



NATURE OF INDIAN FEDERALISM: A CRITICAL ANALYSIS

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ABSTRACT

Federalism in India is a debatable issue, while some people call it “quasi-federal”, “co-operative federalism”, “competitive federalism” or the bigger debate underlying is whether India is actually a federal state. Federalism along with parliamentarism, is an axial principle of the Indian Constitution. Indian federalism is dynamic as it has been evolving over the years to form a predominant parliamentary system. The flexibility of the federal process has made it possible for the state in India to accommodate ethno national movements in the form of new regions, thus gradually increasing both the number of states and the governability of the union. Also, in a country like India which is full of diverse culture and ethnicity, any form of political system will have its own challenges. This paper discusses the nature of Indian federalism, constitutional provisions related to it and the challenges faced by the federal system in today’s time.

KEYWORDS: Federalism, Indian Constitution etc.

INTRODUCTION

Federalism is a system of government in which powers have been divided between the Centre and its constituent parts such as states or provinces. It is an institutional mechanism to accommodate two sets of politics, one at the central or national level and second at the regional or provincial level. Federalism, in essence is a dual government system including the Centre and a no. of states. Federalism is also one of the pillars of the Basic Structure of the Constitution of India.

Constitutions are classified by political scientists into unitary or federal. In unitary form, the central government enjoys all powers and the constituent units are totally subordinate to the centre. In federal form, there is separation of decision making powers among centre and the constituent parts.

According to Bombwall, the general rule is that a country will go in for a unitary form of government if it can and would accept federalism only if it must. Federal political systems of governments are adopted in countries where unity and diversity are in equipoise, while existence of autonomous states becomes inexorable where the forces of diversity are in primacy over the forces of unity. The factor important in defining the origins of different political system is observed by Watts as, “is not the mere existence of the forces promoting unity and diversity, but their relative strength,”

Federalism means different things to different people. Its foundations have been laid in different countries at different times. According to Dicey, it is the desire for union without unity which is a condition absolutely essential to the founding of a federal system.

FEDERALISM IN INDIA

India become the largest democracy in the world, with the adoption if the Constitution by the members of the Constituent Assembly on 26th November, 1949. The Constitution of India came into force on 26th January, 1950. By this act of vigour and will, Assembly members began what was perhaps the greatest political venture since that originated in Philadelphia in 1787. Indian Constitution, the world’s largest Constitution creates the largest democracy in the world. Indian Constitution makers adopted Federal political system for a variety of reasons.

Nature of Indian Federal System:

- Dual Polity – the union at the centre and the states at the periphery
- Written Constitution
- Supremacy of the Constitution
- Division of powers between the centre and the states i.e. seventh schedule
- Independent judiciary headed by the Supreme Court to settle disputes between the centre and the states and between the states.

But despite all these federal features, states are not co-ordinate but subordinate so much that they can best termed as glorified municipalities.

The Indian federal system of government has a power tilt towards the centre:

- Strong centre – more powers in favor to the centre, more subjects in the Union list than the State list
- India is an indestructible union of destructible states. States are given no right to territorial integrity.
- Flexible Constitution – the bulk of the Constitution can be amended by the unilateral action of the Parliament either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the centre.
- Unequal representation of states in the upper house of Parliament
- Emergency provisions
- Parliament's Authority over State list subjects by a resolution of Rajya Sabha to that effect in the national interest.
- Veto over state bills
- Appointment of Governors by President

These provisions do not entitle the Indian Constitution to be called as a true federation.

Whether Federal or not:

Many political scientists showed doubt regarding the federal principles of the Indian Constitution.

K.M. Munshi said that the Constitution made India, “a quasi-federal union invested with several important features of a unitary governments”.

K.C. Wheare has argued that the Indian Constitution is quasi-federal in nature. He classified India as “a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles”.

In D.D. Basu's views, our Constitution possesses the fundamental elements of a federation and at the same time possesses some unique features.

Bharati Ray described Indian federal structure as a “modified version of federalism”.

Former Chief Justice of India, K. Subba Rao holds that while some unitary principles are definitely present, they do not basically affect the federal principles in the Indian Constitution.

Prof. P.K. Tripathi said that federalism in India is a “myth and not a reality”. He also stated that the Constitution of India is anything but federal in character.

