

CO-OPERATIVE FEDERALISM V. COMPETITIVE FEDERALISM: CONTRADICTION YET SUPPORTIVE IDEA

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Abstract

The concept of federalism has grown to such a stage of democracy that it has bifurcated into two contradictory, yet supportive phenomena, for its effective execution. The primary focused aspects talked of in the study would be the success rate of co-operative federalism and an equivalently aiding role played by competitive federalism, which, in a way, standardizes the subsequent states to compete with the other state, setting the target of socio-economic growth and finally, confronting the Centre with their growth and development.

The study would be very optimistic and healthy, as it would lay its basic concern on the merits of co-operative federalism, along with the signing attributes of competitive federalism. To scrutinize various spheres of functional federal structure of the government, the help of some political stunts, in the form of legislations, like that of GST law, which have proved successful in some distinguished territories of the nation, and failed in the other, has been taken.

In the concluding strata of the paper, mainly the benefits of federally structured governance have been focused and some of the issues, obstructing the implementation of such objectives have been criticized. The two sides of the same coin can bring essence in governance and the nation can see light of the day if a balance is struck between the executions of both the phenomena. The need is to maintain the equilibrium and not just to bother the dark phase or the ill-effects of the system, which are caused by external agencies and the political pathogens.

Introduction

So proud does it feel in describing itself as the world's largest democracy- The Indian democracy stands in the feet of significance so long it is enrolled in a federal structure. While democracy deals with the majority stand, federalism is an attempt to accompany the minority to

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feel the taste of social justice and equality in the nation. Thus, it ensures a harmonious running of the entire system.

The idea of federalism has flexed the political system of the nation, and so to overcome the stress caused by certain uncertainties, the prolonged existence of the same does not simply require federalism, but cooperative and constructive federalism.²

Cooperative v. Competitive Federalism

Co-operative federalism talks about the relationship between Union and State governments- in the matters of legislation, finance and administration. Schedule 7 of the Constitution of India lays down the structure of Union List, State List and Concurrent List- based on which the execution of the functions of the Union and State governments is decided. The division of powers between the two spheres, i.e. State and Union, ensures smooth, effective and stable governance in the country. Schedule 7 of the Indian Constitution demands cooperation between the Union and the states. In order to strengthen the roots of cooperative federalism, the idea of Panchayati Raj in rural sector and Municipality in the urban sector was introduced in the Indian Constitution. Thus, cooperative federalism is a concrete part of the Indian Constitution and cannot be very easily amended or deleted from it.³

Examples of Cooperative federalism

1. NITI Ayog is formed with an objective of making states a voluntary party to the plans and policies of development of the government;
2. States have been given liberty to choose a central scheme as per their need and cause effect to it as per their convenience;
3. Joint effort between Union and states to carry out national infrastructure projects like rail projects.⁴

On the other hand, competitive federalism denotes the relationship between two or more states, and not between the Union and the states, to deal with investment, financial,

²Arvind Subramanian, Indian federalism, (Mar. 5, 2018, 2:17 PM), www.discoverias.in/polity/strengthen.

³ V.K.Gupta, UPSC Mains Samvegias, UPSC Mains Initiative, (Mar. 6, 2018, 10:54 PM), www.targetupsc17.wordpress.com.

⁴V.K.Gupta, *supra* note 4.

administrative, etc. affairs. The states compete with each other to fetch or pursue administrative efficiency and enhance development as well. The Centre makes rules and provides directions for this competition. The investors prefer to invest in more developed states. This stimulates the flow of economy and brings the social and physical infrastructure of a state into motion towards development. Thus, a healthy competition among the states ensures more socio-economic and physico-social equilibrium. Hence, in simple and confined terms, competitive federalism can be said to mean- No work, No money; More work, More Money.⁵

The competition among the states provides a platform for development. It actually provides an opportunity to the states to make and implement the policies as per their needs, and to extract the effectiveness out of those policies. It lets the states to develop more than the other. The competition is actually a developmental fight. Every state wishes to attract more investors towards it. The percentage of investment decides the development of a state. It has been recognized by India that the progress of the nation lies in the progress of its states. Thus, competitive federalism came out as the decision of the Executive, keeping in notice the progress of the nation, though competitive federalism is not part of the basic structure of the Indian Constitution.⁶

