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Rethinking sub-national cooperation *Reforming the Inter-state Council*

“Though the country and the people may be divided into different states for the convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source.”

– Dr. B.R. Ambedkar, Chairman, Drafting Committee of the Constitution of India

INTRODUCTION

Pleasant and mutual relations between different States are as imperative as that between the Centre and States for healthy functioning of our federation. Various problems have been cropping up in inter-State relations from time to time. On the one hand, there are problems like growing competition amongst the States, and on the other there are differences of opinion over sharing of river water etc. While competition in good spirits between the States for developing efficient and socially desirable policies and programmes is welcome, any competition that nullifies each other's advantages in development and erodes the resource base of the States should be avoided.

But a vibrant multi-layer system with all its checks and balances brings along with it, its own problems and conflicts. This is particularly so in the working of inter-State relations. Hassles and tussles, at times, threaten to stifle the efficient working of the system and imperil the unity and integrity of the country. Hence, for the betterment of the nation as a whole, the spirit of co-operative federalism should guide the relation among each other. This underlines the need for an effective mechanism that could ensure harmonious and cooperative relations between the Centre and States and between the States. Sub-national forums has a greater role in this, as they could leverage resources towards a more efficient and participatory governance.

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EXISTING INTER-GOVERNMENTAL MECHANISMS

Collective assessment, dialogues and persuasion between the political executives of the Union and States is vital for a federal structure. For

aiding this, proper institutional arrangements are vital. A high-level coordinating forum called Inter-State Council (ISC) was formed as envisaged in Article 263 of the Constitution. It is the only platform that constitutionally attempts to provide a greater synergy between the Centre and States.

Inter-State Council

Based on the recommendations of the Sarkaria Commission, ISC was set up on May 28, 1990 under Article 263 of the Constitution for co-ordination of inter-State matters. This is the only article of the sub-chapter 'Co-ordination between States' of Chapter II – Administrative Relations of Part XI of the Constitution – Relations between the Union and the States. The text of the article reads as under:

Art 263. Provisions with respect to an ISC - *If at any time it appears to the President that the public interest would be served by the establishment of a Council charged with the duty of –*

- a) *inquiring into and advising upon disputes which may have arisen between States;*
- b) *investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or*
- c) *making recommendations upon any such subject and in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.*

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The Council set up is a temporary recommendatory body and all its meetings are held in camera. Issues that come up for consideration at the Council are decided by consensus. Though the Constitution has envisaged under clause (a) the power to adjudicate disputes by the council, in reality the Council is authorised only to perform functions stated under clauses (b) and (c) of Article 263 i.e. investigation, discussion and

recommendations on matters of interest to the Union and States, particularly those involving coordination of policy and action. In other words, the Sarkaria Commission did not recommend the role of conflict resolution for the Council envisaged under Article 263 (a). This omission by the commission was without any justification.

Besides, empowered with limited power, though the Council had arrived at several decisions regarding implementation of the Sarkaria Commission's recommendation they have not been implemented by the Union Government. Hence, any mechanisms that are mere advisory will be nothing more than an ornamental piece. In fact it is considered as one of the vital reason for the lack-lustre condition of the ISC. If this was properly addressed, then it could have served as a solution to the mounting fissiparous tendencies seen these days.

Other Inter-Governmental forums

There are other inter-governmental forums in India like the Planning Commission, which was set up outside the framework of the Constitution by a cabinet resolution in 1950. Based on the suggestions of the Planning Commission, another inter-governmental agency called National Development Council (NDC) was constituted in 1952.

Apart from these, other inter-governmental forums are the Chief Ministers Conferences, Governors Conferences, Inter Governmental Ministerial Conferences, Chief Secretaries Conferences, Zonal Councils, Inter-state Tribunals, Advisory Council on Foodgrains Management and Public Distribution and the Mineral Advisory Board. In addition, there are a number of inter-State consultative bodies e.g., National Water Resources Council. Then there are Central Councils of Health, Local Self Government and Family Welfare, Transport Development, Education, etc.

However, neither has these bodies worked with effective representation of the States, nor have their decisions brought a fair deal to the States. In fact, most of these bodies have functioned ceremonially with a hidden bias in favour of the Centre.

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NEED FOR CHANGE

In recent times, adversarial relationship between the Union and the States has put the country to a situation wherein neither of them trusts the other. The lack of co-ordination between states both at the political and secretarial levels has led to increased intervention of Courts in governance. If adequate measures are taken to strengthen inter-governmental forums including the ISC, then judicial interventions can be reduced to a considerable extent.

Though the ISC was established in 1990, i.e. 40 years after the framing of the Constitution, it met for the first time only in 1996. Even after that it had hardly met and has been unable to work to its full potential. According to ISC website, the committee has met only 10 times since its inception with last meeting taking place eight years back in 2006.

Even the structure of Council has been designed in a manner that somehow ignores the participation of States in overall functioning of the Council. It has a top down approach. Also, it certainly does not provide a common platform to the states where they can discuss and exchange knowledge, skills and ideas related to development of states. Even the Punchhi Commission Report talks about the sorry state of affair of the ISC. The Commission underlined the need for strengthening and mainstreaming the ISC and make it a vibrant forum for all the tasks contemplated in Article 263.

