

# INDIAN FEDERALISM: EXECUTIVE FEDERALISM AND THE INTER-STATE COUNCIL

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Article 1 of the Indian constitution calls India as "a union of states". In spite of the term federation being absent in this description, experts agree that Indian constitution is a federal constitution and the Indian federation is different from either the U.S. or the Canadian federation. The Constitution of India has provided separate governments at the Union and the States with separate legislative, executive and judicial wings of governance. Secondly, Constitution has clearly demarcated the jurisdiction, powers and functions of the Union and the State Governments. Third, Constitution has spelt out in detail the legislative, administrative and financial relations between the Union and the States. Within this basic framework of federalism, the Constitution has given overriding powers to the Central government. States must exercise their executive power in compliance with the laws made by the Central government and must not impede on the executive power of the Union within the States. Governors are appointed by the Central government to oversee the States. The Centre can even take over the executive of the states on the issues of national security or breakdown of constitutional machinery of the State.

Before we analyse whether India is federation or not, let us define the federalism:-

**K.C. Wheare** defines federal government as *an association of states, which has been formed for certain common purposes, but in which the member states retain a large measure of their original independence*. A federal government exists when the powers of the government for a community are divided substantially according to a principle that there is a single independent authority for the whole area in respect of some matters and there are independent regional authorities for other matters, each set of authorities being coordinate to and subordinate to the others within its own sphere.

At the time of framing the Indian Constitution, the federal features of other countries such as U.S.A., Canada and Australia were not accepted totally, but they were altered to suit the Indian conditions. The basic feature which raises the doubt about the federal nature of Indian Constitution is the powers of intervention in the affairs of the states given to the Central Government by the Constitution. According to Wheare, in practice the Constitution of India is quasi-federal in nature and not strictly federal. Sir Ivor Jennings was of the view that India has a federation with a strong centralizing policy. In the words of **D.D. Basu**, the Constitution of India is neither purely federal nor unitary, but is a combination of both. It is a union or a composite of a novel type. India is a union comprising of various States which are integral parts of it. The Indian Union is not destructible. Here, the States cannot break away from the union. They do not have the right to secede from the union. In a true federation, the constituting units or the States have the freedom to come out of the union. We have seen in the recent years that many new states have been carved out of the existing states, therefore, in India states are destructible. In other words it can be said as described in constitution that India is "Union of States". This means, India is not a true federation. It combines the features of a federal government and the features of a unitary government which can also be called the non federal features. Because of this, India is regarded as a semi federal state. Prof. K.C. Wheare describes it as "a quasi federal state". India has two sets of government, one at the Centre and the other in the States a feature of a federal government. But the Indian Constitution has also some non federal features which are opposite to the features of a federal government. Therefore, India can not be regarded as a true federation. **But the fact that there are two sets of governments - the union government and the governments of the states, there is a constitutional distribution of powers between the centre and the states, there is a written and somewhat rigid constitution and finally there is supreme court acting as the guardian of the Constitution. In India states are not autonomous, they draw their power from constitution, the distribution of power is titled towards centre.** Features that make the Indian Constitution Unitary are : both states and centre can legislate in concurrent list and in case of conflict, the central legislation prevail, Upper House is not having equal representation of states, single citizenship; The emergency powers of the president to declare national emergency or declaring emergency in a state in the event of failure of Constitutional machinery, the appointment of governors, unification of judiciary and the dependence of the States on the Centre for finance; The power of the Union to alter the names and territory of the states, to carry out Constitutional amendments and to affect coordination among the States and settle their mutual disputes is also regarded as an indicator of the unitary character of the Indian Constitution.

