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Harmony in Hierarchy- Analyzing Centre-State Dynamics with Cooperative Federalism

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*The Constitution of India envisages two tiers of Government, one at the level of the Union, and the other at the level of the States. From a functional standpoint, such a constitution is a symbol of dynamism thereby endorsing a quasi-federal structure that is neither purely unitary nor purely federal but is a combination of both,¹ wherein the centre and the states adopt myriad cumbersome yet collaborative approaches for administration in consonance with the powers granted by the constitution. Within this process, the interplay of centrifugal forces influenced by changing social, economic, and political environments, strives to find **new adjustments of “the balance of State power and the powers of the states”**. The very dynamism of the constitution brings in its wake problems and conflicts in the working of Union-State relations which can be averted by certain checks and balances. It is with the vision to uphold these checks and balances that the Sarkaria Commission was formed, chaired by Hon’ble Retired Justice RS Sarkaria in 1983. The report submitted in 1988², explained the importance of centre-state relations while manifestly applying the concept of cooperative federalism to reduce hiccups caused by tussles in the political hierarchy proving, that it is essential for the centre and the state to work as a team else, it can overshadow the merits of our constitutional set-up. This paper aims to convey to the readers the relevance of this concept today even after 40 years to attune the centre-state relations to the changing times with common endeavour and effort ensuring good governance.*

¹ Ministry of Home Affairs, Report of the Sarkaria Commission (1983)

² Ibid

Keywords: *constitution, sarkaria commission, cooperative federalism.*

INTRODUCTION TO FEDERALISM

The term federalism originated from the Latin word “*foedus*”, which means treaty or agreement. A federation is a new state policy combining the principle of centralization and the power of non-centralized units³. Johannes Althusius is considered the father of modern federalism along with Montesquieu. In the *Spirit of the Laws*, Montesquieu for his part sees a federalist republic as an ‘assemblage of societies’. He says that- ‘...Mankind would probably *have been, at length, obliged to live constantly under the government of a single person, had they not contrived a kind of constitution that has all the internal advantages of a republican, together with the external force of a monarchical, government. I mean, a confederate republic.... It is a kind of assemblage of societies, that constitute a new one, capable of increasing using further associations, till they arrive at such a degree of power, as to be able to provide for the security of the whole body*⁴. One of the Federalist papers which were published in newspapers in the United States at the time of the formation of its constitution by their forefathers, contained an essay by James Madison, published by The Independent Journal (New York)⁵ in, 1788 in which Madison defines a republican form of government, and he also considers whether the nation is federal or national: a confederacy, or consolidation of states.

Federalism in the modern era was first adopted in the unions of states during the Old Swiss Confederacy. Some prominent federations include Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Canada, Ethiopia, Germany, India, Iraq, Malaysia, the United Arab Emirates, the United States, Venezuela and other nations. Some characterize the European Union as the pioneering example of federalism in a multi-state setting, in a concept termed the ‘federal union of states’⁶. India however is a federal system but with a smattering of the unitary

³ Prajjwal, ‘Cooperative Federalism’ (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-4882-cooperative-federalism.html>> accessed 14 June 2024

⁴ Charles Louis de Secondat and Baron de Montesquieu, *The Spirit of Laws* (vol 1, Ingram Short Title 2011)

⁵ James Madison, ‘The Federalist Number 39, [16 January] 1788’ (*National Archives*, 16 January 1788) <<https://founders.archives.gov/documents/Madison/01-10-02-0234>> accessed June 18 2024

⁶ Dejan Guzina, *Federalism and Regional Autonomy* (Oxford University Press 2017)

system of government as followed in Great Britain. Article 1 of the Indian Constitution reads, '*India, that is Bharat, shall be a union of states*'⁷. Although India is not called a 'federation of states', the Constitution has espoused a federal character but the distinguishing feature is that India is a flexible federation⁸. The elements of federalism were introduced into modern India by the Government of India Act of 1919⁹ which separated powers between the center and the provincial legislatures.