Examples of Competitive Federalism

1. Rajasthan and many other states have reformed their labour laws to attract more investment and also the industrial expansion, that would result in more employment;
2. State allowances to plan for smart city program;
3. Promotion of global investment summit by Uttar Pradesh, Maharashtra, etc. to attract more investment.⁷

Role of Inter-State Council

B.R. Ambedkar once described India and its states as, “One integral whole, its people a single people living under a single imperium derived from a single source.” Taking reference from this statement, Article 1 of the Indian Constitution provides for a Union of States, whereby

⁵V.K.Gupta, *supra* note 4, at 7.

⁶*Id.* at 8.

⁷*Ibid.*

laying a federal structure, but unitary spirit of India. The Constitution of India prescribes a unitary spirit despite being setup on the fundamental principle of fusion of powers between the Legislature and the Executive. The separation of powers through the three lists⁸, i.e. Union List, State List and Concurrent List, as enshrined in Article 246, and the separation of powers between the Judiciary and the Executive⁹ as provided under Article 50, is done in order to politically integrate unite the nation and to ensure an equitable distribution of resources, thereby achieving a socio-economic equilibrium, and delivering all forms of social, economic and political justice to every resident and citizen of India. The need of the hour to maintain the success ratio of governance in the country is to administer the togetherness of the Centre, states and the local authorities, to achieve common constitutional goals. Thus, it proves the implementation of the policy of cooperative federalism, in the context of policy-making and implementation, with a participatory approach of the authoritative bodies.¹⁰

The Supreme Court in *State of West Bengal v. Union of India*¹¹ neglected the absoluteness of federalism in India. Moreover, it held that the modern federal structure differs from the traditional design due to the following aspects:-

1. Both Centre and state possess a single Constitution;
2. Parliament alone has the power of amending the Constitution; (Golak Nath's case¹²)
3. Review of any action to be conducted under the supremacy of the Constitution.

In *State of Rajasthan v. Union of India*¹³, Constitution was stated to be perhaps the first document to incorporate the idea of cooperative federalism. The Court also emphasized that the Indian Constitution is an 'amphibian', i.e. the Centre may move or float on federal or unitary planes, respectively, according to its needs.

⁸INDIA CONST. art. 246.

⁹INDIA CONST. art. 50.

¹⁰CBP Srivastava, Strengthening India's cooperative and competitive federalism through inter-state council, (Mar. 9, 2018, 6:23 PM), www.salrj.ccinternational.in.

¹¹State of West Bengal v. Union of India, AIR 1963 SC 1241 (India).

¹²Golak Nath v. State of Punjab, AIR 1967 SC 1643 (India).

¹³State of Rajasthan v. Union of India, AIR 1977 SC 1361 (India).

But, the Court in *S.R.Bommai v. Union of India*¹⁴ held that India's federalism shall be called as 'pragmatic' which advocates that while distributing the legislative powers between the Central and the State governments, the Constitution has maintained a strong unitary character.

Based on the directives laid down by the Supreme Court in *Dabur India Limited v. State of Uttar Pradesh*¹⁵, an Inter-State Council, mandated to inquire into and advise upon the disputes arising between the states, was established, in accordance with Article 263 of the Indian Constitution, on 28 May, 1990. The council aided in bridging the trust deficit between the Centre and the states. If not always ensuring a problem solving success, it at least played a role of safety valve.

Under the executive functioning of the Inter-State Council, a signal of reiteration of both the Centre and the states, to strengthen the inter-state relations is received by the Council, which indicates to develop such relations that would help in achieving the goals set by the Constitution. An instance of this can be derived from the step taken in November, 2017 to reconstitute the Council. According to a gazette notification, the Union Ministers who will be the members of the reconstituted Council are the Ministers for Home Affairs, External Affairs, Finance, Road Transport, Social Justice and Empowerment and Defence. Chief Ministers of all states and Union Territories having legislative assemblies will also be members of the Council. Eight other Union Ministers have been made permanent invitees to the Council. They are the Ministers of Commerce, Food, Food Processing Industries, Tribal Affairs, Human Resource Development, Petroleum and Railways. The standing committee of the Inter-State Council has also been reconstituted under the chairmanship of Home Minister. Four Union Ministers and seven Chief Ministers are members of the new standing committee of the Council. The matters for reconsideration of the Council and the processing of all matters pertaining to Centre-State relations before taken up for consideration in the Council will be recommended by the reconstituted Council. Moreover, the implementation of any decision taken on the recommendation of the Council shall also be monitored by the reconstituted Council.¹⁶

