalism is even more essential in India because of its size, diversity, and vastness.

**Background**

The concept of federalism may be novel to the rest of the world, yet it has existed in India since antiquity. Due to the heterogeneity of various subcontinents, the central government previously employed non-interventionist approaches in local affairs. During the reign of some Mughal monarchs, however, centralization of authority tended to occur. However, with the Revolt of 1857, the British government ended its intervention policy.

The Regulating Act of 1773 was the impetus for cooperative federalism in modern India. In this instance, the English Crown oversaw the East India Company and delegated authority to the local government. The Government of India Act of 1919 foresaw a dual government arrangement known as dyarchy. In accordance with this, power will be shared between a British governor and the local administration. The Government of India Act of 1935 was enacted to achieve this dual government structure. From 1946 to 1950, the famous leaders of Indian independence were in charge of the constitutional framework. They convened a Constituent Assembly to frame the blueprint of India's constitution. They sought to

<sup>316</sup> The Constitution of U.S.A, Senate Doc., 14 (1953)

develop a political concept that would unify a fractured and divided country. Therefore, the members of the Assembly opted for a concentrated power structure. In the 1980s, the concept of centralising power gained prominence. The division of power between the union, states, and panchayats, however, later increased. This is how India's cooperative federalism fulfilled constitutional goals like unity, social justice, and democracy<sup>317</sup>.

### **Cooperative federalism under Indian Constitution**

1. Article 245 confers legislative authority to the Parliament to enact laws for the nation and to state legislatures to enact legislation for their respective states.
2. Article 246, when read in conjunction with Schedule VII, delineates the subjects on which the Centre and states may pass legislation.
3. Additionally, Article 261 accords full faith and credit to the public acts, documents, and judicial processes of the Union and the state, thereby fostering collaboration and faith.
4. Furthermore, Article 262 empowers the Parliament to resolve inter-state water disputes.
5. Article 263 authorises the formation of Inter-State Councils, which are tasked with investigating matters of common interest to the Centre and the states.
6. Article 312 enables All India Services, which are shared by the Union and the states.

### **Judicial Stance on Indian federalism**

In **SR Bommai v. Union of India**<sup>318</sup>, for the first time, it was held that it formed a part of the basic structure of the Indian Constitution and the Union can in no way restrict the powers of the States. The Constitution has clearly delineated the powers between the two Governments and the scheme of this distribution of powers cannot be so interpreted as to whittle down the sovereignty of the states. The States are independent in their fields to exercise full sovereignty. The Court warned the Union as well as the

Judges to be watchful and not dilute the vision of the Constitution by a narrow interpretation of the scheme of distribution of powers between the Union and the States.

Justice Jeevan Reddy concluded by stating that:

“The fact that under the scheme of our constitution, greater power is conferred upon the centre vis-à-vis the States does not mean that States are appendages of the centre. Within the sphere allowed to them, States are supreme. The centre 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 the principle of the outcome of our historical process and a recognition of the ground realities... enough to note that our constitution has certainly a bias towards centre vis'-a-vis the States.”

In the **State of Karnataka v. UOI**<sup>319</sup> case, Chief Justice Beg, delivering the majority view, stated that the Constitution of Indian has established a more “pragmatic federalism”. He went on to analyse the scope of the “basic structure theory” and answer the question as to ‘whether federalism is a part of the basic structure of the Constitution of India’. The Supreme Court held “federalism” as a restriction on the legislative powers of the Union based on the theory of basic structure cannot operate as the provisions in the Constitution nowhere expressly mention anywhere any restriction on the legislative powers of the Union. For this purpose, he had analysed the scope of Kesavananda Bharti case and the definition of “Union” under Article 1 and other provisions of the Constitution.

In the **State of Rajasthan v. UOI**<sup>320</sup>, the Bench was shy to exhaustively analyse the nature of federalism as envisioned in the Constitution, but holding back its reservation it discussed the concept with respect to the question at the hand-the scope of Article 356. On the question of the nature of federalism, the Court herein had interpreted the scheme of the constitution in the line of Justice Subba Rao in the West Bengal case.