Federalism is sometimes viewed in the context of international negotiation as 'the best system for integrating diverse nations, ethnic groups, or combatant parties, all of whom may have cause to fear control by an overly powerful centre.'¹⁰ However, those sceptical of federal prescriptions sometimes believe that increased regional autonomy can ultimately lead to secession or dissolution of the nation.¹¹ In describing the relationship between the Federal and State Governments in the U.S.A., Lord Bryce has said: '*The Central or national Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other.*'¹² The United States espouses absolute federalism but albeit having an independent union and state machinery it did suffer problems such as stark economic differences across several states. In 2014, Maryland had the highest median household income (\$73,971), while Mississippi had the lowest (\$39,680). There were also huge disparities in school funding across states. In 2013, New York spent \$19,818 per student for elementary and secondary education, while Utah spent \$6,555. Furthermore, healthcare access, costs, and quality varied greatly across states. Despite such shortcomings the US did have, several breakthroughs, such as child labour laws, were inspired by state policies. An American citizen enjoys dual citizenship as there is a dual polity in the country which gives him access to social security measures and employment opportunities. California for instance had led the way in establishing

⁷ Constitution of India 1950, art 1

⁸ 'Constituent Assembly Debates Volume 7 04 Nov 1948' (*Constitution of India*)
<<https://www.constitutionofindia.net/debates/04-nov-1948/>> accessed 15 June 2024

⁹ Government of India Act 1919

¹⁰ Michael Meyer-Resende, 'Why Talk of Federalism Won't Help Peace in Syria' (*Foreign Policy*, 18 March 2017)
<<https://foreignpolicy.com/2016/03/18/why-talk-of-federalism-wont-help-peace-in-syria-assad/>> accessed 14 June 2024

¹¹ *Ibid*

¹² Constituent Assembly Debates Volume 7 04 Nov 1948 (n 8)

auto emission standards for fuel emissions¹³ and other environmental policies. Recently, the health insurance exchanges run by Connecticut, Kentucky, Rhode Island, and Washington have served as models for other states seeking to improve the performance of their exchanges.¹⁴

In toto, the federal structure of governance is fraught with flaws but not devoid of perks. It may set off a race to the bottom among states, cause cross-state economic and social disparities, and obstruct efforts to address national problems¹⁵. Hence, for the centre and the states to function cohesively without being an apple of discord, cooperative federalism which is a balanced mixture of unitary and federal structures will prove to be a prompt solution.

RECOMMENDATIONS OF THE SARKARIA COMMISSION (AN OVERVIEW)

The three-member¹⁶ commission was set up in June 1983 by the then prime minister Indira Gandhi which was chaired by Hon'ble Retired Justice RS Sarkaria with the primary objective to discuss upon the relations between the centre and the state. The committee submitted a report in the year 1988 which contained around 247-250 recommendations in line with the provisions of the constitution.¹⁷ These recommendations were not binding on the Government and were advisory. Among these recommendations, The Supreme Court has frequently emphasized¹⁸ the importance of those related to the **formation of an Inter-state Council, the appointment of a governor, and Article 356¹⁹ of the constitution.** Let us discuss each one of them.

(i) The Role of a Governor

¹³ Nicholas Bryner and Meredeith Hankins, 'Why California Gets to Write Its Own Auto Emissions Standards' (*The Conversation*, 06 April 2018) <<https://theconversation.com/why-california-gets-to-write-its-own-auto-emissions-standards-5-questions-answered-94379>> accessed 16 June 2024

¹⁴ Christine Vestal and Michael Ollove, 'Why Some State-Run Health Exchanges Worked' (*USA Today*, 10 December 2013) <<https://www.usatoday.com/story/news/nation/2013/12/10/stateline-health-exchange-aca/3951043/>> accessed 16 June 2024