Granville Austin characterizes the Constitution as ‘co-operative federalism’ which generally produces a strong centre but does not necessarily weaken the states.

The Supreme court in *Sat Pal v. State of Punjab and Ors.* 1969, held that the Constitution of India is more quasi-federal than federal or unitary.

S.P. Aiyer, an Indian scholar of federalism, had concluded that the Indian Constitution was not only not “federal” but not even “quasi-federal”. He preferred to call it as “union constitution”.

The Constitution as it emerges from the Constituent Assembly in 1949, has key federal features but it can neither be termed as federal nor as unitary in the classical sense. It anticipates a diversified political system of special type.

CONSTITUTIONAL PROVISIONS

The respective legislative powers of states and centre are traceable to Articles 245 to 254 of the Indian Constitution.

The seventh schedule of the Constitution contains three lists that distribute powers between the centre and the states (Article 246).

- On 98 subjects in the Union List, the parliament has exclusive power to legislate
- On 59 subjects of the State List, the state alone can legislate

- On 52 subjects of the Concurrent list, both the centre and states can legislate. However, in case of a conflict, the law made by parliament prevails (Article 254).

Absolute power of state in certain matters: According to various decisions of the Supreme Court, if an enactment falls within one of the matters assigned to the State List and reconciliation is not possible with any entry in the Concurrent or Union List after employing the Doctrine of “pith and substance”, the legislative domain of the state legislature must prevail.

Issues related to federalism

- **Increasing Central Dominance in Fiscal Policies:** A series of steps by the Union government undermined the principles of fiscal federalism. This has been manifested by :
 - Increasing monetary share of the States in Centrally Sponsored Schemes (CSS).
 - Imposition of demonetization without adequate consultation with the States.
 - Outsourcing of the statutory functions under the Smart Cities Mission
 - As of 2020-21, the Union government’s share in the total contribution of the petroleum sector was 68%, which left only 32% to the States.
- In 2013-14, the Union: State share was almost 50:50.
- **Impact of Covid 19:** The states were curtailed in aspects relating to Covid-19 management such as procurement of testing kits, vaccination, the use of the Disaster Management Act, 2005, and the unplanned national lockdown.
 - Moreover, the ill-prepared government during the Second Wave countered criticism health as a ‘State subject’.
- **Legislations Weakening States’ Authority:** Several other bills and amendments introduced by the Union government in the recent past have also led to the weakening of States’ autonomy. These include:
 - The farm laws (repealed now)
 - Banking Regulation (Amendment) Act of 2020
 - Government of National Capital Territory Amendment Act,2021
 - Indian Marine Fisheries Bill, 2021
 - Draft Electricity (Amendment) Bill, 2021
 - National Education Policy of 2020
- **Taxation Related Issues:** Enlarging the non-divisible pool of taxes in the form of cess in petrol tax and instituting the Agriculture Infrastructure and Development Cess have resulted in a situation where the Union continues to exclusively benefit from tax collection.
 - The share of non-divisible pool cess and surcharge in total taxes collected by the Union government has increased from 12.67% in 2019-20 to 23.46% in 2020-21.
 - The 2021-22 Budget Estimates indicate that the States’ share of Union tax has reduced to 30% against the mandated 41% devolution prescribed by the 15th Finance Commission.
 - GST Specific Issues: During the pandemic, the Union government repeatedly violated the compensation guarantees to the States under the GST regime.
 - Delay in paying the States their due worsened the impact of the economic slowdown.
 - The GST compensation period expires in 2022, and despite multiple requests from the States, the deadline has not been extended
- **Inadequate funding:** Cash-starved States have been seeking non-tax avenues to generate funds to sustain their programmes.
 - The suspension and transfer of the Member of Parliament Local Area Development (MPLAD) funds to the Consolidated Fund of India led to a major crisis situation for most states.
 - Although the Government has raised the borrowing limit under the Fiscal Responsibility and Budget Management Act (FRBM) from 3% to 5%, it has imposed certain restrictive conditions making it more difficult for the states to borrow.

