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THE FEDERAL INDIAN HAVOC & COVID-19

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ABSTRACT

The abrupt spread of the Covid-19 pandemic raised genuine fundamental concerns regarding the nature of the Indian federalism not only as a mere constitutional ideal but also as to how the two potent players of this game, the center and the states, were going to work in collaboration to curb the transmission of this lethal virus. During this process, brand-new dimensions of this affable federal relationship were discovered and are still exerting immense influence on India's economic and political ambience. The Centre, by the means of its legislative, executive, in short, its federal supremacy has been partly successful in undermining the autonomy of the states. From declaring a national lockdown without consulting the states, promulgating the DM Act, 2005, violating the provisions of the List System (seventh schedule), depriving the states financially, the union has partially violated the terms of the doctrine of Cooperative Federalism. States, anyhow, have been vocal about such injustices. Therefore, this article talks about how the above-mentioned alliance can be symbiotic in nature and what are the leads for India as a unique federal state as the responsibilities of outfoxing a deadly pandemic hover over it.

The world has been ravaged and enormously affected due to the novel corona-virus pandemic and many countries have systematically struggled to efficiently manoeuvre this delicate situation. In India, the onus of fighting the pandemic down lays on the central government and the distinct state governments, working in collaboration. The state agencies have played a vital role in our centralized federation in dealing with such charged political, economical and administrative atmospheres. Therefore, the said global emergency has raised some pertinent philosophical and functional questions regarding the ideas of centralization and decentralization of powers in the Indian governmental system. Hence, the following article discusses the vexing issue in detail.

Keywords - *Indian Federalism, Centre, State, Relationship, Imbalance, Cooperation*

INTRODUCTION

The Covid-19 crisis has brought nascent dimensions to the quasi-federal composition of the system of separation of powers and devolved governance in India. The instance of Indian federalism is extremely sui generis and, therefore, this division of legislative, financial and executive powers between the centre and the states has led to a great deal of bickering over genuine concerns regarding this matter. The different subjects of administration have been enshrined in the three lists with elaborate jurisdictional autonomy of the centre and the states in the seventh schedule of the constitution of India. The central government of India announced a nation-wide lockdown on March 24, 2020 and extended it till May 3, 2020 with state governments analyzing the ground level rates of the spreading virus and also, side by side exercising their authority to announce individual shutdowns. The Central government also introduced various agricultural, taxation etcetera related legislations which many states clearly defenestrated. The Indian constitution includes no definite framework for efficiently tackling global catastrophes like Covid-19 and even though there has not been a formal declaration of national emergency yet the country is very much under a state of de-facto extremity. Consequently, this puts the so far apposite centre-state relationship under the heavy scrutiny not only of time and people but also the dense circumstances. Even though India has structurally been able to proactively handle the pandemic unlike many of its eastern as well as western counterparts yet the quintessential nature of Indian federalism has received a considerable amount of backlash due to appalling corona-virus outbreak. There has been a top-down clash among the centre and the states in the superintendence of this pandemic rather than coordination.

FEDERALISM IN INDIA AND IMPACTS OF COVID-19

Federalism is one of the most idiosyncratic attributes of the Indian constitution. The exclusive purpose of federalism is to create an association of parity between the centre and the states. In the Indian context, federalism means the division of legislative and executive powers between the central and state governments of the union of India. The term ‘Federalism’ does not appear in the preamble but has been comprehensively mentioned in Part XI of the constitution. Similar to provisions like Rule of Law (Britain), DPSP (Ireland), Concept of republic (France) and so on, the

ideal of ‘Quasi-Federalism’ in the Indian constitution was borrowed from the Canadian constitution. Here, there are multiple tiers of government. Also, the supreme court of India has all the authority to settle disputes between the state governments.

LEGISLATIVE DIMENSIONS:

India has inherited an intensely conducive ‘List System’ from the Australian constitution. This stringent apportionment of powers is defined by the constitution and the subjects are divided into three lists: Union list, State list and Concurrent list.

Union List --- The Parliament and the central government have full liberty to initiate laws on the subjects of the union list. It has 100 items which includes areas like defence, armed forces, railways, citizenship, war and peace, airways, wireless and broadcasting, banking, insurance, income tax etcetera.