¹⁵ 'Advantages and Disadvantages of Federalism' (*University of Central Florida*) <<https://pressbooks.online.ucf.edu/amnatgov/chapter/advantages-and-disadvantages-of-federalism/>> accessed 16 July 2024

¹⁶ Ministry of Home Affairs (n 1)

¹⁷ Constitution of India 1950

¹⁸ 'Summary of Sarkaria Commission Report on Center State Relations' (*Forum IAS*, 23 November 2024)

<<https://forumias.com/blog/summary-of-sarkaria-commission-report-on-center-state-relations/>> accessed 16 July 2024

¹⁹ Constitution of India 1950, art 356

Some essential recommendations in chapter IV of the report include a national policy to be brought into effect which can help the union and the states to collaborate with the governor keeping in mind the national objective of defending our democracy.²⁰ A politician from the ruling party at the Union shouldn't be appointed as Governor of a State which is being run by some other party or a combination of other parties. To ensure effective consultation with the state Chief Minister in the selection of the governor the procedure of consultation should be prescribed in the Constitution itself by suitably amending Article 155. The Vice-President of India and the Speaker of the Lok Sabha may be consulted by the Prime Minister in selecting a Governor. The Consultation should be confidential and informal and should not be a matter of constitutional obligation²¹.

The above recommendations are the most essential of all viz the role of a governor which can be implemented using the constitutional provisions. The Constitution states that normally there shall be a Governor for each State (Article 153)²². The Governor is appointed by the President and holds office at his pleasure [Articles 155 & 156(1)]²³. Article 154²⁴ vests the executive power of the State in the Governor who exercises it either directly or through officers subordinate to him by the Constitution. Under Article 163(1)²⁵, he exercises almost all his executive and legislative functions with the aid and advice of his Council of Ministers. However, article 163(2)²⁶ states that if any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. And in 163(3) it is stated that the question of whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

²⁰ Ministry of Home Affairs (n 1)

²¹ *Ibid*

²² Constitution of India 1950, art 153

²³ Constitution of India 1950, arts 155-156

²⁴ Constitution of India 1950, art 154

²⁵ Constitution of India 1950, art 163(1)

²⁶ Constitution of India 1950, art 163(2)

We can see the irony that the governor and the council work hand in hand and heart to heart but the discretion of the governor (163(2)) and the advice of the ministers (163(3)) is the supreme verdict. This results in the supremacy of the discretion of the governor and the advice of the ministers too. To prevent abuse of such discretionary powers, the Supreme Court held in the *Arunachal Pradesh Prez. rule case*²⁷ that the Governor's power to summon the House is not solely to be exercised by the Governor himself, but only on the advice of the Council of Ministers. The court further emphasized that the Governor is not elected personnel and is a mere nominee of the President, and thus the Governor cannot have overridden power over the representatives of people from the Houses of the legislature. Article 174 of the Indian Constitution grants power to the Governor to summon, dissolve, and prorogue the State Legislative Assembly. This power can be exercised by the Governor under Article 163 only with the aid of the Council of Ministers and Chief Minister. The Court held that the Governor does not possess wide discretionary powers and cannot thereby, summon the House, address the Assembly, or determine agendas without consultation with Ministers.

(ii) Formation of an inter-governmental council

Article 263 of the constitution²⁸ allows the President to establish a Council deputed with the duty of inquiring into and advising upon disputes, investigating and discussing subjects in which some or all of the States; or making recommendations for better coordination. Using this basis the commission has made some recommendations in Chapter IX about The General Body meetings of the IGC²⁹, conditions about who shall constitute the standing committee and the council election of the chief ministers in zonal councils³⁰ among others. Such councils were set up to resolve conflicts between states and the interstate water tribunal is a good example which was set up under Art 262 with the help of Art 263 to solve the interstate water disputes between Karnataka and Tamil Nadu³¹. Chapter XVII of the report makes some recommendations for the amendment of the Inter-State Water Disputes Act to empower the Union Government to appoint

