



Legal aspects and issues and challenges of federalism in India

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Abstract

Federalism, in its fundamental sense, implies a division of regulative and leader power between the central government and local governments so every government can work freely in its own circle. In a nation like India, the significance of federalism is essential in light of the fact that different individuals from different foundations and cultures live respectively. Neither one of the future is workable for a solitary government to make laws for the entire country nor is it positive in light of a legitimate concern for individuals with shifted societies, languages and different foundations. In this way, the Central government might make laws for the entire and any part of an area of India and the separate State governments might make and execute the laws as per the social, financial and political states of individuals living in different regions. Federalism in the cutting-edge age is a standard of compromise between two disparate propensities, the enlarging scope of normal interests and the requirement for neighbourhood independence. The paper will look at the concept of federalism as well as the changing components of federalism in India. Further, this paper will feature the necessities of the co-employable and cooperative federalism for accomplishing the constitutional objectives.

Keywords: federal, federalism, issues of federalism, federal laws

Introduction

Federalism has a constitutional component to the sharing of power between different levels of government so that unified units can enjoy significant, constitutionally assured independence over specific strategy areas, while providing the power to understand agreed rules in different areas. Along these lines, federalism consolidates part self-government with part shared government^[1].

Federal systems are typically associated with socially distinct or regionally large nations. Federated nations (or nations with federal-like characteristics, Striking examples of what are frequently referred to as 'quasi-alliance') include Argentina, Belgium, Brazil, Canada, Germany, India, Malaysia, Nigeria, Pakistan, Spain, South Africa and The United States of America.

India has been ruled by unknown rulers for thousands of years, for example, the French, Portuguese, Dutch, Shakas, Huns, Kushans, Mughals and British. Thus, the type and tradition of government and administration were certainly influenced by the workings and visions of the above rulers. After independence, Indian parliamentary democracy was determined by the constituents held together. This assembly was influenced by various Acts of the British Government at any point passed to lead India and the Act of 1935 became the most influential Act for the group forming the constituents of India. And this was cited by W.S. Mauris Jhons in his different research and discoveries^[2]. On 15 August 1947, India's fight for independence came to an end and the Constituent Assembly was responsible for drafting another constitution which became effective on 26 January 1950. One of the important features of the Indian Constitution included the devolution of powers between the Parliament and the regulatory assemblies of the state.

The federal features that influenced the early architects of the Indian Constitution were mainly from the American, Canadian and Australian federations. The framers of the constitution were influenced by federal standards, with exemptions and amendments to the constitutions of the US and Canada. Then, Indian leaders like Jawaharlal Nehru, a lifelong admirer of the liberal majority rule system, focused only on socialism and agrarian rearrangement. For his strategies to be successful, he recognized that the foundation of the federal system in India should have a centralized curriculum.

Defining Federalism

Federalism is a complex government system for the administration of a country. It unites certain independent, invariable, separate and dissimilar elements or regulatory units in a political union. It tries to create harmony between the forces working for the convergence of power at a central point and the forces working in favour of the dispersion of power across different units.

Federalism, therefore, tries to accommodate solidarity with classification, centralization with decentralization, and patriotism with localism. The creativity of the federal system that lies in that power is, at the same time, focused and at the same time isolated. There is centralization of administration and regulation in specific areas along with decentralization in various sectors. A federal constitution creates a dual nation, with two degrees of

government – a central government that has jurisdiction over the entire country in some areas, and state governments, each of which has jurisdiction within specific provincial boundaries. Practices. A resident in a federated nation is dependent on the declarations of two governments.

The entirety of government powers and functions are divided between the Center and the states. Along these lines, each degree of government has the capability within its allotted area. Some governments do not have waterproof cartons in spite of the capacity. They interact with each other in certain places, and as a result, a large set of government relations emerge in a federated country. The example of these relations is not static; It is dynamic and constantly finding another balance in the light of centripetal and centrifugal forces operating in the nation and that is why the subject of government relations is of great importance for any federal constitution researcher. The equivalent is valid for the Constitution of India which constitutes a dual nation comprising a central government and 29 state governments.

