



Nature and characteristics of Indian federalism

Dr. Virender Sindhu

Assistant Professor, UILMS, MDU, Haryana, India

Introduction

Ivo D. Duchacek has drawn a model to explain the nature and characteristics of the Indian Federalism, and analysed the links between two spheres of seemingly exclusive jurisdiction. He classified these links under two broad categories. They are (A) the Constitutional overlaps and (B) Extra Constitutional overlaps^[1]

Constitutional overlaps

1. The 'Elastic Clause'
2. Constitutional authorization for federal supervision of local execution of national laws.
3. The right to insure the republican or democratic form of government.
4. Emergency powers in case of invasion or insurrection.
5. War and foreign policy powers.
6. Concurrent powers.
7. Dependence of the central authority on the State government, in such things as state control of national elections, control over the upper chamber, and local administration of national programs. Dependence of the Central Authority on the components also includes the possibility of blackmail, implied in the Constitutional grant of the right of secession^[2].

1. Elastic Clause

There is distribution of powers through three lists among the center and states. If the Union law trenches upon the State subjects or vice versa, the courts apply a principle of interpretation known as the "Doctrine of Pith and Substance". This doctrine validates the law despite the entrenchment into the domain of one by another. It proves the elastic nature of powers.

Constitutional Authorization for Federal supervision of local execution of national laws

Article 256 says that every state has to exercise its executive power so as to ensure the compliance with the laws made by the parliament and any existing laws which apply in that state. To do this, union executive can give directions to a state as it finds necessary for that purpose. Thus the state has an obligation to comply with the law of parliament and union can issue directions for that purpose. This serves a dual purpose, that the state law shall always comply with the Union law and that in execution of the laws the Union can issue directions to the state. Article 257 also deal with the control of the Union over states. Article 258 empowers Union powers on states.

Failure to comply⁷ with these directives may lead to imposition of President Rule under Article 365. Articles 339(2), 344(6) and 350A authorise the President to issue certain directions to the states to get certain specific things to be given effect to. This aspect has direct impact on the nature of Indian federation itself

3. Right to insure Republican or Democratic form of Government

Preamble says that India is Republic and democratic. In Keshavananda Bharathi case it was held that democratic and republican form of government form part of basic structure of the constitution and thus cannot be amended.

4. Emergency powers in case of invasion or insurrection

Article 352 refers national emergency. Armed rebellion has been substituted for 'internal disturbance' by 44th amendment so that emergency cannot be imposed for 'internal disturbance'. This Article gives sweeping powers to the Union in case of emergency. There is an obligation on the Union to protect the states against external aggression or internal disturbance, as per Article 355. Under Article 257-A assistance to states by deployment of armed forces or other forces of the Union was also possible. This provision has been however, omitted by the Constitution 44th Amendment in 1978. Even in the absence of such a provision there is definitely an obligation on part of the Union to do so in terms of Article 355. Thus Indian Constitution would satisfy this overlap also giving the power in favour of the Union Government at the time of such emergencies or insurrections.

5. War and Foreign Policy Powers

These powers are exclusively with the center. Art 352 empowers the Union to impose emergency and give sweeping powers. States cannot question or raise objection till normalcy is restored. Depending upon the nature of emergency the extent of power would also vary. The power of the Union Government during such emergencies of war is provided under Article 246 read with Entries 1 and 2 of List I to Schedule VII which speak about the Defence of India. Article 246 read with entries 10, 11, 12, 13, 14, 15 and 16 of List I of Schedule VII contain the powers of foreign policy entrusting exclusively to the Union. Article 253 empowers the Parliament to make any law for the whole or any part of the country for implementing any treaty with other countries or any decision made at any international conference. Thus in these two areas the Union has absolute powers.

6. Concurrent Powers

Concurrent list provides scope of legislation for both Union and Center. Article 254 plays key role in interpreting the three lists. In case of conflict the law made by parliament will prevail over the state law [254(1)]. If the State law on subject listed under concurrent list, is reserved for the consideration of the President by the Governor under Article 200, and has received assent from the President then the State law shall prevail over the Central law in that state alone. Nothing in this article shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to or amending, varying or repealing the law made by state. [Exception provided under 254(2)]

7. Dependence of the central authority on the States for local administration of national programmes

The Union has to depend on states for national elections, local administration and national programmes. Article 324(6) imposes an obligation both on the President and the Governors of states to make available such staff as necessary for the discharge of the functions conferred on the Election Commission. Under Part XI, Chapter II provides the frame for Administrative relations (Art 256-261) with regard to local administration of national programmes and policies. In the implementation of national policies also the Union can issue directions and if these directions are ignored, the Union government can go to the extent of removing the governments under Article 356. These seven overlaps, which are present in the Indian constitution, prove that the Union Government is more powerful than federal units.