¹⁴S.R.Bommai v. Union of India, AIR 1994 SC 1918 (India).

¹⁵Dabur India Limited v. State of Uttar Pradesh, AIR 1990 SC 1814 (India).

¹⁶CBP Srivastava, *supra* note 11, at 17.

Competitive Federalism is the relationship between the Centre and States in vertically competitive form or among the states in horizontally competitive form. With the increase in globalization and economic liberalization in the post-cold war era, the practical philosophy of competitive federalism proposed a greater significance assuming a free-market economy to be the realistic spirit of competition in the existing era. The competition is amongst the states and at the same time with the Centre as well to gain benefits.¹⁷

Increasing globalization, however simplified the already existing imbalances on economic and administrative grounds between the states. A blow to states' liberty to formulate their own growth and developmental policies is faced at this stage of mass globalization.

Keeping the purview of the observation in notice, it was questioned that the greater is the competition, the lesser will be co-operation. Thus, a need arose to have crystal clear idea of having a blend of both cooperative and competitive federalism. It was cleared as to have cooperative or competitive federalism, one thing is for sure that the states should be permitted to make a sketch or design their programmes and schemes with much better financial strength and self-sufficiency, while observing financial prudence, wisdom and discipline. According to the recommendations made by the Fourteenth Finance Commission (FFC), the Centre delegated 42 per cent from its pool to the states. This step of the Commission appears to be in resonance with the policy of expecting a mixture of cooperative and competitive federalism.¹⁸

Moving towards Competitive Federalism from Cooperative Federalism (Steps taken in this regard)¹⁹

1. The Planning Commission has been replaced with NITI Aayog by the government. The prime objective and mandate of the NITI Aayog is to develop competitive federalism. Under it;
 - a. State governments would not seek Centre's support to formulate or implement policy guidelines and monetary resources. States will have full liberty to plan and strategize their expenditure based on their priorities;

¹⁷Arvind Subramanian, *supra* note 3, at 312.

¹⁸Upasna Chaudary, India needs a mix of competitive and cooperative federalism, (Mar. 15, 2018, 5:05 PM), www.livemint.com.

¹⁹Shiv Prasad Kapoor, Moving towards competitive federalism from cooperative federalism, Forum IAS, (Mar. 15, 2018, 6:26 PM), www.forumias.com.

- b. In matters of national objectives, states would work hand-in-hand with the Centre on a shared vision;
 - c. The formulation of credible plans would be done at the village level and would progress at higher levels subsequently.
2. The schemes sponsored at Central level have been restructured;
 3. Implementation of the financial sector bailout programme under UDAY scheme;
 4. Swachh Bharat ranking system.

NITI Aayog: Promoting Cooperative, Competitive Federalism

NITI Aayog is a Planning Commission created by the present NDA government under Prime Minister Narendra Modi. The institute, known as the National Institution for Transforming India Aayog is symbolic of the PM's general theme. His distinguished opinion has been reverberated by Chief Ministers of different states from time to time, largely from the opposition ruled states of the time. The meetings held on 6th and 8th of February 2015 under the chairmanship of the Prime Minister Narendra Modi are symbolic of the silver lining in the functioning of the Aayog in enabling states competing with each other to promote governance initiatives in the spirit of "cooperative competitive federalism".²⁰

The Prime Minister, in the meeting, highlighted that a crucial object of NITI Aayog was to establish a dynamic and sophisticated administrative mechanism where eminent scholarly individuals outside the government system could contribute to policy making. To satisfy this objective, he made a statement in the meeting which reads as, "Forgetting all our differences, let us focus on the cycle of investment, growth, job creation and prosperity". Such a statement merely assures the likely nature of cooperative federalism that might be seen in the future.²¹

