

Unitary Features of Indian Constitution – A Study

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Abstract

This paper attempts to study how **in India federal powers** Dr. Ambedkar said that power vested under Article 356 would rarely be used. But this was not the case. Until the Supreme Court judgment of *S.R. Bommai v Union of India*, the power under Article 356 had been invoked 90 times. Supreme Court in this case restored the federalism by saying that if the decision is mala fide, then the court can reinstate the government dismissed or if the Assembly is dissolved, the court can revive and restore the dissolved Assembly. Now SC has said that once the president rule is imposed, the Assembly should be immediately dissolved. It should be kept in suspended animation until the proclamation is approved by both the houses of the parliament. Both Article 352 and 356 have been borrowed from the Weimer Constitution of Germany. Residuary Power i.e. the power to legislate on the areas which do not find mention in any of the three lists under Schedule 7 lies with the Centre. For example, the laws like POTA, TADA which are now included in the Unlawful Activities (Prevention) Act, National Investigation Agency Act under which NIA was set up on the lines of FBI in US, to investigate federal crimes like terrorism is a trans-border phenomenon, so although public order is a state entry, terrorism is a problem which has a magnitude beyond public order, it concerns more with the security of India.

Key words: residuary power, federal powers, constitutional constraints, quasi federal, India.

Introduction

Division of governmental powers into national and regional governments by the way of 3 lists – the Union, State and the Concurrent lists is provided in the 7th Schedule to the Constitution. Only the Centre deals with the issues mentioned in the Union List, States on the areas mentioned in the State List while the Concurrent List contains areas where both the Center and the State can legislate. This concept of 3 Lists has been adopted from the Canadian Constitution. However, there are certain powers which do not find mention in any of the three lists. These are called residuary powers and lie primarily with the Centre as per Entry 97 of Article 248. The rationale behind the residual power is to enable Parliament to legislate on any subject which is not recognizable at present. Thus, the principle of division of powers which this concept imbibes highlights the federal structure of the Indian Constitution. When the Lokpal Bill was passed by the Parliament, the States opposed, they said that in one legislation you cannot provide both

Lokpal and Lokayukta so now the Lokayukta part is removed and there is one provision which states that the States are supposed to make Lokayuktas within 2 years of passage of this Bill because Central Legislation creating Lokayuktas for the States would not have been consistent with the federal policy.

In past, several states have demanded that the residuary powers, including those of taxation should be vested with the States. In the defense of this demand, the Centre has time and again pointed to a strong unitary bias of the country's federal structure. The Sarkaria Commission, which submitted its report in 1988 also justified the transfer of the residuary powers to the Concurrent List because it felt, the exercise of such powers by the States would ultimately be subject to the rules of the Union Supremacy which would be in consonance with the Unitary spirit of the Indian Constitution, particularly Articles 256 .

Objective:

This paper intends to explore and analyze the framework in the discourse on **Indian quasi-federalism** by outlining the history of the country's federal structure in four different time periods, from the birth of the Indian republic to these contemporary times.

Unitary Features of Indian Constitution

Indian Constitution lays down a dual polity where the Central Government is neither merely the league of States and the States nor the States are the administrative units or agencies of the Central Government because they have their own Constitutional identity. However, there are some strong centralizing tendencies present in the Indian Constitution which confer maximum power to the Central Government. There are historical reasons for this centralization – when the Constitution was made, it was made at the time of partition of the India, so the framers thought that if the Central government was not strong, then India would get fragmented. The Philadelphia Convention which gave rise to the formation of the US Constitution also mentioned the expression Union, which was deliberately mentioned there in order to make it a more perfect Union. Maybe the intention of the Constituent Assembly behind adding the expression Union was that they wanted to give an impression that it was an indestructible Union. They must have feared the Balkanization of the Indian Union. The policy thus adopted by the Constituent Assembly was to have an inbuilt bias in the favor of Centralization i.e. a unitary in spirit.

A typical unitary system is governed constitutionally as one single unit, with one constitutionally created legislature. All power is top down. A unitary state is a sovereign state governed as one single unit in

which the central government is supreme and any administrative divisions (sub national units) exercise only powers that the central government chooses to delegate. These are some unitary features also present in the Indian Constitution which make it ultimately Quasi-Federal in nature –

Article 1 which provides that India i.e. Bharat, shall be a Union of States. It is to be pondered here that the use of the word ‘Union’ was deliberate or not. Because the word ‘Federation’ is nowhere to be mentioned in the Constitution. It was there in the draft Constitution but was subsequently dropped and it was deliberate omission on the part of the drafting committee. The Chairman Dr. Ambedkar, justified this deletion by saying that the addition of the word Federation was not done after the ratification of the States.

Article 2 and 3 of the Constitution, give the power to the Parliament to redraw the political map of India; to create and abolish the states, change the boundaries of the States or even change their names and this can be achieved by simple legislation by way of simple majority in the Parliament and the Constitution only provides for consultation by the Centre of the concerned State. For eg – when Andhra Pradesh was divided recently into Telangana, Andhra Pradesh Assembly had passed a resolution opposing the step irrespective of that the Central Government went on with the separation. So, what the provision provides is consultation of the State Assemblies and not concurrence and the President can only prescribe a time frame within which the State Assembly has to take a call on the proposal of separation of the State or to merge 2 or more State. Also are the examples of Uttarakhand, Jharkhand and Chattisgarh. In 2007 also, the name of Uttaranchal was changed to Uttarakhand. And this was achieved without amending the Constitution. So, the Central government has upper hand so far as the creation or abolition of the States concerned.

