

Indian Federalism and its Challenges

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ABSTRACT:

Unlike the classical federation India is a unique federation with a considerable amount of centralizing tendencies. The present paper tries to highlight the major challenges India is facing to maintain the features of a federation. Indian federalism is not an outcome of a treaty or an agreement like the US. The Britishers left India as a state marred by multiple problems. The major challenge in front of the Indian leaders was to build a framework or system that could help in administering and governing the whole territory. For the administrative convenience it was necessary to reorganize Indian states. The vision of the Indian leaders was to organize states on administrative and economic basis. But linguistic affinity of the people of India and lingual movement compelled the leaders to base the reorganization on the basis of language. Regionalism and separatism played a major role in creating adverse conditions for federalism to grow in India. Another major challenge was to tackle the Centre-state relations in later years with the emergence of regional parties. In the initial years India did not face problems with Centre-state relations because the same party was ruling at both Centre and the states. Rise of regional parties ignited regional aspirations of the leaders as well as the people, which started hurting the federal spirit of the country. Role of governors became the focal point with the use of Article 356 on the frequent basis in the states run by opposition parties.

KEYWORDS: Federalism, Centripetal, Centrifugal, Regionalism, Lingual movement, Cooperative Federalism.

INTRODUCTION:

The word 'federalism' is derived from the Latin word 'foedus' which means 'covenant or treaty'. Federalism refers to the distribution of powers between the state and the central government. Three lists are provided by the seventh schedule of our Indian constitution and the three lists are union lists, state lists, and the concurrent list. The central government deals with the issues mentioned under the union list such as defense, trade and commerce, citizenship, insurance, banking, highways, railways, higher education, navigation and shipping, and many more. The state government deals with the issue given under the state lists such as agriculture, pilgrimages within India, prisons, state court fees, public health and sanitation, and the last list is a concurrent list which consists of issues on which both the central government and the state government can exercise jurisdiction such as contempt of court, evidence, protection of wild animals and bird, labor welfare, stamp duties, food, administration of justice, etc. if there is a conflict between the central government and the state government then, the decision of the central government will supersede the decision of the state government.

PRINCIPLES OF FEDERALISM SEPARATION OF POWERS

The power is divided into three branches: legislative, executive, and judiciary. These three organs of the government are independent of each other. These branches are well-known examples of the tripartite system in the united states. The main purpose of this separation of power is to prevent the concentration of power and autocracy.

CHECKS AND BALANCES

Checks and balances are important to prevent the concentration of power and violation of the separation of power. It is required for the proper functioning of the three organs of the government. Some of the examples of checks and balances are judicial review, basic doctrine structure of the Indian constitution, etc.

KEY FEATURES OF THE FEDERALISM UNDER THE INDIAN CONSTITUTION

DIVISION OF POWER

Division of power is the essential feature of federalism so that the power is not concentrated in the hands of the central government. In this, the power flows from the central government to the state government and the local government i.e panchayat.

SUPREMACY OF THE INDIAN CONSTITUTION

Supremacy of the Indian constitution means that the powers of the executive, judiciary, and the legislative are mentioned in the Indian constitution and they are bound by the constitution hence, no one is above the constitution. This feature gives strength to the basic structure doctrine of the Indian constitution which was given by the Keshvananda Bharti vs the State of Kerala.

WRITTEN CONSTITUTION

A written constitution is necessary to constitute a country as a federal nation. As it is difficult to distribute the powers orally among the center and the state government. Written constitution helps to maintain the supremacy of the Indian constitution and provides clarity.

RIGID CONSTITUTION

It is important to have rigidity in the constitution to maintain the supremacy of the constitution.

JUDICIARY

There can be a dispute between the center and the state and the judiciary provides the proper mechanism to solve the dispute between them and the decision of the judiciary is binding upon all of them.

- ARTICLE 131

According to this article, the supreme court has original jurisdiction to hear the disputes between the center and the state, two or more states, etc.

- ARTICLE 262

This article focuses on the issue of water and valley disputes between states. This parliament is allowed to make laws on the distribution of water or control of river valleys and can even bar the supreme court to hear disputes related to water or valley disputes.

- ARTICLE 263

Article 263 is based on the issue of the “establishment of the inter-state council”. In this article, the president can ask to establish a council on the charge of interest of the public or to resolve disputes between them. The duty of these councils is to advise and inquire the states if a dispute arises between them, make a recommendation for the better functioning of the policy, and discuss the subjects which are common to both the state and the union.

BICAMERAL LEGISLATION

Like Canada, India has also bicameral legislation. India also has two houses upper house [Rajya Sabha] and the Lower house [Lok Sabha] and a bill have to be passed by both the houses of the parliament. In India even states also have bicameral legislation such states are Karnataka, Maharashtra, Uttar Pradesh, Bihar, Telangana, and Andhra Pradesh. They have an upper house [Vidhan Sabha] and a lower house [Vidhan Parishad].