Various studies have also highlighted the need for an overhaul in the structure and functioning of ISC. Saez (2002) opines that the working of the ISC shows that it still struggles to define its internal structure. Despite some attempts to establish a more solid institutional structure for inter-governmental cooperation, the ISC has failed to set up a permanent, independent secretariat as recommended by the Sarkaria Commission. Mukarji and Mathew (1992) claimed that the hopes that this body might become a useful federal forum were belied by the first meeting having failed to deal with any major item of the nation's federal agenda. Frankel (1997) suggested that the ISC is 'virtually defunct'. Although the ISC was envisioned

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by the central and state governmental commissions to serve as a body of highly placed individuals, in its functioning, it has become an annex within the Ministry of Home Affairs. The functioning of the ISC raises serious doubts about the role to be filled by this important body.

Venugopal (2007), highlighted the need for activating the ISC arises for three reasons: economic and specifically fiscal policies of states have been widely misaligned; the economies of the states are much more interdependent at present than they were in the past; there are important externalities in policy-making implying that when states act independently and in their own self-interest policy changes may not be carried to the degree necessary to maximize the collective welfare of all the States.

All the above facts and ever changing situation within the country, highlights the urgent need to develop an effective system that is more regular, independent and neutral. Such a platform would be of huge substance for relatively less developed states as they get an opportunity to interact and learn from others. Also developing a common understanding between the states facilitates in meeting the present as well as future challenges.

HOW?

As mentioned earlier, ISC is a temporary body, first constituted through a Presidential Order in 1990, with Prime Minister as its chairperson. Most recently it was reconstituted in 2013 by the UPA government. With a new government in office, it needs to be reconstituted, and here lies the opportunity to reform its structure and functions to make it truly relevant to achieve the vision of cooperative federalism of the new government.

Best way for this is to restructure the ISC on the lines of a States-led Forum. The restructured ISC should aim at better co-ordination among states which can ultimately result into sharing, replication and up-scaling of innovative governance and developmental practices and also help in developing innovative solutions to address today's most pressing public policy challenges.

It should be dominated by Chief Ministers of States, and the central government must take a back seat in functioning of the ISC. The Prime Minister, while being the chairperson, must only discharge role of observer and to aid states to reach at mutually acceptable solutions. At present, a Standing Committee of the ISC has been constituted for continuous consultation and processing of matters for the consideration of the Council. Selective representation from the Business Community, Civil Society, Academia, Media, and Central Government in accordance with the selected theme, must be allowed in such Standing Committee to take an informed all-round view on the subject under consideration.

The restructured ISC will periodically elect the office bearers from among the Chief Ministers, with a permanent Secretariat in New Delhi to be serviced by professionals working closely with the Resident Commissioners

Developing a common understanding between the states facilitates in meeting the present as well as future challenges.

The State Government of Orissa consider that it is not necessary to set up/ have an ISC to iron out Inter-State and Union-State differences as envisaged under Article 263. We feel, it will, not be appropriate to discuss and review the disputes arising out of constitutional obligations devolving either on the Centre or States in a Council. Instead, we would suggest that Inter-State and Union-State differences should be resolved in a forum comprising of representatives from the concerned States and concerned Central Ministries. Any dispute which cannot be settled through such arrangement may be addressed to judicial forums.

Source: http://shodhganga.inflibnet.ac.in/bitstream/10603/3541/1/11/11_chapter%205.pdf

of the States and other stakeholders. It will be funded by all States on the basis of the decision to be adopted by the CM's inaugural meet. The US and Nigerian sub-national bodies too are funded by the States.

The ISC must act as an exchange platform among States to acquire knowledge, transfer skills and know how on good practices on initiatives being undertaken, be a particular state or a group of States. The ISC must act as repository of best practices and lessons learnt by the states and must aid willing states to design and formulate practices to suit their own unique capacity and requirements. It must meet regularly with adequate preparation of agenda and negotiating points and position papers from parties involved. The Secretariat of the ISC may have joint staff of various States to inspire confidence and enhance co-ordination. All major issues involving inter-State relations could be discussed and decided by the ISC.

AROUND THE WORLD

Countries, such as like US and Nigeria have adopted similar kind of model with the objective of promoting better understanding, good governance, and co-operation among the States and ensure a healthy and beneficial relationship between the States and other tiers of government. It has paid rich dividend for these countries in terms of achieving social welfare goals.

US: The National Governors Association (NGA) is the collective voice of the Governors of the 50 states, 3 Territories and 2 Commonwealths. The focus of its annual meeting held in July 2011 was on higher education for catalysing economic growth and advancing competitiveness.

Nigeria: The Nigeria Governors' Forum (NGF) is a coalition of all 36 democratically elected Governors of the Federal Republic of Nigeria. In

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October 2011, the Forum initiated a programme in association with the Gates Foundation to improve Polio and Routine Immunisation.

Australia: The Council of Australian Governments (COAG) is the apex intergovernmental forum in Australia, comprising the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association. In its August 2011 meeting, COAG reaffirmed its commitment to advance the 'Seamless National Economy Reforms' agenda.

ISSUES FOR DISCUSSION

1. Will a restructured ISC with limited involvement of the Centre be an effective mechanism to promote inter-state cooperation?
2. What are the ways in which the functioning and activities of ISC can be further streamlined and made more effective?
3. Do you agree with the suggestions given above?

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