State List --- The state legislatures have exclusive freedom to make legislations on the matters catalogued under the state list. It has a total of 59 items including public health, sanitation, burials and burial grounds, public order, agriculture, water, local governments (municipalities etc.), trade and commerce, market and fairs etcetera. If any law made by the state legislatures violates any provision of law made by the parliament then the law made by the central legislature prevails as India is a federation with an extremely vigorous union.

Concurrent List --- In case of concurrent list, both the central and the state legislatures have the authority engender laws. It involves matters like criminal law, criminal procedure, bankruptcy and insolvency, civil procedure, contempt of court etcetera summing around 52 items. Hither, homogeneity is covetable but not mandatory.

Here, the question is about examining the legislative competence of the centre and how the states have been foisted to comply with the contents presented on their tables by the union during the Covid-19 crisis.’ Disaster management’ has no specific mention in list I, II or III, therefore, the parliament exercised its residuary powers of legislation under article 248 under entry 97 of list I¹.

¹Akshay Aurora, The Constitutional Propriety of India’s COVID-19 Response from a Distribution of Powers Perspective, IACL-AIDC BLOG (June 02, 2020), <https://blog-iacl-aidc.org/2020-posts/2020/6/2/the-constitutional-propriety-of-indias-covid-19-response-from-a-distribution-of-powers-perspective>.

However, this stroke of the central government can be sideswiped on two accounts --- one, the Act was imposed ultra vires and two, being said that, the primary law that was supposed to be in picture was the British-Indian Epidemic Diseases Act, 1897 instead of the Disaster Management Act. The discrepancy is with the fact that according to section 2 of the Epidemic Diseases Act, 1897, the onus of introducing interim legislations to curb the outbreak any further lies on the state governments and not with the centre². Notwithstanding, ‘Public Health’ and ‘Public Order’ are the subject matters of list II, the centre’s passing of the DM Act, 2005 rescinded all the measures taken by the state governments to deal with the Covid-19 outbreak³. DM Act, 2005, however, covers handling this pandemic under section 2(d) as it defines a disaster as a “catastrophe, mishap, calamity or grave occurrence in any area”, resulting in “substantial loss of life or human suffering or damage to property”⁴. Further, the national plan to counter Covid-19 requires to be made in consultation of states and other departments of such preeminence which at this point is not the case. There is no congruency in the aspirations of the centre and states which is disquieting for the fortitude of Indian federalism. An elucidation of this fact can be established by the reluctance of the states to abide by the midmost norm of ‘zone’ classification. Also, so far there is no judicial challenge in the regard of the matter and this gives the central government unleashed autonomy to outfox the states’ provisions in controlling matters such as the present one. The centre wisely enough, did not promulgate the constitutional provisions of emergency but, however, used the scheme of ordinances in a way that stripped the states from their statutory powers to manage the pandemic.

Therefore, such concentration of power in the centre gives an asymmetric equation to the ambition of achieving a system collegial federalism in India where centre and states can work in aplomb.

² Mohan Katarki, State’s Legal Framework To Control Epidemic Diseases And Its Constitutionality, Live Law (May 03, 2020, 12:13 PM), <https://www.livelaw.in/columns/states-legal-framework-to-control-epidemic-diseases-and-its-constitutionality-156137>.

³ Kevin James, Covid-19 and the Need for Clear Centre-State Roles, VIDHI (Apr. 03, 2020), <https://vidhilegalpolicy.in/blog/covid-19-and-the-need-for-clear-centre-state-roles/>.

⁴ Pankhuri Aggrawal, COVID-19 and Dwindling Indian Federalism, Economic & Political weekly (June 27, 2020), <https://www.epw.in/journal/2020/26-27/commentary/covid-19-and-dwindling-indian-federalism.html>.

BUDGETARY DIMENSIONS AND AN EXECUTIVE CRUNCH:

Fiscal federalism is a quintessential element of constitutional federalism as this symbiotic relationship between the two holds up the true ideals of separation of powers. Inter-alia, what has been extremely appalling on the part of the centre is the manner in which it successfully breached the revenue generating capacities of the states making them implore for funds so they could ensure their mundane functioning. The centre applying ironclad fiscal policies on the already money strapped states making the prevailing circumstances even more tumultuous for them is a clear statement suggesting the lordship of union over the states and that too, at a hefty cost of erosion of the sanctity of real federal values.