²⁷ *Nabam Rebianand Bamang Felix v Deputy Speaker* (2016) 11 SCC 673

²⁸ Constitution of India 1950, art 263

²⁹ Ministry of Home Affairs (n 1)

³⁰ *Ibid*

³¹ *T.N. Cauvery Sangam v Union of India* (1990) 3 SCR 83

a Tribunal, *Suo motu* when it is satisfied that such a dispute exists in fact and for the formation of a databank and information system at the national level³². The states shall be required to give the necessary data³³ for which purpose the Tribunal shall be vested with the powers of a Court. Such provisions have also helped in dealing with the *Mahadayi* river dispute between Karnataka and Goa and the *Kaveri* water dispute between Karnataka and Tamil Nadu by setting up tribunals³⁴ for solving both of them respectively.

(iii) Declaration of emergency (art 356)

The Emergency Provisions of the Constitution form a fasciculus of nine Articles giving the President overriding authority to assume and exercise powers to deal with four types of extraordinary situations- (a) A situation of grave emergency whereby the security of India or any part of its territory is threatened by war or external aggression or armed rebellion. (Articles 352 and related Articles: 353, 354, 358, and 359). (b) A situation involving the breakdown of constitutional machinery in a State, i.e. where the Government of the State cannot be carried on by the provisions of the Constitution (Articles 356 and 357). (c) A situation of 'external aggression' and/or 'internal disturbance' which is not grave enough to satisfy the requirements of either Article 352 or 356, but calls for other action by the Union under the first part of Article 355. (d) A situation where the financial stability or credit of India or any part thereof is threatened enabling the Union to give suitable directions (Article 360). 'Emergency' under Article 352 was declared for the first time in October 1962 following the Chinese aggression and was revoked only in January 1968. 'Emergency' was proclaimed again in December 1971 in connection with 'external aggression'. While this proclamation was already in force, a fresh proclamation of Emergency on the ground of 'internal disturbance' was issued in June 1975 which was in force till March 1977.

Here If the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, he may, by Proclamation, make a declaration to

³² Ministry of Home Affairs (n 1)

³³ *Ibid*

³⁴ Divya Chandrababu, 'Water wars: Disputes over sharing natural resources' *Hindustan Times* (11 July 2023) <<https://www.hindustantimes.com/environment/water-wars-disputes-over-sharing-natural-resources-101689017609212.html>>accessed 17 June 2024

that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the Proclamation³⁵ and the case of a specific state or territory, the receipt of a report of the governor of the concerned state is a prerequisite for proclaiming an emergency by assuming the functions of the particular state government while making incidental and consequential provisions³⁶ by the constitutional fabric.

To ensure that the usage of these powers is commensurate with the conditions specified for its use, the commission in chapter VI of its report made some recommendations that are worth of mention. It stated that Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives fail to prevent or rectify a breakdown of constitutional machinery in the State. The availability and choice of these alternatives will depend on the exigencies of the situation.³⁷ A warning should be issued to the errant State, in specific terms, that it is not carrying on the government of the State by the Constitution. If the important ingredients described in the report are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend a proclamation of the President's rule without dissolving the Assembly³⁸. The Governor's report, based on which a Proclamation under Article 356(1)³⁹ is issued, should be given wide publicity in the mainstream media and in full.

A good example of the implementation of these recommendations is the landmark case of *SR Bommai v UOI*⁴⁰ in which the Supreme Court held that the powers granted in the provisions of emergency should be utilized by the President with great caution. The court had also referred to the points in the report of the Sarkaria Commission and stated that the proclamation issued by the President must be thoroughly analyzed by both houses of the Parliament as per Article

³⁵ Constitution of India 1950, art 352(1)

³⁶ Constitution of India 1950, art 354(1)

³⁷ Ministry of Home Affairs (n 1)

³⁸ *Ibid*

³⁹ Constitution of India 1950, art 356(1)

⁴⁰ *S.R. Bommai v Union of India* (1994) 3 SCC 1

356(3). It was also held that the president's power to dismiss a state government was not undivided or absolute⁴¹.