<sup>317</sup> Varshney, A. (2013). How has Indian federalism done? Studies in Indian Politics, 1(1), 43–63.

<sup>318</sup> SR Bommai and Ors. v. UOI and Ors 1994 AIR 1918

<sup>319</sup> State of Karnataka v. UOI and Anr. 1978 AIR 68, 1978 SCR (2) 1

<sup>320</sup> State of Rajasthan & Ors. Etc. v. UOI Etc., 1977 AIR 1361.

J. Ramana in **Jindal Stainless v. State**<sup>321</sup> stated that the Union does not exist in isolation, but is rather a cooperative association of the State. Studies of constitutional histories reveal a deep-rooted presence, and lawful recognition, of cooperative federalism.

Consequently, to test whether the principle of federalism has been breached, we will consider which force, or cooperation, has been the driving element in the post-COVID era.

In **Kuldip Nayar V. UOI**<sup>322</sup>, the Court stated that the nature of federalism in India is no longer a matter of intense discussion as it was in the past. The earlier decisions of the Court in that regard are clear and so are the intentions of the drafters of the Constitution, that India essentially follows a federal system of governance. The features that take a departure from the strict adherence to the principle are to ensure stability. As the Indian Union is based on the fact of “holding together of different areas” than of the “coming together of constituent units as in the case of the U.S.A. and the confederation of Canada” the so-called unitary features only enhance the application of the principle of federalism. Drawing largely from the previous case of **S.R Bommai**, the Court in this case, reiterated that federalism is the basic structure of the Constitution and any amendment done to any should pass the test of federalism as envisioned in the Constitution by the drafters. And the drafters nowhere intended the States to act just as agents of the Union. They have accorded the States full sovereignty with respect to legislative and executive powers to regulate their State territory and the Union cannot encroach within that sphere.

The best example of Centre-state cooperation is the case of **Jaora Sugar Mills v Madhya Pradesh**<sup>323</sup>. In this case, the Madhya Pradesh Government enacted the Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958 which made a sugarcane cess payable as prescribed under the Act. This Act was later on found to be invalid since the legislative competence for the same rests with the Centre under the Union list. And so, it was struck down. But the

Parliament realized that this Act along with several other state Acts suffered from the same Constitutional inconsistency and infirmity.

### Current Trends in Co-operative Federalism in India

In the first meeting of the Governing Council of NITI Aayog, the Prime Minister of India Mr Narendra Modi called upon all the Chief Ministers to work with the centre to forge a new model of federalism- ‘competitive-cooperative’ federalism, wherein the states compete among themselves to promote the overall growth of Indian economy, by coming together to resolve differences and chart a common course to achieve this<sup>324</sup>. Further, it also envisions the States working together among themselves. But India has had an unstable past with this concept. The constant tug of war between the central and the State governments for power has been a constant bone of contention throughout the history of Indian federalism. But it is always dependent on the willingness of the Central Government to give life to the spirit of the Constitution even after seventy years of achieving Independence. Such dependence, in practice, weakens the core of Indian federalism as envisioned by our forefathers. The vision of the current government seems novel. It dissolved the Planning Commission and constituted the NITI Aayog with the aim to have a bottom-up approach. Further the passing of the GST Act, 2016 was also with the aim of furthering the spirit of cooperative federalism.

There is a need to come together today, not as a consequence of the new challenges faced by the nation but because it will serve as a cure to prevent such challenges from recurring in the future and cooperative federalism strengthens the nation from within by enabling it to stand against adverse situations and challenges because of its inherently strong base-unity.