States on an individual level have profusely suffered backlashes. The central allowances during this fiscal year were fiercely cut down leaving states in a serious paucity funds. Taxation, which is a sturdy source of state income, did not yield much fruit. The GST collection this year dwindled to a staggering number leaving the states desperate, if not worse. Here, the astounding withdrawal of the central support was a thunderclap. Despite their repeated demands, the Centre did not release outstanding GST compensation of about ₹30,000 crore to the States. With GST dues of States such as Karnataka (₹8,000 crore), Punjab (₹4,000 crore), Kerala (₹3,000 crore), Maharashtra (₹16,600 crore) pending, even the timely payment of salaries and pensions seemed difficult, without immediate Central intervention. The trend towards centralisation is also evident in the Terms of Reference (ToRs) for the 15th Finance Commission (FC), which, amongst other things, asks the FC to examine whether revenue deficit grants should be provided at all for the State Governments (ToR 5), and to recommend measures for controlling “populist measures by the States” [ToR 7(viii)]. Such mandates show how non-elected bodies constrain the fiscal space of the states⁵. It has only been recent that the 15th Finance Commission has proposed revenue grants of Rs. 2,94,514 crore over the award period for seventeen states⁶. The commission dealt with multiple matters of concern keeping in vision the flimsy pecuniary condition of the states including online learning, health, education, road building, fast-track courts etcetera. It also recommended that Rs. 6,143

⁵ Kabir S Ghosh, Erosion of fiscal federalism in the times of Covid-19, The Hindu Business Line (May 25, 2020), <https://www.thehindubusinessline.com/opinion/erosion-of-fiscal-federalism-in-the-times-of-covid-19/article31670568.ece#>

⁶ PIB Delhi, The Report of the Fifteenth Finance Commission, Finance Commission pib gov (Feb. 01, 2021, 1:06 PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=1693868>.

crore be allocated for online learning and development of professional courses like medical and engineering in regional languages for higher education in India. It said that the central government must put forth an arrangement for the completion of the pending railway projects at the earliest⁷.

The state economies were severely hit by the unforeseen announcement of a nationwide lockdown without any prior dialogue with the states. This was an act of an unclouded meddling of the centre in the affairs of the states. Management and administration of areas like hospitals and dispensaries (entry 6), intoxicating liquors (entry 8), agriculture (entry 13), markets and fair (entry 25), industries (entry 24) and other related matters falls under list II, that is the state list, and passing of such turbulent executive orders torments the attunement of centre-state alliance. Liquor shops generate a magnificent chunk of states' revenue but due to pan-India lockdown the related shops had to be shut causing complications as they produce one-fourth of state revenues. Taking the instance of New Delhi, the capital city was expected to lose Rs 645 crore just in the first 43 days of closure of liquor shops. For 2020-21, the city-state projected total revenue of around Rs 6,279 crore through the sale of liquor, compared to the revised estimate of around Rs 5,480 crore for the previous fiscal. In 2018-19, Delhi earned around Rs 5,007 crore through the sale of liquor, according to budget documents⁸. Confederation of Indian Alcoholic Beverage Companies (CIABC) considered the option of home-deliveries for alcoholic substances but did not receive the centre's approval. As a consequence of all this, the Delhi government imposed a 70 percent corona fee on the MRP on types of liquor⁹. This was disadvantageous for the people in general as they also received pay cuts.

Member of Parliament Local Area Development Scheme (MPLADS) is a paramount for carrying out developmental activities and in addition, is assistance for MPs to perform their very duty of maintaining the well-being of their constituencies. An amount of Rs 5 crore would have been palatial for providing the healthcare facilities like building proper quarantine units, supplying PPE

⁷ Shreeja Singh, 15th Finance Commission recommends revenue deficit grants Rs 2.94 lakh crore for states, Money Control (Feb. 08, 2021, 5:08 PM), <https://www.moneycontrol.com/news/business/15th-finance-commission-recommends-revenue-deficit-grants-of-rs-2-94-lakh-crore-for-states-6468481.html>.

⁸ HT Correspondent, Delhi set to lose Rs 645 crore in revenue as liquor shops remained shut for 43 days, Hindustan Times (May 05, 2020, 4:30 AM), <https://www.hindustantimes.com/delhi-news/delhi-set-to-lose-645-cr-in-revenue-as-liquor-shops-remained-shut-for-43-days/story-d4qun7uC72v5MeNSe9BAnO.html>.