Extra Constitutional Overlaps

- a. Economic and social imperatives such as economic planning, technological innovation (atomic energy, computers, and other costly projects calling for national financing and controls), Social Welfare Programmes and the growth of large national organizations that cut across the territorial divisions, such as manufacturing corporations, insurance companies, banks, labour and farm organizations and mass media. They all challenge the intra-federal boundaries ("the worst inanities" as Morton Grodzins called the boundaries of American States) that had been drawn in earlier eras and that cannot be justified on any grounds of rational efficiency. Planning Commission and National Development Council are extra constitutional bodies which eroded the powers of the states. The projects like atomic energy and other costly enterprises have to be funded by the center and regulated by it. Railways, Airways, waterways, Public Corporations and companies, Banks, Insurance companies, mass media organizations like AIR and Doordarshan are under the control of central authority. But the privatization of these institutions have reduced the control of the Union authority over it and private persons are playing key role by manipulating these organizations
- b. Population shifts, especially the growth of big cities, the emergence of new regional territorial communities regardless of state boundaries, or emergence of new territorial communities within the existing state

boundaries. Interstate travel and migration of people from one state to another state created multi-linguistic groups all over the country. Because of this states formed on the basis of language has lost their significance to some extent.

- c. External pressures (threats and opportunities) that result in further extension of the federal powers. Three wars that India fought after independence increased the power of the center. Central authority and command over external affairs and relations with neighbours, increase the importance and power of the Union Government.

Political culture and political parties whose orientation, structure, and changing leaders may have a profound impact on the reality of federalism.(ibid, 279) When there was single party rule in center and states, the power of Union Government was enormous and the federal polity has been totally undermined. Only after the advent of regional parties or due to raise of non-congress parties the situation changed. With the advent of coalition politics, there is some sort of federal character visible in the governance at the center. The regional leaders and parties are playing definite role in national politics and running constitutional offices. Thus a prolonged debate amongst the Constitutional Jurists about the nature of the Indian Constitution went on changing along with emerging character of Indian Constitution Earlier view was that it was a quasi-federal constitution and contains more unitary features than federal.

The other equally strong view that it was a federal constitution with a novel feature of adopting itself to national emergencies. The framing of Indian Constitution as done away with the traditional classification followed by the political scientists such as the Constitutions are either unitary or federal. As discussed above, the framers incorporated a proportionate mix of features of unitary Constitution, wherein the powers of the Government are centralised in one Government viz., the Central Government, the provinces are subordinate to the Centre, and the features of federal Constitution where there will be division of powers between the federal and the State Governments and both are independent in their own spheres. It is mainly federal with unique safeguards for enforcing national unity and growth. It is a Union of composite States of a novel type. It enshrines the principle that in spite of federalism, the national interest ought to be paramount^[3].

Salient Features

The basic philosophy of our Constitution is summed up in the Preamble, which declares India to be a Sovereign Socialist Secular Democratic Republic.

1. Largest Written Constitution: It is a written constitution containing as many as 395 Articles and 9 schedules, originally. It is the bulkiest and the largest one in the world. Constitution of U.S.A. contains just 7 Articles, that of Australia 128 and that of Canada 47 Articles. The 395 Articles of Indian Constitution were divided into 22 parts. After the Constitution 78th Amendment Act, 1995, the Constitution now consists of 443 Articles divided into 26 parts and 12 Schedules. Since 1950 to 1995, 21 Articles

have been repealed and 69 more Articles have been added. As the framers wanted to remove difficulties during the working of the Constitution, they incorporated several details to avoid loopholes and defects. They framed the Chapter on Fundamental Rights on the model of the American Constitution, and adopted the parliamentary system of Government from the United Kingdom, they took the idea of the Directive Principles of State Policy from the Constitution of Ireland, and added elaborate provisions relating to Emergency in the light of the Constitution of the German Reich and the Government of India Act, 1935. It lays down the structure not only of the Central Government but also of the States, while American Constitution left the aspect of drafting the provisions of governance to the States. The vastness of the country and diversity in the society with peculiar problems is another reason for bulkiness of the Constitution.

2. Sovereign Socialist, Secular Democratic Republic: According to Preamble, India is a Sovereign, Socialist, Secular, Democratic Republic.

The word Sovereign emphasises that India is no more dependent upon any outside authority.

The term "Socialist" has been inserted in the Preamble by the Constitution 42nd Amendment Act, 1976. In general, it means some form of ownership of the means of production and distribution by the State. India has chosen mixed economy and now drifting towards privatisation. The term Secularism means a State which has no religion of its own as a recognised religion of State. It treats all religions equally. In a secular State the State regulates the relation between man and man. It is not concerned with the relation of man with God. The term "democratic" indicates that the Constitution has established a form of Government which gets authority from the will of the people. The rulers are elected by the people. Justice, liberty Equality and Fraternity are the essential features of the democracy. The term Republic signifies that there shall be an elected head of the State who will be the Chief Executive Head. The President of India, unlike the British King or Queen, is not a hereditary monarch but an elected person chosen for a limited period. It is an essential ingredient of a Republic.