Nature of Indian federation in the context of Article 356

There are arrangements that do not make the Indian Constitution federal in the spirit of the US Constitution. However, it is expressed that within India, neither the Union nor the States appreciates internal influence because of the division of powers between the Union and the States, in which both the Governments wield full power within their allotted circle. However, there exist specific arrangements in the constitution which are seen as contradictory to the standard of federalism. For example, Article 200 of the Constitution states that specific bills passed by state legislatures may be saved by prominent representatives for the consideration of the leader of India. Another article that is seen as a deviation from the guidelines of federalism is Articles 356, 352 and 360 which give the President the power to pronounce a crisis, which can turn the federal system into a unitary system; but the arrangement is intended for brief and may be used exclusively in specific outstanding circumstances, within specific limits created through legal arbitration, there are many situations where the central government has used this power to break the state governments of the opposing parties and remain in power at the centre^[3].

An adjustment has been made in the development of the idea of Indian federalism. Majority government and federalism are fundamental features of our Constitution and are part of its essential formulation. Dr. Babasaheb Ambedkar argued that art. 356 of the Constitution of India as a dead end of the Constitution, although sadly many state governments in India are covered by their power with the help of Article 356^[4].

In a mockery of the Constituent Assembly, it was recommended that Article 356 should be tampered with for political reasons. In response, Dr. Ambedkar said that such articles would never be called into action and would remain a dead end. If they are implemented, I am sure that the President, to whom these powers have been conferred, will do so safely before actually suspending the administration of the territories. I believe the main thing he will really do is issue a simple warning to a region that has failed, that things were not happening in the frame of mind in which they were planned to be in the constitution. If that warning fails, the other thing would be for him to order a political decision, allowing the people of the area to settle matters without anyone else. Only when these two fix the bomb will he come back to this article.

However, it was never the case that the power of the Presidents to issue decrees under Article 356 was exercised more frequently. Up to this point, the power under the system has been used in more than 90 incidents and practically all cases against governments have shown ideological groups in resistance. This *S.R. Bommai v. Association of India* was a landmark judgment in which the Supreme Court finally examined the provisions of Article 356 and various issues relating to the said provisions. Another historical case following which the idea of the Indian Constitution was addressed was the *State of Rajasthan v Union of India*. In this case, the Chief Justice of the Hon'ble Court, interpreting Article 356, said, "Our difficulty is that the language of Article 356 is so broad and independent that it would not be understood or understood in order to enclose and bind to a restraint. Yet there would be constitution-producing regulation, which, once again, would not speak strictly. has been, is in our place." The discussion of whether India has a "federal constitution" and a "federal government" is catching up with the Supreme Court in India in the light of the fictitious mark given to the Constitution of India to be distinct, federal, quasi-federal, unitary. The main important case where this issue was finally addressed by the Apex Court was that of *State of West Bengal v. Association of India*. The central concern associated with the matter was the activity of the sovereign powers by the Indian states^[5].

Issues and Challenges Pertaining to the Federal Structure^[6]

▪ Centralised Planning

Although economic and social planning is found in the Concurrent List of the Seventh Schedule of the Constitution, the central government in India appreciates the unrestrained power over public and local preparedness. The centralized system, through the Planning Commission, the NITI Aayog currently designated by the Centre, significant dominance in official power for the Union, monetary dependence of the states on the leniency of the Centre, regulatory arbitration of the states makes the states compliant and vulnerable. The states simply occupy the obvious places contained in the text for the sake of arrangement. There is no specific arrangement commission for the states in India. It also adds to the dismay of the states and is in the mood for the smooth functioning of the federal spirit throughout the country.

- **Language Conflicts**

The diversity of languages in India sometimes hurts the federal spirit of the Constitution. 22 languages are constitutionally supported in India. Additionally, many of their local languages have addressed the country. Discomfort comes when the league's grassroots unit tries to impose a particular language on others. The struggle for the true language is still a serious issue in India. The southern states' resistance to Hindi as the official language of India has prompted a well-established language emergency in India. It casts soil on the federal character of the Union of India.

- **Issue of Religion**

India is a good example of strict asymmetry which sometimes leads to unrest to weaken the organisation. In any case, the hardening cycle should not be constantly disruptive. As far as there is sensible flexibility regarding individuals and there is a proven mainstream strategy regarding government, religion cannot be the cause of irregular characteristics in a federation.