The main goal of the Aayog is seen to be the rationalization of 66 central schemes on various skill development programs making Clean India a succeeding program to the formation of three CM sub-committees. A check is also made by the PM on the hastening of the timely decisions to be given in the nature of the project and has asked, in this regard, the CMs to pay personal attention in matters that hold up the projects. But it can be inferred that not only the

²⁰Manoj Kataria, NITI Aayog: promoting cooperative, competitive federalism, Team Interface, (Mar. 14, 2018, 4:40 PM), www.insightsonindia.com.

²¹*Ibid.*

onus is put upon the CMs to slow down the implementation of the concerned projects for the betterment of the state, but also the state is made an attractive investment destination for the investors- a kind of competitive federalism.²²

The states have been given a greater scope to get united and learn from each other, yet it is bit obvious that the states must work to fulfill their role in promoting the national objects. Thus, it is true that the nation as a whole cannot advance without the healthy participation in equal advancement of its constituent states.²³

When the Yojana Aayog, a sixty four year old institution was scrapped with the help of an executive order, was it easy? The Aayog, or the Planning Commission was created in 1951 to show our nation's commitment towards centralised planning. Today, we have a NITI Aayog, created by the present NDA government under PM Narendra Modi. The institute, known as the National Institution for Transforming India Aayog is certainly symbolic of the PM's general theme and doesn't fail to raise a few eyebrows.

It is well known that our current PM was at logger heads with the erstwhile Yojana Aayog when he was CM of Gujarat-a leading industrialised state of India. He has always criticised the role of Yojana Aayog for its high-handedness in disbursing the grants to the states and its one size fits all policy for the states. This is evident from his tweet on 1st January, 2015 which said "Through the NITI Aayog, we bid farewell to one-size -fits all approach towards development. The body celebrates India's diversity and plurality". His dissent has also been echoed by CMs of other states from time to time, largely from the opposition ruled states of the time.

Interestingly, the new structure of the NITI Aayog may be criticised as old wine in a new bottle. The NITI Aayog has retained the earlier member secretary as the current CEO. Its members (Bibek Debroy and V K Saraswat) and the Deputy Chairperson (Arvind Panagariya, a follower of Jagdish Bhagwati, an economist who praised the Gujarat model of development) are close to the ruling political parties.

²²Manoj Kataria, *supra* note 21, at 27.

²³*Ibid.*

On 6th February, in his first Aayog meeting with top economists of the country, the PM set the agenda in the backdrop of the sharp fall in crude prices and a favourable global sentiment towards India. He asked the economists to share their candid views on making the ensuing budget growth oriented and bringing investors back to the country.

Specifically, he asked for suggestions to perk up revenue mobilisation and ways to put India back on a high growth path. He further highlighted that an important objective of NITI Aayog was to establish a dynamic institutional mechanisms where ‘eminent individuals outside the government system’ could contribute to policy making. Economists known for their candid opinions stressed the need for giving importance to the agriculture sector, rural infrastructure and fiscal prudence with the overall objective of poverty alleviation.

The Governing Council meeting is scheduled to be on 8th February, where the PM, CMs and Lt. Governors will meet at the PM’s residence. Although it might appear to be similar to the National Development Council (NDC) meet under the aegis of the erstwhile Yojana Aayog, it is different in the way it is conducted. Unlike earlier, this time the PM, CMs and Lt Governors will be equal partners, with the ensuing discussions with minimal bureaucracy. One might recall the meeting on 7th December, when the PM met the CMs at his residence, which was highly appreciated for its non-formal yet highly productive outcome.

The priorities for the Aayog are evident with the suggestions for rationalisation of 66 central schemes on skill development and making Clean India a continuous program leading to the formation of three CM sub-committees. In addition, the PM also noted that projects are often held up for want of timely decisions and has asked chief ministers “to give personal attention” to factors that slow down projects. In a subtle manner, this not only puts the onus on CMs to hasten implementation of projects for betterment of the state, but also make the state an attractive investment destination – a kind of competitive federalism.

