

Unitary Features of Indian Constitution – An Empirical Study

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Abstract

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. Our Constitution contains an inspiring Preamble reflecting the hopes and aspirations of the Indian people, a chapter on Directive Principles of State Policy, indicating the manner in which the people's objectives can be attained by legislative action, with due respect for Fundamental Rights of the citizens, the enforcement of which should only be suspended under compelling necessities. A democratic system such as ours, depends for its success upon a government under the Constitution in accordance with the letter and spirit of the Constitution and as expressed in the laws which must prevail amongst the law abiding people and be enforced, in cases of their infringement by courts armed with adequate power and authority and given the respect due to those through whom the Constitution and the laws speak. This in practice would be the true meaning of the 'Supremacy of the Constitution'

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

Introduction

Ours being a rigid Constitution, it cannot be amended by the national legislature unilaterally without the participation of the states. In United States, which is a perfect example of classical federalism, no part of the constitution can be amended without the ratification of at least 3/4th of the individual States. Another example, in Switzerland, no amendment can be brought into force unless it is ratified by a popular vote i.e. referendum as took place recently when the Switzerland decided to hold a referendum to separate from the Britain and people voted NO. Also, in Germany, the states do have a play in the amendment of the constitution but even the German parliament cannot amend so far as the federal features are concerned like division of federation into States or the participation of the States in making amendments in the legislature, these features are exclusively made unamendable because Germany is also a federal country. The examples justify that a rigid constitution is a primary feature of any federal form of government and the same has been incorporated in India too. In India, federal provisions i.e. the provisions which deal with the centre-state relations cannot be amended without it being ratified by at least ½ of the states. For example – When the 121st Constitution Amendment which created the National Judicial Appointment Commission (NJAC) was passed by both the houses of the Parliament with 2/3rd (special) majority, it was subsequently sent to the states

for ratification after 16 states approved the amendment, it was finally sent to the President for his assent. But before the amendment could become fully effective, it was declared to be unconstitutional by the SC as it violated the independence of judiciary as a basic structure in the Supreme Advocates on Record Association & Anr. V Union of India, also known as the 4th Judge's Case. Another example is that of Kihoto Hollohan vs Zachilhu & Ors where the court invalidated insertion of Para 7 in the 10th Schedule by way of 52nd Constitutional Amendment because Para 7 affected the jurisdiction of state high courts and the amendment was passed simply by both the houses of the parliament and was not sent for the approval of the states, so there was a procedural ultra vires and the SC declared the 52nd Amendment and the 10th Schedule to be unconstitutional to this extent as void. Doctrine of Severability was applied and only Para 7 was severed and remaining were held to be valid.

Objective:

This paper intends to explore and analyze the framework in the discourse on 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.

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.

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.

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