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CENTER-STATE DISCONTENTS DURING COVID-19

Introduction

Federalism means, a mode of political organization that includes different states or polities in a political system in such a way that allows every member of the organization to maintain its Integrity. In India, we have a Quasi-federal form of structure. It means that there is a transitional form of state among unitary states and federations. The Supreme Court also stated that it as a federal structure bias towards the center. However, there should be some liberty and autonomy in the powers of states on certain matters. India is a very diverse country there must be some special provision for forming special policy or reforms in special areas. In the current situation of Covid-19, there has been a sudden flux in the balanced structure of federalism. The exercise by the central government shows encroaching state's power and suppress federalism.

Discussion

Legislative powers in a federal or quasi-federal constitution are divided between the center and the States. The division is in respect of both territory and topics of legislation.

Article 245 defines the ambit of territorial limits of the legislative powers vested in parliament and the State Legislatures. The prevalent view is that the territorial jurisdiction as well as the substantive law-making powers of the Parliament and State Legislatures arise from Article 245 and are subject to the provisions of the constitution. This would justify judicial review.¹

We are in the pandemic situation of Covid-19, the way to heal-up from the damage caused due to Covid-19 is to rest upon better collaboration, mutual trust, and constant communication between Center and State.

¹ Article 245 of the Constitution.

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As the state is the first responder of this crisis, providing them with enough relief funds and autonomy must need to tackle this crisis. For which central government required to treat all the states equally and provide aid to strengthen them to fight against COVID. In India, we have a “*Quasi-Federal*” form of government², which is also known as the “*Indestructible Union of Destructive States*” as we have a centralized tendency. Moreover, the current situation of COVID-19 puts a litmus test to determine the actual nature of federalism in India, which is also a debatable matter for the constitutional scholar.

To fight against COVID-19 new policy was form, and with that new aspect of challenges emerges, one of the challenges based on of the federal structure of Indian democracy. And there are many such policies formed which were challenged on the basis of the federal structure.

Managing the disaster itself

The recent policy formed by the central government has revealed the gap in center-state cooperation. In the beginning, implementing the lockdown nationwide by invoking “*Epidemic Disease Act, 1987*”³ by the center, without even consulting the state shows a huge gap in coordination. Later in lockdown 4.0, the classification of zones in red and orange zone emerged sharp criticism by many states. What the state demanded was more autonomy in the classification of such zone. These guidelines were issued by the center to states under the “*Disaster Management Act 2005*”⁴ under which consultation by the states is legislative necessary by the center in formulating guidelines under the act.

Section 11 of the act also provides the central government to form a “national plan”, and section 6(2)⁵ gives power to the center to issue guidelines that are binding on the states. The national plan is documented wide vision while the guidelines are its implementing mechanism. Section 11(2)⁶ also make mandates that before forming such a National Plan state must be consulted and for the binding guidelines are likely to embody the views of states. Instead of formulating a National Plan, the Central government just issued some informal guidelines which are binding on the states⁷ and bypass the step of consultation from states, since guidelines are not

² The Constitution of India, 1950, Art. 1.

³ Epidemic Disaster Act, 1972.

⁴ Disaster Management Act, 2005, §11.

⁵ Disaster Management Act, 2005, §6(2).

⁶ Disaster Management Act, 2005, §11(2)

⁷ *Supra note 3.*

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mandatorily be consulted by states. Even in lockdown 3.0, the order passed by Home Ministry prohibited the states from lowering the union classifications. The particular application of the Disaster Management act by the center gives power in decision making to the center only, and without any interference of the state.

Lack of Finance Aid

Because of the lockdown, most of the source of revenue of the states had collapsed. The primary source of revenue of a state is the stamp duty of various transactions including the sale of property, sale tax on Liquor, and petroleum products. However, the main expenditure of the state on salaries of the employee, Interest payment, and social sector scheme does not affect a lot. Most of the expenditure was still there. Moreover, to improve health infrastructure, including testing and treating Covid-19, increase the expenditure of states. Even state GST has been affected because the center still has to distribute the dues. And as per the “*Fiscal Responsibility & Budget Management Act, 2003*⁸” the state is not allowed to borrow funds from the market over a particular limit.

Further, the Central Government declares that “*PM-CARES Relief Funds*” are in the ambit of “*Corporate Social Responsibility*”. However, a donation in “*Chief Minister’s Relief Fund*” or “*State Relief Funds for COVID-19*” does not come under the ambit of CSR expenditure. It directly affects the donations to any CM-funds; it diverts the crores of state fund revenues to the PM-Cares funds. And makes any state mainly depends on the center on the financial matter and harms the spirit of federalism.

Even, suspension of *MPLANDS* and divert the funds to “*Consolidated Funds of India*” also harm the harmony of federalism and centralize the financial resources, which hamper the local customary solution by any member of parliament.

Oppose to the Unitary or Central form of government, a quasi-federal form of government means that the Central Government works in coordination with the state government all the time except in the condition of emergency. But emergency has not been imposed, and there should be coordination between governments. It seems like there is an absence of coordination between center & state.

⁸ Fiscal Responsibility & Budget Management Act, 2003.

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The greatest example of the gap between center and state governments was in the unpredicted mass reverse migration, where migrants were returning to their native home in the states mainly UP, MP, Bihar, Chhattisgarh, and Jharkhand, in a vulnerable condition. They walked 100s of Kilo Meters in such a situation because both center and state failed to form a holistic plan or guidelines in the coordination of each other, they have not provided enough relief funds and medical aid which resulted in the death of migrants.

The incomprehensible sufferings of the millions of internal economic migrants who worked in India's big urban conglomerates and lost their jobs in this crisis are one of the most pathetic and heart-wrenching consequences of the lockout due to COVID-19. Having faced the immense brunt of the crisis in the last two months, they are now moving back to their home countries.

In order to ensure better dissemination of social and health services to historically marginalized economic refugees who sit at the receiving end of this crisis, the center aims to redefine the categorization of 'foreign workers'. While the proposal is well-meaning, any such effort would require extensive and comprehensive collecting and exchange of information between the center and these migrants' native and host states.

Such knowledge exchange is significant for ensuring the correct delivery of food and other social services, as well as for the allocation of new jobs to these migrant workers spread across different regions of the country who have been made unemployed and who will desperately need state survival assistance. Owing to their high mobility and insufficient paperwork, tracing the location and identity of the migrant workers engaged in menial labour is a challenging challenge. Therefore, the ground-based study of their position in the coming days will require a strong degree of administrative coordination between the center and the States.

Conclusion

There are many such discontents between center and the states on different matters. From the above explanation, it seems that the center is trying to encroach federal power to implement reforms, by taking advantage of current situations. And exercising such reforms is against the spirit of the preamble of the constitution enshrined.

During framing the constitution, the constitution assembly studied many models of the form of governments, and they framed a structure, suitable for what India needs. They focused on the

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Quasi-federal form of government which has a strong central government, but it does not mean that states must be weak. There should not be arbitrariness in the decision by the central government. There should be cooperation between the center and states.⁹

Moreover, in the current situation of COVID-19, India must need to adopt cooperative federalism, in which there will be administration cooperation between the union and the state. Both center and state need to work together and counter the current situation. It helps in strengthen the essence of quasi-federalism and cooperative structure among center and states.

⁹ Government of NCT of Delhi v. Union of India, 8 SCC 501 (2018).