⁹ Pretika Khanna, Suneera Tandon, Delhi govt announces 70% 'special corona cess' on alcohol from Tuesday, mint (May 05, 2020, 12:12 AM), <https://www.livemint.com/news/india/delhi-govt-announces-70-special-corona-cess-on-alcohol-from-tuesday-11588617495374.html>.

kits, maintaining the hygiene of hospitals and other medical wards, creating efficient testing schemes and so on but the suspension of MPLADS by the union government left the states with one more void to fill. Among the most vociferous critics was three-time Thiruvananthapuram MP Shashi Tharoor who tweeted that pooling the MPLADS funds into a Consolidated Fund run by the Central government is problematic. “An order to earmark all MPLAD spending for Covid19 related measures would have been OK...MPLADS preserved the sense of direct responsibility for the well-being of constituents that is a hallmark of an Indian MP’s work,” he said in a series of tweets. Therefore, dangling the said colossal financial reinforcement at this time of urgency is a distressing call¹⁰.

Corporate Affair Ministry’s blatant move to repudiate donations made by companies to the CM Relief Fund as Corporate Social Responsibility is another case of centre involving in anti-federal practices. Donations to PM CARES Fund and State Disaster Management Authorities (SDMAs) qualify as CSR, but not to CM’s Relief Fund. The former are governed by central laws whereas the later is a state affair¹¹. The government’s hesitation to offer a decent explanation supporting the move is an issue in itself. Also, blackballing PM CARES Fund from the purview of the RTI makes the picture slightly adumbral. The move yielded legions of reactions from different state political leaders like Captain Amarinder Singh (CM of Punjab), Ashok Gehlot (CM of Rajasthan), Amit Mitra (West Bengal Finance Minister) among others. “In a federal set-up, the relief funds set up by the states for a public purpose cannot be excluded from the eligibility criteria when the same is available for a central fund set up with similar objectives and aims”, also expressed Kerala CM, Pinayari Vijayan¹².

Falling of tax buoyancy is again a huge obstacle for the states. At the root of this crisis are two factors. The first is the structural deceleration in the Indian economy along with a fall in tax buoyancy. The pandemic’s economic shock has only made things worse. The second is a growing squeeze on states’ share in central taxes. Above all this, centre refused to immediately compensate

¹⁰ Tina Edwin, Why suspension of MPLADS has raised hackles, The Hindu Business Line (Apr. 13, 2020), <https://www.thehindubusinessline.com/news/why-suspension-of-mplads-has-raised-hackles/article31332490.ece>.

¹¹ Dipak Mondal, Why coronavirus donations to CMs Relief Funds are excluded from CSR, Business Today (Apr. 14, 2020, 12:12 AM), <https://www.businesstoday.in/current/economy-politics/why-coronavirus-donations-to-cms-relief-funds-are-excluded-from-csr/story/400889.html>.

¹² Remya Nair, Modi govt unlikely to classify donations to CM fund as CSR despite demand from states, The Print (Apr. 21, 2020, 7:30 AM), <https://theprint.in/india/modi-govt-unlikely-to-classify-donations-to-cm-fund-as-csr-despite-demand-from-states/405471/>.

the states for an expected shortfall of Rs 2.35 lakh crore, which they are constitutionally entitled to¹³. Many legal savants have advocated that the alliance between fiscal and political federalism as two imperative elements of constitutional federalism in India is necessary for the progression of centre-state propinquity and decentralization of functions, here, can help achieve a concerted idea of the principle of separation of powers.

COOPERATIVE FEDERALISM:

Indian federalism is one of the most captivating attributes of the constitution of India even though the word has not been given a direct citation but it, indeed, falls under the ambit of the basic structure of our foremost legal charter. Former governor of the Reserve Bank of India and confidant of Jawaharlal Nehru, LK Jha, says India has “a centrist Constitution with federal trimmings”¹⁴. Granville Austin, the American historian, acclaims India to be the chief architect of the notion of collegial federalism. Unfortunately, this parity of power was colluded due to a few startling decisions made by the centre.

Grueling pandemics like Covid-19 demand impeccable partnership among centre and states. To successfully clobber a pandemic in any democracy, the cooperation between the Centre and the states is a *sine qua non*, and the absence of this in India currently indicates broad fault lines in the constitutional framework. The Supreme Court in the case of Security Association of India vs. Union of India in 2014 held that constitutional doctrines must be designed to reconcile the legitimate diversity of regional experimentation with the need for national unity, and if such appropriate balance is struck, it would be in pursuance of cooperative federalism. To guarantee welfare-oriented governance framework in line with cooperative federalism, legislative subjects, especially welfare subjects, require both national and state vision¹⁵.