**Executive Federalism** : Having established that Indian Constitution satisfies the criteria of federal constitution, the next logical question is the relationship between the states and the centre in terms of governance, legislation, revenue sharing, overriding power, law and order, judiciary etc. and etc. This brings us to executive federalism, defined by **Donald Smiley** as "the relation between elected and appointed officials of the two orders of government. It is the relationship between elected and appointed officials of the two orders of government in federal provincial interactions and among the executives of the provinces in inter provincial interactions. The word executive federalism was coined to define the political system of Canada, having a strong centre. Due to many similarities and evolution of political system in India in last six to seven decades, it can safely be established that India follow the system of executive federalism, similar to Canada. Another important reason for drawing analogy is the fact that both Canada and India, neither follow the British model of government or American model of government, aptly described as "This hybrid system combines two classical models : British tradition, based on parliamentary supremacy and conventions, and American principles, which requires a written constitution, the separation of power and judicial review. The two models are contradictory, since parliamentary supremacy and constitutional supremacy are incompatible" (Verney, 1989). The two sets of government - the Central or Union government and the State government, division of Powers : The Constitution of India has divided power between the Central government and the state governments, however this division is not equal.

In India, the Central government has been given more powers and made stronger than the State government, for example:-

1. The constitution is not strictly rigid - it can be amended by the Indian Parliament very easily. On many subjects, the Parliament does not need the approval of the State legislatures to amend the Constitution. In a true federation, both the Union and the State legislatures take part in the amendment of the Constitution with respect to all matters.

2. One Constitution is applicable to both the Union as a whole and the States. There are no separate constitutions for the States.
3. The Centre exercises control over the States - The States have to respect the laws made by the central government and cannot make any law on matters on which there is already a central law.
4. States are not represented equally in the Rajya Sabha. The populous States have more representatives in the Rajya Sabha have the less populous States.
5. The existence of a State or a federating unit depends upon the authority of the Centre. The boundary of a State can be altered and new states can be created out of the existing States.
6. Single citizenship - In a true federal state, citizens are given dual citizenship. First, they are the citizens of their respective provinces or States and then they are the citizens of the federation. In India however, the citizens enjoy single citizenship of the country as a whole.
7. Unified judiciary - India has a unified or integrated judicial system. The High Courts which work in the States are under the Supreme Court of India. The Supreme Court is the highest court of justice in the country and all other subordinate courts are under it.
8. The Constitution of India has given emergency powers to the President. He can declare emergency in the country under three conditions. When an emergency is declared, the Union or Central governments become all powerful and the State governments come under the centre's control. The State governments lose their autonomy and this is against the principles of a federation.

**Executive Federalism in India** - Having established that Indian constitution supports executive federalism, for dialogue and negotiation between the centre and states, it is imperative to ponder over the issues and developments post independence and tools available for success or failure of the system. At the time of the independence of the country, the unity of the country was the main issue and not the federalism in its true sense. A strong centre which can keep its constituents together was the main challenge but over the period of time, as the concept of India as union of states established beyond doubt, the diversity of the country started manifesting the demand for non uniform policy making and hegemony of the centre. The major issues emerging have been discussed in the following paragraphs.

**Evolution of Multi-Party System** - Though the country always had a multiparty system but ruled by single party from 1950 to 1975, the country was ruled by Congress party and to a great extent; same party rule at the centre and at the states was the norm rather than exception. However the situation has changed drastically in last three decades. To prove the point, it will be pertinent to mention that during UPA-II, Congress was in power in 9 states including some the small states of North East. The emergence of region parties and rule of different parties at centre and states have lead to demand for federalism.

**Language** - The States Reorganization Act, 1956 was a major reform of the boundaries of India's state and territories, organizing them along linguistic lines. Although additional changes to India's state boundaries have been made since 1956, the States Reorganization Act of 1956 remains the single most extensive change in state boundaries since the independence of India in 1947. Therefore, language was one of the major criteria for reorganization of the states in the country and regional language remains an emotive issue in the country. There was a time, when the English parliament was dominated by English speaking representative and also UPSC was conducting the examinations either in English or Hindi but the situation has changed in recent time, and demand for local language over imposition of English or Hindi is dominating.

**Regionalism** - Some of the problem faced by the country like in Jammu and Kashmir, in North East states and even in Punjab in late seventies and early eighties warrants powerful centre to ensure the integration of the country but apart from that there are many issues which warrants strong states and centre relation for their resolution. Recognition of regional identities, development without disturbing the basic regional fabric, land acquisition issues, displacement and rehabilitation issues need more serious and continuous coordination between centre and state and unitary decisions in the matters may detrimental to local population and, however, executive federalism may be better method to cordially resolve the issues.