- **Relative Economic and Fiscal Incompatibilities among the Units**

Differences in economic parameters and relative financial and economic discrepancies between constituent states also represent a threat to an organization. The forces of one-sided characteristics in the region are monetary preparation and advancement and demands for local financial uniformity and monetary independence of the states. The demands of a district's financial correspondence form issue in a federation. In India, some states are declared poor and are getting aid rewards, on the rule of balance. Nevertheless, difficulty arises in an organization that if the balance sheet guideline is followed, public pay and full wage growth will be tolerated. Once again, if more attention is paid to the monetary turn of events, then equilibrium, all else being equal, cannot be met.

- **Physical Environment**

The physical environment can also create a hindrance for an organization by affecting correspondence. In a league in which the lines of correspondence are long and difficult, each unit faces the difficulty of keeping in touch. It is easy to misunderstand and conflict and this was probably one of the important foundations for the partition of the eastern part of Pakistan. Furthermore, without any great correspondence, the less fortunate units typically perpetuate a complex of neglect and feel that they are not getting their fair share of assets to improve. In India, the north-eastern states have similar sentiments and make issues for the alliance.

- **External Forces**

External forces also form blocks for a league. The pressure on the northeastern states in India is due to the obstruction of the neighbouring countries. China's case over parts of Arunachal Pradesh's territory on the LAC is a threat to India's territorial integrity. The Tamil issue in Sri Lanka makes the forces in India problematic. The alleged Pakistani hand in the development of Khalistan in the past has also had something to do with weakening the Indian Union.

- **Challenges from Globalization**

Globalization opens doors as well as provoking for federal systems like India. Federalism faces tough difficulties in the period of globalization as the last option has put pressure on changes to monetary and political union. As the economy progresses after globalization, states also seek financial reforms by allowing unrecognized direct enterprise and the SEZ model of monetary refuge within their territories. It has brought many reforms and primary changes in the economy of India. The market-driven economy has generally re-imagined past community-state relations, particularly in the monetary circle. Continuing control of the Indian economy has led to competition among Indian states to obtain an enterprise, especially from unfamiliar sources. This has had an unfriendly effect in emphasizing the provincial irregular features, said not to expand the hole between the endless. On the one hand, forward and created states improve the pace of their monetary advancement through FDI, on the other hand, regressive states remain underdeveloped in the absence of a viable socio-political financial environment. The last option needs help and cooperation by the central government in this way. This will advance supportive federalism in India. Also at the grassroots level, the relationship between the state and panchayats is undergoing transformation due to all the intrusive effects of globalization. For federalism to flourish, more decentralization is needed at each level. Globalization has given rise to new concepts such as 'new locality, individual empowerment and so forth. Globalization has made both the middle and the states active participants in political stability and building harmony and consensus. The use of Article 356 has been radically reduced since the beginning of progress in 1990.

- **Governor's Office**

The Constitution of India provides for a Governor for each state, who is directly elected by the President of India and serves a 5-year residency. The President can pardon the Governor as per his wish. Executive, judicial, legislative and monetary powers are vested in the governor of each state. The main power of the governor which sometimes comes into conflict with the federal construction of the nation is the power vested by Article 154 of the Indian Constitution which states that every major power of the state is with the Governor. Such an

arrangement suggests that the Governor can delegate to the Chief Minister and the Advocate General to endless State Election Commissioners. Another main force on his removal that hurts federalism is that he may suggest the burden of a constitutional crisis in a state.

▪ **Single Constitution and Citizenship**

India operates on only one constitution and the provisions laid down somewhere near the Articles in the Constitution, as well as the boundaries are equally important for each State and Union Territory of the country. It presupposes that a person cannot hold dual citizenship and cannot simultaneously participate in the rights of another country in India as well. The quasi-federal formation of the Government of India required the administration to be divided between the state and the centre. Anyway, somewhere the teaching of single citizenship and single constitution contradicts such a design. The system of single citizenship does not consider the way of life of a resident as a member of a particular state and it states in a roundabout way that the most important powers actually remain and will continue to be with the centre alone.