QUASI FEDERALISM

Quasi federalism means a form of government that has features of both the federal government and the unitary government. For example, India and Canada. But the major control and authority lie with the central government. India is a quasi-federal country in which the states have the power to make laws under list 2 of the seventh schedule of the Indian constitution and the central government has jurisdiction on the matters mentioned in the first list of the seventh schedule of the Indian constitution. The state government and the central government both have the powers to make laws on the matter listed under the third list of the seventh schedule of the Indian constitution. If the dispute arises between the center and the state, then the opinion of the central government will prevail.

In India, emergencies can be imposed under articles 352, 356, and 360 of the Indian constitution. During an emergency center government retains all the power and the state government has no autonomy during an emergency. This way federalism loses its luster.

ISSUES AND CHALLENGES FACED BY THE INDIAN FEDERALISM

REGIONALISM

As center focuses more on bigger states than the smaller states and states work according to the democratic system. Then, the conflict can arise between them and they demand to be separated from the union.

ABSENCE OF FISCAL FREEDOM

Fiscal freedom basically means the distribution of financial and tax-related power between the center and the state government. It is necessary for the development of the nation. Though the main power lies in the hands of the center and also they have a finance commission whose work is to decide the state's share in the center's revenue.

OFFICE OF THE GOVERNOR

Governor is the head of the state and is appointed by the president of India under Article 155 of the Indian constitution. The decision of the president can overrule the decision of the governors appointed by the president.

INTEGRATED SERVICES

India has integrated services of the judiciary, audits, elections, and many more. The judiciary system of India consists of the supreme, the high court at the state level, and district courts. Supreme court's decisions are bound on the high court and the high court doesn't have jurisdiction to entertain cases related to disputes between the states. The process of election is the same at both the center and the state level. At the center, it is conducted by the election commission and at the state level it is conducted by the chief electoral officer [CEO] but they are under the supervision of the election commission.

DIFFERENT RELIGION

India is a diverse country and has people who belong to many religions but India is a secular state and the word secular was added in the preamble under the 42nd amendment act which means India will not have any religion or will not promote any religion. This can lead to a conflict between the two religions and then makes federalism weak.

CASE LAWS

MANEKA GANDHI VS UNION OF INDIA

In the year 1978, the verdict passed under this law is that any law made by the legislature is considered to be ultra vires if it violates or infringes any of the fundamental rights. The fundamental rights can only be changed by the constitution, hence this is a check on both the executive branch and the parliament and the state legislatures. During times of emergency article 19 of the Indian constitution is taken away as during the times of emergency our country follows a unitary government. Therefore, India is a quasi-federal country.

STATE OF WEST BENGAL VS UNION OF INDIA

The exercise of sovereign rights by Indian states was the central issue in this case. The Parliament's legislative competence to implement a statute requiring the Union to acquire land and other properties vested in or

owned by the state, as well as the sovereign authority of states as separate entities, were also investigated. The Supreme Court of India ruled that the Indian Constitution did not contain an absolute federalism provision.⁶

Article 13 of the Indian Constitution will therefore become a non-issue, and it may be overlooked because even regular legislation will be exempt from judicial examination because they were passed on the strength of a constitutional amendment that is not subject to challenge.⁷

CONCLUSION:

Federalism is the distribution of power from the central government to the state government and the local government. The main objective of this is to prevent autocracy. India is quasi federalism country which means it has the features of federalism but the main authority lies with the central government. No doubt there is a lack of balance between the center and the state government.

REFERENCES:

1. B.D Dua and Mahender Parsad Singh, Indian Federalism in New Millenium, Manohar Publishers & Distributors, New Delhi, 2003.
2. Mokbul Ali Laskar, Dynamics of Indian Federalism, Notion Press, Chennai, 2015
3. Zeenat Ara, Changing Dynamic of Indian Federalism, Abhijeet Publications, New Delhi, 2009.
4. U.B Singh, Fiscal Federalism in Indian Union, Concept Publishing Company, New Delhi, 2003.
5. Lancy Lobo, Mrutuyanjan Sahu, Jayesh Shah, Federalism in India: Towards a Fresh Balance of Power, Rawat Publications, Jaipur, 2014.
6. Rasheedudin Khan, Rethinking Indian Federalism, Indian Institute of Advance Studies, Shimla, 1997.
7. R.K Chaubey, Federalism, Autonomy and Centre-State Relations, Satyam Books, New Delhi, 2007
Kesavananada Bharti vs state of Kerala, [1973 SC 1461]
8. Constitution of India, 1950 Art 131
9. Constitution of India, 1950 Art 262
10. Constitution of India, 1950, Art 263
11. Maneka Gandhi Vs Union of India, [AIR 567, 1978 SCR [2] 621]