**Disparity in Development** - There is lot of disparity in the development index of the Indian States, whereas, the western states are high on development index, the northern and north-eastern states are low in the index. This has led to migration of people from less developed states to developed states has the origin of many problem of the country, particularly witnessed in Maharashtra few year back. The demand for reservation for local population in jobs, education and local business has either already manifested or simmering. The trend is dangerous and poses challenge to national integration of the country.

**Appeasement or Majoritarian Views** - the forefathers of Indian constitution were aware of the disparity of the country and anticipated the need of better coordination between states and centre and devised the mechanism for better dialogue between centre and states, including the state representation in policy formulations.

Some of the Important Institutions created by the Constitution are:-

**Rajya Sabha or Upper House** - "The 'Council of States' which is also known as Rajya Sabha, a nomenclature that was announced by the chair in the House on the 23<sup>rd</sup> August, 1954 has its own distinctive features. The origin of the second Chamber can be traced to the Montague Chelmsford Report of 1918. The Government of India Act, 1919 provided for the creation of a 'Council of State' as a second chamber of the then legislature with a restricted franchise which actually came into existence in 1921. The Governor General was the ex-officio President of the then Council of State. The Government of India Act, 1935, hardly made any changes in its composition. Extensive debate took place in the Constituent Assembly regarding the utility or otherwise of a Second Chamber in Independent India and ultimately, it was decided to have a bicameral legislature for independent India mainly because a federal system was considered to be most feasible form of Government for such a vast country with immense diversities. A single directly elected House, in fact, was considered inadequate to meet the challenges before free India. A second chamber known as the 'Council of States', therefore, was created with altogether different composition and method of election from that of the directly elected House of the People. It was conceived as another Chamber, with smaller membership than the Lok Sabha (House of the People). It was meant to be the federal chamber i.e., a House elected by the elected members of Assemblies of the States and two Union Territories in which States were not given equal representation. Apart from the elected members, provision was also made for the nomination of twelve members to the House by the President. The element of dignity and prestige was added to the Council of State House by making the Vice President of India ex-officio Chairman of the Rajya Sabha who presides over its sittings. The present day Rajya Sabha may not be the true representative of the states. Second conspicuous aspect is ruling party of the country may not be a majority party in the Rajya Sabha and may prove to be a major bottle-neck in decision making process and policy formulation. However, if the Rajya Sabha truly represents the regional sentiments, it has the great potential to make executive federalism a great success.



**Inter State Council** - The Constitution of India Act, 1950 Article 263 empowers the President to establish an Inter State Council (ISC) and define its membership and powers with a view to:- (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, recommendation for the better coordination of policy and action with respect to that subject" (Bakshi, 2006, Pp. 229-30). The Council having only mandates (b) and (c) above, with Prime Minister, six Union Ministers, Chief Ministers of the States and Territories as members, was established in 1989 but has not played a significant role in federal state affairs (Singh and Saxena, 2010). Instead, adhoc meetings of State Chief Ministers accompanied by Chief Secretaries and chaired by the Prime Minister are usually held to discuss emergent federal state issues. India has a unified civil service with rotating appointments to federal and state positions and therefore bureaucratic interactions guided by the federal government dominate inter governmental relations in India (Shah, 11 March, 2013).

Indian federation should be seen in the context of its democratic system of governance at the national, state and local levels and the pluralities of its culture in terms of ethnic, linguistic, religious and other diversities, which cut through the States. India is the largest democratic country as also the largest federal and the largest pluralist country of the world. While democracy provides freedom to everybody, federation ensures that governance is distributed spatially and a strong central government enables that the 'unity amidst diversity' is maintained and the country mobilizes all its resources to maintain its harmony and integrity and marches ahead to progress. A strong Centre in India is therefore necessary for strong States and vice versa. This is the essence of cooperative federalism. So long as the same political party rules the central and governments, the cooperative framework worked very well. Since the seventies when different political parties are in power in the center and the states and more recently when coalition governments of national and regional parties are in power in the Centre, there are signs of stresses and tensions in intergovernmental relations between the Centre and the States.