▪ **Centralized Amendment Power**

The power of constitutional amendment in India lies with the Center under Article 368 and various arrangements, however, is a common league, and the power to amend the federal constitution is vested on a common basis between the organization and its units. Despite the fact that some restricted areas seek ratification of half the states, the states of the Indian Union essentially have no power in reform amendment procedures.

▪ **Economic Incompatibilities of the States**

Differences in economic parameters, relative economic and fiscal discrepancies, etc., between states, pose a threat to a union. Subsequently, the demand for financial equality in a region creates problems in a federation.

- The introduction of GST has created an atmosphere of frenzy in the states.
- The central government is expected to pay the states for any shortfall in income due to GST.
- The centre should pay this salary on every other month basis, however, during the previous year, these instalments have been deferred for some time due to the absence of assets.
- The COVID-19 pandemic and the subsequent lockdown have magnified the issue manifold, with both the focus and the states facing an income crunch, limiting the Centre's ability to meet the wage requirements of the states Has been.
- According to the Finance Ministry, the GST paid for the period April 2020-March 2021 was Rs 81,179 crore and for the period April-May 2021 was Rs 55,345 crore. The remuneration is due to the multitude of states except for Arunachal Pradesh., Manipur, Mizoram and Nagaland.

▪ **Recent Controversies**

- The softness of the Indian federal structure was shown in the new conflict between the Governor and the Chief Minister in West Bengal.
- Battle for Gorkhaland and Bodoland for the state.
- Fight against draft regulations like Prevention of Lakshadweep Anti-Social Activities by Individuals in Lakshadweep Regulation (Goonda Act), and so forth and actions of the Administrator of the Union Territory.
- The death of the Tamil Nadu Admission to Undergraduate Medical Degree Courses Bill, 2021 suggests that regulation on subjects in the Concurrent List (Education) should also satisfy the wishes of the states.
- Blackball power was involved by the Chief Minister of West Bengal in the case of the Teesta Pact.

The Teesta River, the fourth largest transboundary stream between India and Bangladesh, is actually a feeder of the Brahmaputra that enters Bangladesh through the Indian state of Sikkim and West Bengal. The question of sharing stream water during the dry season gained importance after the end of the Ganga Water Treaty in 1996. The two countries almost completed a water sharing deal in 2011, under which India would get 42.5 per cent and Bangladesh about 37.5 per cent during the dry season. However, the proposed agreement was rejected by the Chief Minister of West Bengal as the water supply in India remains a state subject, given the contribution of an Indian state in relation to this situation, the issue turned into a conundrum as a result. As Bangladesh continues to be a significant swing state in South Asia, all things considered, India should really think of an arrangement as soon as possible.

New Challenges to India's Federalism

▪ **Federalism & Development Challenge**

To accelerate progress, Indians have proposed some plans and dreams that could undermine the federal standard. For example, developmental narratives like 'One Nation, One Market', 'One Nation, One Ration Card', 'One Nation, One Grid'.

▪ **Undermining States**

The size of an undisputed state in Jammu and Kashmir into a union territory, at least late in 2019, the notification of Delhi's NCT (Amendment) Act, 2021 reflected the centralization tendency of the central government.

Additionally, the association government had invoked the Epidemic Diseases Act and the Disaster Management Act, centralizing the powers for the management of the pandemic. Be that as it may, the state convention is a regulatory mandate, provided there is reason to feel vague about the middle under these Acts and the prohibiting Covid-19 rules being issued by the Center to the states.

▪ **Increasing Inter-State Divergence**

Developing inequalities between the more exceptional (southern and western) and less fortunate (northern and eastern) states remain a significant source of tension in state relations that can become a real impediment to overall action between states. This has created a setting where overall action between states becomes difficult as India's less fortunate places contribute undeniably less to the economy, although more major monetary assets are needed to defeat their financial weaknesses. Quiet Financial Crisis: The real factors of India's full-scale financial condition detail the fragility of the state's wealth. Weak financial administration welcomed the central government financial expert Rathin Roy has called a quiet monetary emergency. The response of the Union has been that the states hardly get any income from the expansion of cesses.

