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The Constitutional Impact of Globalization on the Federal Structures of India and the United States - A Comparative Study

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ABSTRACT

The emergence of globalization is causing a strain in the relation between different state governments of a country and is also causing a far-reaching change in the relation between the federal and state government. The repercussions of globalization are causing an unintended divulgence on the established intention of the constitution makers both in the United States and India. Though there is not much of contention between the states of the United States of America, the recent composition of 'Investor Summit' to attract foreign investors in India makes it very evident in India.

Thus said article research work seeks to provide a critical analysis of how globalization is leading to an unintended competition between the states of India to attract FDI. Likewise, it also discusses how the vision of "New Federalism" of America is getting hampered on account of corrective measures adopted by the federal government of the US towards regulating FDI.

Keywords: Federalism, India, America.

I. INTRODUCTION

The concept of Globalization has brought about a momentous change in the 'Federal structures' of the countries which have adopted it as a political system. Federalism being a form of political structure where powers are divided between two levels of government is now getting mutated on account of challenges faced by it in the era of globalization. The latter has pressurized for reform in economic and social organizations and thereby in inter-governmental relations as well². The proliferating process of reciprocity and integration among people, corporations, and governments worldwide is transforming the federal structures of the countries across the world.

The Federal political structure around the world has encountered a paradigm shift due to

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² Aamraesh Bagchi, 'Globalisation and Federalism: Uneasy Partners?' (2008) 43, The Economic & Political Weekly 41

globalization and so is the correlation between the federal government and the regional (state government). Globalization involves making deals with the rest of the world. The power to make such deal is usually vested solely with the Federal Government. However, it is Regional governments that face the effects of Globalization. Nonetheless these effects vary from state to state, for example, the United States, is among the most extravagant and richest in the world on the other hand, India following the same political structure of federalism is buried in poverty though de – facto is one of the fastest growing economies

In the above context to address this inquiry, the research paper will develop a comparative theory of federal performances between the USA and India in the context of the prevailing globalization. It is not coincidental that both these countries despite being the most ethnically diverse are one of the largest democracies in the world. This is because federalism affords regional units significant political and economic freedom and liberty. Time and again it has been an apt system for governing large land masses with diverse regions and populations³.

(A) Perspective of India

Though the foundation of Globalization were laid in India first in 1980's by Indira Gandhi and Rajiv Gandhi governments, respectively it failed to yield the expected results⁴. On the contrary, quiet of economic revolution occurred in India owing to central government initiated economic policy reforms of July 1991⁵. India began having the balance of payments trouble in 1985, and was followed by depletion of foreign exchange reserves which shrunk to such an extent that India could barely finance three weeks worth of imports. This led to opening of the gates of Indian economy embracing Globalization, Privatization and Liberalization⁶. All these Economic reforms of 1991, made India to witness a transition and a shift in the flow and direction of foreign direct investment (FDI) into the country⁷. Moreover, now that states are independently allowed to seek FDI, they have now entangled themselves competing with each other, resulting into varied disparities⁹. Thus, the Foreign economic engagement being one of

³ Keith S Rosenn, 'Federalism in the Americas in Comparative Perspective' (1994) 26 The University of Miami Inter-American Law Review 1

⁴ Mohan Rakesh, '*India Transformed: 25 Years of Economic Reforms*' (Brookings Institute 2018)

⁵ Aseema Sinha, 'The Changing Political Economy of Federalism in India: A Historical Institutional Approach'(2004)3 India Review 25

⁶ Mohan Rakesh, '*India Transformed: 25 Years of Economic Reforms*' (Brookings Institute 2018)

⁷ Dutta, M. K. and Sarma, Gopal Kumar, Foreign Direct Investment in India Since 1991: Trends, Challenges and Prospects (2008) SSRN Electronic Journal 12

⁸ Vinay Kumar, 'Trend of FDI in India and Its Impact on Economic Growth' (2012) 3 International Journal of Science and Research (IJSR) 639

⁹ Singh N and Srinivasan TN, "Indian Federalism, Economic Reform, and Globalization" in Jessica Wallack and TN Srinivasan (eds), *Federalism and Economic Reform: International Perspectives* (Cambridge University Press 2006)

the aspect of Globalization, has considerably enhanced sub – national governments propensity and potential to seize opportunities.

The economic policy shift of 1991 in India handsomely expanded the autonomy of the sub-national governments¹⁰. Globalization and Privatization has led to the flow of foreign capital and infrastructural development in India which all falls within the ambit of what is called as ‘Foreign Direct Investment’.(FDI). Foreign Exchange Regulation Act, 1973 accused of being more traditionalist and prohibitive was supplanted with the more adaptable Foreign Exchange Management Act, 1999. The FEMA (Annex B of Schedule 1 to Notification No. FEMA 20) now provides that without the previous endorsement of either the Parliament of India or the Central Bank ie. (RBI), foreign investment is permitted under programmed course i.e the automatic route¹¹. Additionally, to boost FDI inflow, the 15 areas that required earlier government endorsement are presently managed by significant focal services or divisions, in a discourse with the Ministry of Commerce (GOI)¹². Apparently, this will accelerate the approval process¹³. As the focal government assumes no immediate role in deciding FDI, the states have taken it in its own hand to pull in the investors by outlining motivating incentive policy based on the taxation reliefs, providing adequate infrastructure, legislating land reforms, and so forth¹⁴.