RELEVANCE IN NATION BUILDING (Events in the 20th and 21st Century)

The concept of federalism by cooperation has shown its relevance in recent times in the process of nation-building. Cooperative federalism is a concept of federalism in which national, state, and local governments increasingly interact cooperatively and collectively to solve common problems. The Indian model of federalism is predominantly 'cooperative' as laid down by the Supreme Court in the *State of Rajasthan v Union of India*, 1977⁴². The constitution has applied this concept by the provision of a 'Concurrent List'⁴³ wherein both the state and the union have been accorded powers to make laws and decisions in certain subject matters called residual powers.

This concept has been promoted by the union by taking active measures among which the noteworthy ones are the setting up of the National Institute for Transforming India Aayog (NITI Aayog) policy think-tank on January 1, 2015, with emphasis on the 'Bottom-Up' approach with the vision of Maximum Governance, Minimum Government, echoing the spirit of 'Cooperative Federalism'⁴⁴, the introduction of goods and service tax (GST) by an amendment to the constitution in 2016⁴⁵. This provision was newly inserted to give power to the Parliament and the state legislatures to make laws on GST imposed respectively by the concerned states. The power to make laws for interstate supplies will rest exclusively with the Parliament.⁴⁶ The abolition of Article 370 of the Constitution gave a renewed sense of confidence in the relations between the union and the state. Part XI of our constitution houses provisions (articles 246-263)

⁴¹ Shivani. A, 'S.R. Bommai v. Union of India : case analysis' (*iPleaders*, 16 January 2024) <https://blog.ipleaders.in/s-r-bommai-v-union-of-india-power-of-presidents-rule-curtailed/#History_of_Article_356> accessed 16 June 2024

⁴² *State Of Rajasthan & Ors. s Union of India* (1977) 1 SCR 1

⁴³ Constitution of India 1950, art 246

⁴⁴ 'NITI Aayog (National Institution for Transforming India)' (*Drishti IAS*, 5 February 2019) <<https://www.drishtiiias.com/important-institutions/drishti-specials-important-institutions-national-institutions/niti-aayog-national-institution-for-transforming-india>> accessed 15 June 2024

⁴⁵ Constitution of India 1950, art 279A

⁴⁶ Constitution Amendment Act 2016

that explain the centre-state nexus concerning the legislature and executive and how they must cooperate for general administration and governance.

Recently the Lok Sabha general elections (2024) got over, in which the Indian populace actively exercised their franchise⁴⁷. There were certain allegations concerning misuse of government machinery when the union government had asked all departments to nominate officers from several states to act as ‘*Rath Prabharis*’ or special officers, who were expected to advertise and promote the achievements of the government around the country over the past nine years. The chief leader of the opposition had also written a letter⁴⁸ addressing the concern of misusing state bureaucracy for political gains.

A similar case of misuse was also seen way back in the landmark *Rai Bareilly* case⁴⁹ of elections of 1971 when PM Indira Gandhi was found guilty by the Allahabad High Court under section 123(7) of the Representation of Peoples Act 1951⁵⁰ for taking assistance from state government officers, usage of government vehicles, and using Airforce planes and army service during the campaigns along with excessive usage of rostrums and loudspeakers at the expense of the state government of Uttar Pradesh during her campaigns. One of the judges remarked in the case that “... I do not think it was indispensable for the state government for the maintenance of law and order that its officers should have taken upon themselves to get rostrums constructed for the meetings of Respondent number 1 (Mrs. Gandhi) and to make arrangements for the supply of power for the functioning of the loudspeakers at meetings...”⁵¹ The elections were declared void and Indira Gandhi was disqualified from contesting for elections for a period of 6 years.