He further asked states to set up two task forces to help the country solve the poverty issue and increase the agricultural production-overarching development paradigm of the country. This meeting further emphasised the intention of the Centre towards empowering the states with finances, technology and knowledge to enhance planning and execution. Further, the provisions

in the Cabinet Resolution in setting up NITI Aayog do provide some scope for the appointment of Regional Councils with specific mandates for specific time periods, with the objective that these councils could help forge cooperation among two or more states facing a common set of problems or amicably settle disputes that delay progress. Also, these councils could catalyse joint projects involving travel, transportation and tourism across member states.

Given the greater scope for states to work together and learn from each other, it is obvious that for federalism to work well, these states must also fulfil their role in promoting the shared national objectives. It is true that India cannot advance without all its states advancing in tandem but it may so happen that by not granting the statutory status for the NITI Aayog, PM Modi has made it vulnerable to future ambush under a different political dispensation and pretext, not unlike what he did in killing an epitome of the Nehruvian legacy- the Yojana Aayog.

Some examples of States moving towards competitive federalism²⁴

1. Gujarat, in order to attract more investment, has amended its Land Acquisition Act;
2. Maharashtra, in order to permit certain publicly-owned lands, has amended the Maharashtra Land Revenue Code;
3. Gujarat and Karnataka have declared various amendments in the labour laws;
4. Uttar Pradesh has confirmed the Uttar Pradesh Information Technology & Start-Up Policy 2016.

Obstacles in the process of competitive federalism

While the competition between states, reflected in the World Bank's Ease of Doing Business index, has generated a lot of enthusiasm, this must be a continuing exercise. There are only few well-off states like Maharashtra, Gujarat, and Tamil Nadu which are competing. The present inter-state competition in attracting investment is too early to determine whether it will really encourage competitive patterns of investment on a continuous basis. There are varied economic patterns in different states. There are deficit states or the backward regions or the states under debt. Those states should not be treated on par with the well-off states. The states like West Bengal, Bihar, Orissa, and Assam have protested against the uniform approach in funding

²⁴N.K.Singh, An Unfinished Agenda of Federalism, (Mar. 13, 2018, 3:37 PM), www.academy.gktoday.com.

because of their special situations in which the central government has to provide special funds to these states. Without special funding these states cannot imagine their participation in competitive federalism. Though the states are provided with financial independence, it is a fallacy to assume that all the states would perform uniformly in the process of development because while some states have favorable factors like skilled labour, capital and infrastructure, innovative service industries other states lagging behind.

For that states with unfavorable climate still need the help from Centre. The proposed GST law may help some of the less productive States to raise the revenue as the tax will be a destination-based levy. But the opposition of few well-off states with respect to revenue loss in implementation of GST system points that there is lack of will in participating in the process of competitive federalism.

Conclusion

Cooperative and Competitive federalism are not mutually exclusive. They have common fundamental underlying principle- progress of the Nation as a 'Unit'. While executing the main object of bifurcated federal structure, there are many obstacles which arise in the path of competitive federalism. In practice, there are only few distinguished states like Maharashtra, Tamil Nadu and Gujarat that are actually competing. The assurance of its longevity cannot be given in view of practice that it would really generate higher investment rate in a state. This is because all the states cannot be treated on par as some of the states are deficit states or the states under debt. That is why, the states like those of Bihar, Orissa, West Bengal and Assam have protested against the uniform system of the implementation of federal policy. These states have demanded special funds from the Central Government. Without special funding, these states cannot even imagine of being a part of competitive federalism. It is also not true to say that all the states would develop at the same pace and would attract same investment, because of lack of skills, resources, capital, infrastructure, etc. Some states face climatic uncertainties that again generate a need to knock the doors of the Centre for fiscal assistance.

Hence, it can be concluded that competitive federalism is not welcomed whole-heartedly by every state. But still a handful of states are working hour-long to strengthen their internal powers in matters of business, finance, administration, etc. to cope up with the neighboring

states. It is well-said that “Strong States make Strong Nation” and to fulfill this slogan, a “Team India” approach is required to work for India’s development- that is to say that Cooperative and Competitive hands are to work in co-ordination to yield development of this nation.