However, all the above progress is establishing though unintentionally, a co-operative relationship between the States and Central government and competitive relationship between the different states government in India. In a free-market economy like that of what India has adopted, with the enrichments of states, accessible resource base and their competitive points all encourage a feeling of rivalry, expanding the current disparities and lopsided characteristics between states. It has now become more comprehensible with the ratification of the 14th Finance Commission’s recommendations, that we are heading towards a competitive federalism; which provides for dispersal of 42% of the divisible pool to states from 2015-16 to 2019-20, against 32% suggested by the previous commission¹⁵. This aims to empower states to plan and actualize program more qualified to their necessities to lure the International investors. Additionally, majority of the state presently composing investors meet to exhibit

¹⁰ Sharma, Chanchal Kumar, "Federalism and Foreign Direct Investment: How Political Affiliation Determines the Spatial Distribution of FDI – Evidence from India,"(2007) 307, GIGA German Institute of Global and Area Studies.

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ Finance Commission of India, ‘Fourteen FC Report’(financecomindia, 5 Oct 2020) https://fincomindia.nic.in/writereaddata/html_en_files/oldcommission_html/fincom14/others/14thFCReport.pdf

offices in their state to attract the international funding has now become one of the many ways to attract investment in this globalizing world thus indulging into direct competition with one another.

(B) American Perspective

As compared to the situation in India, the affairs in the United States is quite different. Over the 230 years of adopting the Constitution, the US Federal structure has undergone a variety of changes from the numerous externalities.¹⁶ Federalism in America is pioneering. It changes after some time contingent upon the general force and objectives of significant interests in the general public along with intents of the legislation.¹⁷ This is very true, as time and again different presidents have advocated for centralization and decentralization of power owing to faced externalities, for instance President Ronald Reagan in 1981 pushed for "New Federalism" which is characterized by a gradual return of power to the states.

The United States has a fundamentally "open economy" and low barriers to FDI. As epitomized by an announcement made by erstwhile President of the US, 'Barack Obama' at the 2015 Select USA Investment Summit promoting investment in United States "America is proudly open for business, and we want to make it as simple and attractive for you to set up shop here as is possible"¹⁸. However, unlike in India, the policies regulating the Foreign Investment in the US is subject to scrutiny by the Federal government. The Senate and House of Representatives accede on a unison version of the Foreign Investment Risk Review Modernization Act (FIRRMA) on July 23. FIRRMA revamps the Committee on Foreign Investment in the United States (CFIUS) process currently used to appraise and redress national security-related concerns related to foreign investment in the United States. Though irrefutably it can be said that the US chases to find ways in which power can be transferred back to the states under the slogan of "New Federalism"²⁰, the repercussions of the Globalization in the form Foreign Direct Investment in the country is hindering its vision towards it. And this has become amply clear on the passing of the 'Foreign Investment Risk Review Modernization Act, 2018' by the US Congress; this expands the authority of the United States Federal Government agency

¹⁶ Issues of Democracy: Reinventing American Federalism (usa.embassy.de 1997) <https://usa.usembassy.de/etexts/gov/ijde0497.pdf> 10October, 2020

¹⁷ Richard P. Nathan, 'There Will Always Be a New Federalism' (2016) Journal of Public Administration and Research Theoriey.

¹⁸ Address to 2015 SelectUSA Investment Summit, available at no.usembassy.gov/obama-selectusa-investment-summit/.

¹⁹ Calvin S Goldman and Michael Koch, 'The Foreign Investment Regulation Review' (Law Business Research Ltd, London 2019)

²⁰ Aamraesh Bagchi, 'Globalisation and Federalism: Uneasy Partners?' (2008) Vol. 43, No. 38 Economic&Political Weekly 1

(CFIUS) to assess foreign investment in the country.

II. CONCLUSION

The globalization is having an unforeseen and unexpected impact on the federal political system of India. In a pursuit to attract foreign capital the states are heading into tug of war with one another. On the other hand in United States globalization is heading its federal system to a direction in contrast to what the legislation had intended to.

If the Federal government in India fails to show the courage to take an immediate role in deciding about the policies of attracting FDI, the continued pursuits of the states will unintentionally lead to disparity. This is because the northeastern states like the Manipur, Tripura and the like are at an undue disadvantage compared to the progressive states like 'Gujarat' which is already well equipped with ports, infrastructures and so forth.

Also the above study makes it very evident that globalization has different impacts on different countries having same political structures because of the contrasting and disparate intentions of the legislations and the executive.

For diverse countries like India and The United States federalism is an opt political mechanism as it facilitates efficient distribution of resources, encourages political participation and also promotes freedom and liberty. However, this political mechanism is volatile to changing externalities like globalization. As seen in the United States of America, worldwide financial crunches compelled the federal administration to tighten certain aspects of the government though it had no earlier intention. Similarly, in India globalization has led to an unforeseen tug of war between states to attract foreign capital. In this race, some states like the one in the north east are at an undue advantage owing to its snag location.

Thus for India, it can be concluded that globalization though is pushing for development in the country, it is confined only for certain states. States like the one situated in the north east are at an undue advantage thus leading to leading to further disparities.

For the United States globalization is compelling its federal system to change its policies from time to time; making it volatile and unpredictable.

III. SUGGESTIONS

Over these years even the legislation in India has distanced itself from playing an active role to minimize the effects of globalization on changing relations between the states and central governments. Thus the Indian legislation should now devise new legislation to make FDI as central subject to minimize contentions between states.

Similarly in United States the congress should play a proactive role in not getting distracted to its established vision of decentralization. This proactive role can be played by establishing and enacting a plan and taskforce to achieve its vision intended in “New Federalism”.