### Challenges To Cooperative Federalism

#### 1. Over-centralization

<sup>321</sup> **Jindal Stainless v State of Haryana CIVIL APPEAL NO. 3453/2002**

<sup>322</sup> **Kuldip Nayar V. UOI AIR 2006 SC 3127**

<sup>323</sup> 1966 AIR 416, 1966 SCR (1) 573

<sup>324</sup> PIB Press Release, “PM focuses on Team India, as vision of cooperative competitive federalism to take National Development Agenda ahead”, 8.02.2015. Available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=115249>

As is well-known, India is a quasi-federal nation, with the Centre government possessing a significant amount of authority and resources. The central government's list contains more items than the state lists, giving it greater taxation authority. This is a significant obstacle to cooperative federalism in India. Over-centralization lessens a state's active participation. The Union government imposes many rules and regulations that several states perceive unjust, resulting in conflicts of interest between the Union government and the states. The taxation issue is one of the most pertinent examples of potential conflicts of interest resulting from excessive centralization. The centre is responsible for tax collection and distributing a certain portion of collected taxes to the states. The majority of states, however, allege that the central government is delaying the payment of their tax portion and abusing the constitutional authority granted to them<sup>325</sup>.

## 2. Regionalism

Constantly, regionalism is regarded as a formidable threat to cooperative federalism. Terrorists propagate a sense of regionalism against the nation's conventional political and administrative structure, posing a threat to national security. The policy is developed to satisfy regional demand, and often, those are extended to all regions of the country. As a result, state demands today dominate national policies. For instance, MSP given to sugarcane, it was beneficial to farmers in Maharashtra but it was implemented across all states, resulting in protests from farmers from UP, Punjab, and Haryana. Violence brought on by regionalism disrupts society as a whole; as a result, individuals are killed, students are prevented from attending schools and universities, tourism cannot be developed, and so on. This impairs the development of human resources, necessitates the deployment of additional forces to regulate the situation, and has a direct influence on the nation's economy. Affected societies continue to lag below the average rate of development, and regional heterogeneity and backwardness are manifestly imitated.

## 3. President's rule

<sup>325</sup> B Chandrashekhar, Cooperative federalism key to progress, The Hindu (Aug. 8, 2016)

On multiple times, the federal government has employed President Rule to suspend state governance. The federal government assumes direct authority of the affected states, and the Governor becomes their constitutional leader. Article 356 states that if the President is satisfied that a situation has occurred in which the government of a state cannot be conducted in accordance with the Constitution, he may issue proclamations dismissing the Councils of Ministers led by the Chief Minister of that state<sup>326</sup>. In *S.R. Bommai vs. Union of India*, the supreme court did place certain restrictions on the abuse of these powers, but this has had little effect on the current state of affairs.

## 4. Uniform Approach

The Centre while framing policies fails to take into account the heterogeneity of India. The one size fits all approach doesn't work in a diverse country like India. This uniform approach makes many states feel that their concerns aren't taken into consideration while framing policies. And this Uniform approach makes it difficult for the different states to get their local/regional problems addressed. This makes cooperation between the centre and the state very difficult.

## The trend in Legislative powers

While the Union and Concurrent Lists have expanded, the State List seems to have shrunk, and this has led many to question the structure of Indian federalism and to propose its remodelling. As widely recognized, India is quasi-federal, with powers and resources being highly tilted in favour of the Union. The Union list has more items than the state list enables more taxation power to the centre. This acts as a major roadblock to cooperative federalism in India. The excessive central character reduces the active participation of states.

## Devolution of Funds

The socio-economic parameters and development of each State in India are different and while a few have made substantial progress in terms of employment, literacy and creating a conducive environment for doing business and investments, there are a few which are lagging.

<sup>326</sup> Tosanbha Marwein, The Quasi Federal Nature of the Indian Political System, International Journal of Science and Research, 2018

Economically as well, there are deficit states or the backward regions or the states under debt. Such states which are lagging have protested against the uniform approach in funding because of their special situations in which the central government has to provide special funds to these states<sup>327</sup>.