¹³ Roshan Kishore, India’s fiscal federalism crisis is not the pandemic’s creation, Hindustan Times (Sep. 29, 2020, 05:04 AM),

¹⁴ Mark Tully, India’s far from cooperative federalism, writes Mark Tully, Hindustan Times (Sep. 27, 2020, 06:48 AM), <https://www.hindustantimes.com/columns/india-s-far-from-cooperative-federalism/story-teUUoRnjTzsABfyix0y7JL.html>.

¹⁵ Stuti Shah, Shashank Atreya, COVID-19 outbreak refocuses need to shift public health from State to Concurrent

What India needs at this point is collaborative rather than competitive federalism. The centre has verbally been sanguine but it is only the exoteric picture that seems rosy. For example, under the Union budget 2020-21, the total estimated transfers to states from the Centre for the ongoing fiscal year had been reduced by around ₹1.41 trillion. These reductions have not gone unnoticed by states like Rajasthan, Tamil Nadu, Uttar Pradesh, Odisha etcetera. Politics has trumped economics, law-making and the greater good thus far in India's story of cooperative federalism. This needs to be fixed before it is too late¹⁶.

Furthermore, due to the unanticipated announcement of national lockdown, India was introduced to one more concern, that of the Migrants. The shutdown led to thousands of migrant workers from Bihar, Chattisgarh, Odisha etcetera lost their employments as a result of factories and industries getting defunct. This was a massive federal mishap, principally on the part of the centre as the pan-India closure had been affirmed without any anterior deliberation with the states and India as a state struggled to provide its citizens with basic amenities like transport. Migrants wanting to return to their hometowns gathered in clusters on the streets of Mumbai and other cities causing more trouble for the centre and states in containing the outbreak.

The Covid-19 pandemic has proved the fact that cooperative federalism is a dynamic concept and changes with time and circumstance. Therefore, after more than seventy years of independence, now is the high-time that India pounds its pavement towards achieving the unvarnished version of cooperative federalism.

CONCLUSION:

The intrinsic idea behind this article is not to scoff the relationship between the centre and the states but to present to people the true image of it. Some mainstream matters of contention have put this symbiotic accord into tribulation. Centre barging its way into the affairs of the state caused

List ; move won't harm decentralization but enhance Centre, state coordination, Firstpost (June 15, 2020, 10:56 AM), <https://www.firstpost.com/india/covid-19-outbreak-refocuses-need-to-shift-public-health-from-state-to-concurrent-list-move-wont-harm-decentralisation-but-enhance-centre-state-coordination-8483911.html>.

¹⁶ Pradeep S. Mehta, The current state of cooperative federalism in India, mint (Mar. 04, 2020, 10:08 PM), <https://www.livemint.com/opinion/online-views/the-current-state-of-cooperative-federalism-in-india-11583339615557.html>.

a lot of federal tension. For instance, including the above problems, “law and order” is a state subject and centre’s imposition of section 188 of the IPC, “disobedience to order duly promulgated by public servant” is unwarranted¹⁷. Such fitfulness is never holistic for the prosperity of is preeminent alliance.

Therefore, with the increasing cases of Covid-19 more and more cooperation between the states and the centre will be the need of the hour. Indian federalism carries a strict sense of responsibility towards properly managing this pandemic. This pandemic has tested the very essence of federalism. In *Tehsheen S. Poonawala v. Union of India*, the supreme court of India clearly mentioned that cooperative federalism an enduring virtue and its ideals must be held high. Yet, there have been concern seem to have weakened our federal structure in the name of politics and economy deviating the attention from the perilous coronavirus which is a complication. So far it has been partly successful but there is still a lot to be done. Till then, we can just contemplate to where the coalition between the two actually heads.

¹⁷ Explained Desk, What is section 188 IPC, under which you will be booked for violating COVID-19 lockdown, The Indian Express (Mar. 24, 2020, 10:01 PM), <https://indianexpress.com/article/explained/explained-section-188-of-ipc-under-which-you-can-be-fined-rs-1000-for-violating-lockdown-6328022/>.