SUGGESTIONS

- **Relooking into Federalism:** The above mentioned policy misadventures call for research and introspection on federalism.
 - States should demand the creation of a formal institutional framework to mandate and facilitate consultation between the Union and the States in the areas of legislation under the Concurrent List.
- **Strengthening Inter-State Relations:** State governments shall consider deploying human resources to support them in preparing responses to the consultations initiated by the Union, especially with a focus on the federalism angle.
 - Instead of reaching out to each other only during crisis situations, Chief Ministers may create forums for regular engagement on this issue.
 - This would be crucial in the advocacy of major demands like the extension of GST compensation to 2027 and inclusion of cess in the divisible pool of taxes.
- **Consultation is the Key:** The intention of the framers of the Constitution was to ensure that public welfare is sub served and the key to that lies in listening to stakeholders.

- The essence of cooperative federalism lies in consultation and dialogue whereas a unilateral legislation without taking the States into confidence will only lead to protests on the streets.
- **Bringing Reforms while Balancing Federalism:** A diverse country India requires a proper balance between the pillars of federalism (autonomy of states, centralization, regionalization etc.). Extreme political centralization or chaotic political decentralization can both lead to the weakening of Indian federalism.
 - Proper utilization of the institutional mechanism if the Inter-state Council must be ensured to develop political goodwill between the Centre and the states on contentious policy issues.
 - The gradual widening of the fiscal capacity of the states has to be legally guaranteed without reducing the Centre's share.

CONCLUSION

The presence or lack of federal flexibility plays a crucial role in shaping democracy. Although our Constitution establishes a federal state in terms of structure of governments, but it adorns a unitary character in terms of functions. It must be noted that whatever the structure of the Constitution and resultant government is – federal, quasi-federal or unitary, its real nature depends on the spirit of 'co-operative federalism' or 'unitary centralism'. The beauty of the Indian Constitution is that it has been made relatively flexible so as to showcase its federal or unitary face in accordance with the socio-political situations in the country. Dr. Ambedkar, one of the architects of the Indian Constitution, rightly remarked, "Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances". But despite all these provisions that aimed at establishing a working balance between the requirements of national unity and autonomy of the states, the union government needs to invest resources towards facilitating effective consultation with the states as a part of the lawmaking process. It is critical to establish a system where citizens and states are treated as partners and not subjects.

REFERENCES

1. Aiyer, S.P., "*Federalism and Social Change*", New Delhi, 1961.
2. Austin, Granville, "*The Indian Constitution: Corner – Stone of a Nation*", Oxford, 1966.
3. Basu, D.D., "*Commentary on the Constitution of India*", Vol. 1, p.12.
4. Bharathi, Ray, "*Evaluation of Indian Federalism*", Calcutta, 1967.
5. Bombwall, K.R., "*The Foundation of Indian Federalism*", Bombay, 1967, p.27.
6. C.A.D., Vol. XI, Government of India, New Delhi, 1949, pp. 977-9.
7. Dicey, A.V., "*An Introduction to the Study of the Law of the Constitution*", London, 1959, p.141
8. Jain, M.P, "*Indian Constitutional Law*", 1987.
9. Kesavananda Bharati v. State of Kerala AIR 1973, SC 1461.
10. Munshi, K.M., "*The President under the Indian Constitution*", Bombay, 1967.
11. Musgrave, R. A., "*Theories of Fiscal Federalism*", 4 Public Finance, 522, 1969.
12. Sarkaria Commission on Centre - State Relations, Government of India, 1980.
13. Sat Pal v. State of Punjab and Ors, AIR 1969, SC.
14. S. R. Bommai v. Union of India, AIR 1994, SC, p.78.
15. State of Bombay v. F.N. Balsara, AIR 1951, SC.
16. Subba Rao, K., "*Indian Federal System*", Madras, 1972.
17. "*The Sustained Attack on Federalism*", The Hindu- 21.12.21 <https://www.thehindu.com/opinion/op-ed/the-sustained-attack-on-federalism/article37999902.ece>
18. Tripathi, P.K., "*Federation: The Reality and the Myth*", Journal of the Bar Council of India, vol. 3(3), 1974, p. 251.
19. Watts, R.L., "*New Federation, Experiments in the Commonwealth*", London, 1966, p. 63-64.
20. Wheare, K.C., "*Federal Government*", London, 1963, p. 28.