There were other events in which the centre and state locked horns. For instance, in February 2024, the senior leaders including the chief minister of Karnataka protested against the centre in Delhi claiming it was not getting its fair share of taxes (GST compensation cess entitlement), which crimps its ability to do good for the state. Kerala and Tamil Nadu too did similar protests

⁴⁷ Constitution of India 1950, art 326

⁴⁸ ‘Mallikarjun Kharge writes to PM Modi, alleges Gross misuse of government machinery’ *The Times of India* (22 October 2023) <<https://timesofindia.indiatimes.com/india/mallikarjun-kharge-writes-to-pm-modi-alleges-gross-misuse-of-government-machinery/articleshow/104630147.cms>> accessed 16 June 2024

⁴⁹ *Indira Gandhi v Raj Narain* (1975) 2 SCC 159

⁵⁰ Representation of Peoples Act 1951, s 123 (7)

⁵¹ Prashant Bhushan, *The Case that Shook India* (Penguin India 2018)

in the coming days. Even West Bengal Chief Minister Mamata Banerjee held a two-day dharna in Kolkata against the Centre's alleged denial of funds under key central schemes⁵².

In May 2023, the central government issued an ordinance amending the Government of National Capital Territory of Delhi Act of 1991. Through this ordinance, the central government allegedly sought to undo the Supreme Court's judgment that struck the notification (on the subject matter of *services* issued by the centre in 2015) as illegal⁵³. The ordinance explicitly deprived the Delhi Legislative Assembly of enacting laws about services within the NCT, and, instead, set up a parallel body, comprising the Chief Minister and two bureaucrats, responsible for taking service-related decisions⁵⁴. It also reduces the role of the Chief Minister and the council of ministers to a rubber stamp, as they can be overruled by two bureaucrats, who are ultimately accountable to the Lieutenant Governor and the Centre. Here it was argued that the union was against the spirit of separation of powers and used its majority strength as a buttress against the judgment of the apex court of this country. The irrational issue of freebies which was prevalent during the 2024 general elections targeting a particular state or territory in a bid to garner more votes is under the scrutiny of the Supreme Court thanks to a PIL filed ⁵⁵is also another instance that is worrisome when it comes to the gaps they create between the two powerhouses.

CONCLUSION

The makers of the constitution had strived to reduce the schism between the centre and state which increases especially when there are political differences that result in both the entities focussing on individual benefit and interest. This doesn't augur well for the nation as unity in diversity is the motto with which this nation stands in the world. The relationship between the centre and the state hits rough waters especially while exercising their decision-making powers

⁵² Arun dev and Divya Chandrababu, 'Inside the Centre vs states battle over funds' *Hindustan Times* (08 February 2024) <<https://www.hindustantimes.com/india-news/inside-the-centre-vs-states-battle-over-funds-101707333510590.html>> accessed 16 June 2024

⁵³ *Govt. Of Nct Of Delhi v Union of India* (2023) 8 SCC 501

⁵⁴ Gautam Bhatia, 'Manifestly Arbitrary, Clearly Unconstitutional' *The Hindu* (29 June 2023) <<https://www.thehindu.com/opinion/lead/manifestly-arbitrary-clearly-unconstitutional/article67020386.ece>> accessed 16 June 2024

⁵⁵ 'Supreme Court to list PIL against the practice of parties promising freebies during polls' *The Times of India* (20 March 2024) <<https://timesofindia.indiatimes.com/india/supreme-court-agrees-to-list-pil-against-practice-of-parties-promising-freebies-during-polls/articleshow/108640929.cms>> accessed 17 June 2024

on certain occasions. During such occasions, these structures must pay heed to the concerns of our huge population as it is ultimately the people of India, whose mandate is the source of their power. Cooperative federalism emerged as a saviour in this regard thanks to numerous commissions⁵⁶ and their contributions which helped in reinforcing this concept as a whole. The mantle is on both the centre and the states and other functionaries, to apply this concept to the hilt for the greater good.

⁵⁶ Ministry of Home Affairs (n 1)