### Challenges during the Covid-19 pandemic

Major challenges of cooperative federalism during the Covid-19 pandemic include the following: the imposition of pan-India policies on subjects strictly within the States' domain, prohibiting the sale of alcohol, withholding of GST compensation, the irregular supply of essential medical equipment during the initial phase of lockdown, denial of State disaster funds from the benefit of Corporate Social Responsibility (CSR) contributions, terms of reference (ToRs) for the 15th Finance Commission (FC) and failure to coordinate with States with regards to migrants return to their States initially. The several States couldn't ramp up testing earlier due to the unavailability of testing kits from the Centre. Many of them reportedly had to procure these from the market/abroad. The classifications of a zone into 'red' and 'orange' evoked vehement criticisms from several States. The States had asked for more autonomy in making such classifications. However, subsequent attempts of forging coordination between the Centre and the States mitigated the chances of political acrimony and policy ambiguity<sup>328</sup>.

### Interstate Water Dispute and Federalism

Because India is a federal democracy, and because rivers cross state boundaries, constructing efficient and equitable mechanisms for allocating river flows has long been an imperative legal and constitutional subject. The provisions of the Constitution relating to interstate water disputes give a good instance of cooperative federalism. In India, water primarily falls under the State list, except in the case of interstate rivers where the Central government can intervene. The problems are compounded by the

entanglement of inter-state water disputes with more general Centre-State conflicts. These impacts can be reduced by a more efficient design of mechanisms for negotiating inter-state water disputes<sup>329</sup>.

### Strengthening Federalism

1. Over the year multiple committees have recommended strengthening of Interstate Council where the concurrent list subjects can be debated and discussed, balancing Centre-state powers. There is far less institutional space to settle inter-state frictions therefore a constitutional institution like ISC can be a way forward.
2. Centre should form model laws with enough space for states to manoeuvre. The centre should give enough budgetary support to states to avoid the budgetary burden. There should be the least interference in the state subjects.
3. Democratic Decentralization of administration and strengthening governments at all levels in true spirit. Power should be decentralized based on the principle of subsidiarity.

### Conclusion

The cooperation among the Union government, the states and the local tiers lies at the heart of India's democracy and is the pre-requisites for India's growth. Though, a sound political undercurrent runs through it. All centre-state disputes are at their core, political disputes. This is the major reason for the difficult nature of centre-state relations. Such a dispute slowly ripens into an economic one. Bad politics leads to bad economics. Unless stagnation in the economic field and unbalanced regional development are not addressed, integration and solidarity in the federal set-up will not be complete. Both Centre and State governments must attend to the task of preserving our nationhood through constructive cooperative federalism which requires a great deal of commitment. The new challenges and issues need the centre and various states to come together. Terrorism, militancy, organized crimes, the

<sup>327</sup> Arora Balveer and Nirmal, *Federalism in India*, Vikas Publications, 2002

<sup>328</sup> Prakash Chandra Jha, *India's Cooperative Federalism during Covid-19 Pandemic*, Sage Publications, Feb 6, 2022

<sup>329</sup> Haris Jamil, *Interstate Water Dispute and Federalism*, Civil and Environmental Research, 2022

problem of internally displaced persons, and refugees' issue, all require that the country as a whole comes together. Cooperative federalism alone strengthens the nation from within by enabling it to withstand adversities and challenges because of its inherent resilience and malleability. Thus, efforts must be made toward cooperative federalism.

### Suggestions

1. The Zonal Councils should be reorganized under the provisions of Article 263 to give them a constitutional status, thus providing them with greater authority and flexibility for proper functioning.
2. The states should be encouraged to take a more active part in raising the funds for their developmental works. More grants should be provided to the poorer states which cannot raise funds as compared to the richer states.
3. The states should act for the overall development of the country and should not act only for their interests.
4. Thus, it is required that cooperative federalism is encouraged over the competitive relationship between the centre and the states.
5. India needs to move away from centralization-decentralization thinking, and embrace genuine fiscal federalism by permanently creating a fiscal power centre in the states.

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