3. Parliamentary form of Government: Both at the Centre and States, the Constitution established a parliamentary form of Government. The British model has been adopted in toto, in this regard. The essence of the parliamentary form of Government is its responsibility to the legislature. The Council of Ministers is collectively responsible to the Lower House i.e., Lok Sabha. In States the Council of Ministers is responsible to Legislature, and therefore it is called responsible Government. On the otherhand the American Government is a Presidential form of Government, where the President, the real executive and elected directly by the people for 4 years. All executive powers are vested in him. He is not responsible to the Lower House, i.e., the Congress. The members of his cabinet are not members of Legislature. They are appointed by the President and therefore, responsible to him.

Parliamentary democracy has three important characteristics namely,--

1. the executive is responsible to the Lower House;
2. the Lower House has a democratic basis (i.e. it is elected by the people; and
3. the ultimate legislative and financial control is vested in this Lower House.

The Parliamentary system of Government in India is based on adult suffrage, whereby all citizens of India who are not less than 18 years of age and are not disqualified on certain grounds like non-residence, unsoundness of mind or corrupt practices have the right to be registered as voters in any election to the Lok Sabha and to the Legislative Assemblies of the States.

4. Partly Rigid and Partly Flexible: The Constitution of India is partly rigid and partly flexible. There are certain provisions which can be amended by a simple majority in Parliament, while there are certain other provisions whose amendment requires not only a special majority in Parliament but also ratification by at least one half of the State Legislatures.

A written constitution is generally said to be rigid. But the Indian Constitution despite being a written one is not rigid and it is sufficiently flexible.

5. Fundamental Rights: The incorporation of a formal declaration of Fundamental Rights in Part III of the Constitution is deemed to be a distinguishing feature of a democratic State. These rights impose limitations on the powers of the State. The State cannot take away or abridge these Fundamental Rights of the citizen guaranteed by the Constitution. If it passes such a law it may be declared as unconstitutional by the Courts. Besides declaring the fundamental rights, the Constitution provided a machinery to enforce them. The Supreme Court is empowered to grant most effective remedies in the nature of Writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari whenever these rights are violated. However, the Fundamental Rights are not absolute. They are subjected to certain restrictions, based on some social interests. Thus, our Constitution tries to strike a balance between the individual liberty and the social interest. This idea of incorporating Bill of Rights has been taken from the Constitution of the United States.

6. Directive Principles of State Policy: -- The Directive Principles of State Policy contained in Part IV set out the aims and objectives to be taken up by the States in the governance of the country. Unlike the Fundamental Rights, these rights are not justiciable. Though by their vary nature they are not justiciable in the Court of law, yet the State Authorities have to answer for them to the electorate at the time of election. The idea of the welfare state envisaged in our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty. The support to villages and rural economy called Gram Swaraj, one of the ideals of Mahatma Gandhi could be found only in Directive Principles of State Policy. Ideals which could not be guaranteed as enforceable rights

- were accommodated in this Part after much deliberations in the Constituent Assembly.
7. **Fundamental Duties:** The Constitution (42nd Amendment Act, 1976) has introduced a Code of ten "Fundamental Duties" for Citizens. The fundamental duties are intended to serve as a constant reminder to every citizen that while the Constitution has specifically conferred on them certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and democratic behaviours. These duties, like the Directive Principles of State Policy cannot be judicially enforced. However they remind the responsible citizen what Constitution expects from them.
 8. **Adult Suffrage:** In the place old communal franchise, the uniform adult suffrage system has been adopted. Under the Indian Constitution every man and woman above 18 years of age has been given the right to elect their representatives for the legislature. The adoption of the universal adult suffrage under Article 326 without any qualification of sex, property, taxation, or the like is a bold experiment in India having regard to vast extent of the country and its population, with an overwhelming illiteracy.
 9. **An Independent Judiciary:** After a thorough deliberation in the Constituent Assembly, the founding fathers created an independent judiciary with a power of Judicial Review as the custodian of the fundamental rights of the citizen. It plays a significant role in determining the limits of power of the Centre and States. Single independent judiciary to interpret the Union and State Laws, vibrant judicial review of executive and legislative action are other basic features of the Indian Constitution which secure the philosophical foundations of the rule of law and democracy. The judiciary is the only resort for a citizen to enforce the constitutional provisions and secure the rights.
 10. **A Secular Socialist State:** The Citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed religion or sex. The word "secular" has been included in the Preamble by Forty Second Amendment. Article 15 (1) prohibits any discrimination based on religion, and Article 25 (1) provides that subject to public order, morality and health and to the other provisions, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Secularism is also subject to democratic socialism. Religious freedom cannot therefore be used to practice economic exploitation. The right to acquire, own and administer property by religious institutions is subject to the regulatory power of the State.
 11. **Single Citizenship:** Though the Constitution envisaged a dual polity i.e., Centre and States, it provides for a single citizenship for the whole of India. The American Constitution provides for dual citizenship i.e., the citizen of USA and a State citizenship. Every Indian has a citizenship throughout the country with same rights. Recently Indian citizenship is given to the non-resident Indians permitting them to retain the foreign citizenship.

References

1. Ivo D Duchacek, Comparative Federalism, Holt, Rinehart Winston, Inc, New York, 1970; 278.
2. IBID. 277
3. Jennings, Some Characteristics of Indian Constitution, p. 55