The genesis of the article can be traced directly to Section 135 of the Government of India Act, 1935 provided for establishment of *Inter Provincial Council* with duties identical with those of the Inter State Council. At the time of framing of section 135 of the Government of India Act, 1935, it was felt that "if departments or institutions of coordination and research are to be maintained at the Centre in such matters as Agriculture, Forestry, Irrigation, Education and Public Health and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of Provincial Governments in them must be expressed in some regular and recognized machinery of Inter Governmental consultations". It was also intended that the said Council should be set up as soon as the Provincial autonomy provisions of Government of India Act, 1935 came into operation. In the Constituent Assembly debate held on 13 June 1949, the article on Inter State Council was adopted without any debate. (Cooperative Federalism)

Inter State Council has detailed guidelines for identifying and selecting issues and procedure for conduct of business of the council. The council has been commissioning research studies on various aspects of cooperative Federalism. Some of the recent studies conducted by the Secretariat are:-

1. Sub-National Governance in Scheduled Areas.
2. Compensation to Resource Bearing States in Respect of Minerals Including Coal, Hydropower, Petroleum and Natural Gas.
3. Creation of a Common Indian Market on Agricultural Goods and Commodities.
4. National Appraisal of Directive Principles of State Policy.
5. National Policy of Urban Street Vendors.

In addition the Commission conducted following studies on Centre-State Relations:-

1. Taxation of Goods and Services in India.
2. Review of Indian Fiscal Federalism.
3. Impact of Legal and Jurisprudential Development on Centre State Relations.
4. Independent Budgeting and Planning at District Level.
5. Centre State Financial Relations and Planning.
6. Fiscal Relations between the Centre and the States : Dependence of States on Devolution of Funds.
7. Digest of Judicial Pronouncements relating to the Centre State Relations - Post Sarkaria Commission on Centre State Relations from 1988-2009.

But the overall role of the Inter State Council has not been very effective in executive federalism in terms of resolving the issues between the Centre and States. The primary reasons may be that the council is headed by Prime Minister and though the central governments outwardly want to show the intensions to strengthen the federal system but none of them want to loose control over states and their policies.

### **National Development Council**

The National Development Council (NDC) was set up on 6 August, 1952 by an executive order of the government with the following the objectives of (a) to strengthen and mobilize the effort and resources of the nation in support of the national development plans; (b) to promote common economic policies in all vital spheres; and (c) to ensure the balanced and rapid development of all parts of the country. The NDC initially comprised of the Prime Minister of India, the Chief Ministers of all States and the Members of the Planning Commission.

**NITI AAYOG** - NITI Aayog or the National Institution for transforming India, has replaced the Planning Commission as a Think Tank of the Government while fostering the spirit of cooperative federalism. It aims in involve the states in economic policy making in India. The Prime Minister is the Chairman of the Aayog which also has representation for states and union territories unlike the Planning Commission.

The NDC and NITI Aayog also put the question mark in the effectiveness of the Inter State council as the membership of all the three bodies is similar if not exactly same with overlapping mandates.

### **Conclusion**

To make federalism work especially under parliamentary forms of political governance, a dense network of national and provincial political and bureaucratic interactions becomes a necessity and all federal countries have responded to these concerns by developing formal and informal mechanisms and processes of inter governmental consultation and joint decision making involving senior policy makers and officials - the so-called 'institutions of executive federalism'. These interactions typically take place behind closed doors impervious to scrutiny by general public, media and legislatures and civil society at large but often yield decisions on sharing of resources, policy

directions and affecting differentially the lives of citizens in different part of the country with little opportunity for feedback loops. The interaction behind the closed door may not be relevant when the people want to scrutinize the decisions affecting them. The possibility that many states might have not been represented in the decision making process cannot be ruled out and in spite of the representation the effectiveness of the representative is not beyond doubt. The possible solution may be movement from executive federalism to legislative federalism.

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