Federalism and Indian Constitution

Till 1935, we had unitary system in India, the Government of India Act, 1935 visualized the federal plan and first time presented the federal concept in Quite a while and utilized the word 'Federation'^[7], despite the fact that, the course of decentralization and devolution of power had begun since the previous Government of India Act, 1919^[8]. Indian federal system isn't a consequence of any deal or understanding among the constituent units/states. In India, unitary system of government was changed over into a federal one by giving specific powers and obligations to the states under the constitution. The composers of the Indian constitution pointed toward laying out a federal system in India considering the social varieties and the immense size of the country^[9]. Fissiparous tendencies^[10] Fissiparous inclinations are hazardous to the solidarity of a country and to supersede the fissiparous propensities, the genuine complaints of the states ought to be tended to inside the system of the Federal Constitution. "In outlining of the Constitution, the Constituent Assembly had many models to draw upon, however it carefully chose to take the Government of India Act, 1935^[11] as the premise on which the new constitution was to be shaped^[12]."

The Indian Constitution was outlined by the Constituent Assembly as per Cabinet Mission Plan and its most memorable gathering was hung on December 9, 1946 and the composers involved the term federal in their speeches. Considering the external circumstances as well as the tremendousness of the nation and its heterogeneous components, there was agreement in the Constituent Assembly that a unitary system was unfortunate, however impossible. Hence, India planned to have a federal constitution^[13]. To bring the Indian States under the federal plan, it was also reported that the Union ought to have just those three powers of safeguard, international concerns and correspondences, which had been yielded by the Cabinet Mission Plan, and the states of the federation will be independent units, having every single residuary power^[14]. The Mountbatten Plan of the June 3, 1947 declared partition of the nation and a different Constituent Assembly for the proposed state of Pakistan^[15]. After the choice to partition the nation was reported, right away, the Union constitution Committee met on the June 5, 1947 and concluded that the constitution of India ought to be federal with a solid community^[16]. It was also concluded that there ought to be three administrative records and buildup was left unenumerated, ought to go to the association and not to states and it was attested by the Constituent Assembly and executed by the Union Powers Committee^[17].

The words 'federation' and 'federal' show up in no article of the constitution of India. The framers used the word 'union.' Article 1(1) of the constitution describes: "*India, that is Bharat, shall be a Union of States*^[18]." The Union Constitution Committee had utilized the word 'federation' however the Drafting Committee of the Constituent Assembly subbed it with the word 'Union'^[19]. Moving the Draft constitution for the thought of the Constituent Assembly on November 4, 1948, B.R. Ambedkar, Chairman of the Drafting Committee made sense of the significance of the utilization of the saying "Association" rather than the adage "Federation^[20]".

Conclusion

Finally, federalism or a federal type of government is the most appropriate structure for a vast and pluralistic nation like India. It attempts to work with the socio-political association between the two systems of characters through different primary systems of 'shared rule'. Nonetheless, as a result of the above factors, state relations and state independence have turned into major issues of Indian federalism. The Sarkaria Commission 1983, entrusted by the Government of India to look into and survey the working of Indian federalism, did not make any valuable suggestions to legally organize Indian federalism. This highlights the fact that despite the fact that our constitution is supposed to be federal, however, this excessive emphasis on the power of the federal government makes it unfit to manage financial difficulties and strengthen public solidarity. There is a need to rebuild Indian federalism so as to make it more practical and multifaceted so as to prepare to pursue a powerful focus state connection and to propagate a federal practice throughout the country. Although India was to be a federation, the union was not the result of an understanding by the states to participate in a union, and the union not being the result of an understanding, no state has the option to withdraw from it. The union is a union because it is indestructible. Although the nation and individuals may be divided into individual states for the convenience of administration, the nation is an essential whole, a single group living below a single retail store derived from a

single source. Today, the political foundation of India is largely regarded as a federal race. Self-government and shared-governing have been linked in strange ways, which have empowered the Union of India to prosper and advance in the entirety of its diversity.

In the Bommai case (1994), the Supreme Court determined that the Constitution is federal and characterized federalism as its core element. It has been observed that under the scheme of our Constitution, the Center has been given more major power unlike the States, which does not mean that the States are ordinary organs of the Centre. States have an autonomous constitutional presence. They are not satellites or experts of the centre and within the circle allotted to them, the states are incomparable.

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