Constitutional provisions and Bias for the Centre, Federal powers and constitutional constraints

The Constitution of India has established a Single and Uniform Citizenship for the whole of the country. In a federal State like the United States of America there is dual citizenship where a citizen firstly owes allegiance to the States and secondly to the union. But in case of India though it is a Federal State there is single citizenship. It implies that all Indian citizens owe allegiance to the Indian Union. Any citizen, irrespective of his birth or residence, is entitled to enjoy civil and political rights throughout India in all States and Union Territories. The Indian Constitution does not recognize State citizenship and as such there is no distinction between the citizens of two or more States, the only exception being the State of Jammu and Kashmir. No one other than a permanent resident of Kashmir can acquire landed property in Kashmir; but it is a purely temporary provision to be abolished when Kashmir is fully integrated to

the Indian Union. The claim of Fundamental Rights is common to all citizens.

In India we have Unified Judiciary with the Supreme Court at the apex as opposed to the federal system having a dual system of courts. The Supreme Court occupies the highest place in our unitary judicial system. Attempt has been made, as far as possible, to ensure its independence and achieve the goal of ensuring justice. By virtue of its place at the apex of the judicial pyramid, the Supreme Court acts as a great unifying force. We have seen that its decisions and verdicts are binding on any court in India. As a result, there is a good possibility of integration, consistency and cohesion in the entire judicial system of the country.

Appointment on Key Positions such as the Chief Election Commissioner, the Comptroller and Auditor General are made by the Union Government and All India Services such as IAS and IPS have been created which are kept under the control of the Union.

Representation in the Legislature, which is equal in case of a true federation such as United States, is not applicable in case of Indian States. States in India have unequal representation in the Rajya Sabha. Representation of States in Rajya Sabha is not equal. According to Schedule 4, the representation of the States ranges from 2 to 31. The largest representation is that of UP i.e. 31 whereas many North-Eastern States have only one representation. The members of the Rajya Sabha are elected by the provincial/State legislatures. Even the value of the vote casted by the members in the Presidential Elections changes from State to State and is based on the population. The representation of the States in Rajya Sabha is not equal and depends from State to State, regulated by the Centre which is basically a unitary feature.

Entry IIA in List 1 inserted by the 42nd Amendment, 1976 calls for deployment of the armed forces of the Union in the aid of the civil powers of the State. Under the Armed Forces Special Powers Act (AFSPA) which is currently active in the states of Manipur and Jammu and Kashmir, when the Centre declares a specified area as a 'disturbed area', then martial law can be declared in that area, so the members of the armed forces of the Union can be deployed in aid of the civil power without the consent of the State. The Armed forces can fire upon and use force even to the extent of causing death, if there is a breach of prohibitory order. The actions of the armed forces of the Union are completely indemnified i.e. no suit or criminal proceeding can be filed against the armed forces without the prior sanction of the Central Government. For example, in the aftermath of the infamous Manorama Rape Case by the Assam Rifles, the elderly women of Assam had staged a naked march in front of the headquarters of the Assam Rifles and they were holding placards saying 'Indian Army Rape Us'. This is an example how the power can be misused in the name of welfare.

The Centre has the power to make laws under the State List under in certain cases. Under Article 249 which says that if Rajya Sabha passes a resolution with 2/3rd majority that the Parliament should make law with respect to a particular entry in List II with respect to a particular State. Then the Parliament makes law and that law remains in force for 1 and 1/2 years i.e. the law will cease to have affect 6 months after the resolution comes to an end because the resolution remains in force for 1 year. The Centre can also make law if there is a request or consent by 2 or 3 States and such law can be subsequently adopted by other States. When the national emergency is declared, the Central government the Union Parliament gets concurrent legislative power to make certain laws under List II and if there is a conflict between the two, the central law prevails.

Conclusion

According to KC Wheare, in practice, the Constitution of India is quasi-federal in nature and not strictly federal. In words of D.D. Basu, the Constitution of India is neither purely federal nor unitary, but it is a combination of both. Throughout the Constitution, emphasis is laid on the fact that India is a single united nation. India is described as a Union of States constituted into sovereign, secular, socialist and democratic republic. In *State of West Bengal v Union of India*, the apex court held that decentralization of authority in India was primarily to facilitate smooth governance of a large nation and therefore, it contains many centralizing features also. Indian Constitution is not a 'traditional federal constitution.' In *S.R. Bommai v Union of India*, Justice Ahmadi opined that the essence of federation is the existence of distribution of power between the Union and the States. However, the absence of the terms 'federal' or 'federation' and the presence of unitary features such as residuary powers, single citizenship, integrated judiciary, etc can help us conclude that the Constitution of India is more 'quasi federal' than 'federal' or 'unitary'. Similar was held in the case of *Sat Pal v State of Punjab*.

The Chairman of Drafting Committee, Dr. Ambedkar had thus rightly said that, "Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances". The Drafting Committee wanted to clarify that though India was a federation, it was not the result of any voluntary agreement between the States. Though the country is divided into many States, it is basically for administrative purposes which do not in any way affect its functioning as an integrated unit.

Finally, on a careful analysis of the federal and unitary features of the constitution, this aspect is not hard to miss that in every federal feature, there was an ultimate centralizing force which is existing. Therefore,

it would not be wrong to conclude that the Constitution of India is federal in structure and unitary in spirit i.e. it is quasi- federal in nature.

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