

Indian Federalism: Its Nature and Challenges Ahead

***Dr. Reetesh Jain**

ABSTRACT

Federalism is a complex governmental mechanism for the governance of a country. It unites several autonomous, distinct, separate, and disparate entities or administrative units into a single political union. It seeks to strike a balance between the forces that favour concentrating power in a single location and those that favour dispersing power across multiple units. Federalism seeks to reconcile unity with multiplicity, centralization with decentralization, and nationalism with localism. The uniqueness of the federal system lies in the fact that power is both concentrated and divided. In some areas, administration and legislation are centralized, while others are decentralized. A federal constitution establishes a dual polity with two levels of government: a central government with some jurisdiction over the entire country, and state governments with jurisdiction within defined regional boundaries. A citizen in a federal country is subject to the decrees of two governments. The Centre and the states share all governmental powers and functions. As a result, each level of government operates within its designated field. The various governments, on the other hand, do not operate in watertight compartments. They come into contact with each other at various points, resulting in a slew of inter-governmental relations in a federal country. The pattern of these relations is not static; it is dynamic and is constantly seeking a new balance in response to the centripetal and centrifugal forces at work in the country, which is why the subject of inter-governmental relations is so important to a student of any federal constitution. The same is true of India's Constitution, which establishes a dual polity comprised of a Central Government and several state governments.

INTRODUCTION

Since thousands of years, India has been ruled by foreign rulers such as the French, Portuguese, Duchs, Shaka, Hunas, Kushanas, Mughalas, and British. As a result, the workings and theories of the above-mentioned rulers undoubtedly influenced the type and legacy of government and administration. The constituent assembly established Indian Parliamentary Democracy following independence. This assembly was influenced by the various Acts of British Government ever passed to rule India, and the Act of 1935 became the most influencing act for the constituent making assembly of India, as quoted by W.S.Mauris Jhons in his various research and findings. On August 15, 1947, India's struggle for independence ended, and the Constituent Assembly was tasked with drafting a new constitution, which went into effect on January 26, 1950. The distribution of powers between Parliament and the state legislatures was an important feature of the Indian Constitution.

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The federal features that influenced the founding fathers of the Indian Constitution came primarily from the American, Canadian, and Australian Federations. The framers of the Constitution were influenced by federal principles, with exceptions and modifications from the US and Canadian constitutions. On the other hand, Indian leaders such as Jawaharlal Nehru, a staunch supporter of liberal democracy, were committed to democratic socialism and agrarian redistribution. They believed that a centralized direction for the establishment of a federal system in India was required for their policies to be successful.

FEDERALISM-DEFINED

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According to some political scientists, the Indian Constitution is also federal. It should be noted that there is disagreement among constitutional experts about the nature of the Indian Constitution. According to some, it is quasi-federal in nature, with more unitary than federal features. Others believe it is a federal constitution with unique and novel characteristics that enable it to deal with emerging situations in the national interest. The Chairman of the Drafting Committee, Dr.B.R. Ambedkar, stated, "I think it is agreed that our Constitution, despite the many provisions contained in it by which the Centre has been given powers to override the Provinces (States), is a Federal Constitution."

HISTORY & GENESIS OF FEDERALISM

It is critical to understand the historical legacies that have shaped any polity. Especially in India,

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where the sociopolitical and economic fabric has been repeatedly shattered by Huns, the Delhi Sultanate, Mughals, and, finally, British. Also, under MK Gandhi, the development of mass communication, the spread of the English language, and mass mobilization created political unity on which the national leadership could build. The wisdom of the founding fathers in the Constituent Assembly was a great move in their first mission of appeasing the existing system. They go beyond the immediate context to lay the groundwork for long-term democracy, sacrificing neither principles nor their vision of what the Republic of India was meant to represent.

Prior to the formation of the Constituent Assembly, the Cabinet Mission Plan emphasized a Central Government with very limited powers limited to foreign affairs, defence, and communication. The Muslim League and the Indian National Congress, on the other hand, did not agree. Despite this, the first report of the Constituent Assembly envisaged a weak centre based on the encouragement of Cripps and Cabinet Mission Plans. The passage of the India Independence Act and the subsequent partition of India compelled the Constituent Assembly to adopt a more unitary version of federalism. Mahatma Gandhi, too, favored a decentralized structure and a panchayat/village-based federation.

On the other hand, then-Prime Minister Jawaharlal Nehru and Dr. BR Ambedkar supported a unitary system of governance, while Home Minister Sardar Vallabhai Patel supported the idea of federalism. All is well that ends well, and eventually a healthy compromise was reached, resulting in a balance of power between the Centre and the States, and India was thus described as a "Union of States," with this union being indestructible. The structure prescribed for Union and State governments with a single citizenship policy rather than dual citizenship.

The foundation of India's current federal system can be found in the Government of India Acts of 1919 and 1935. For the first time, the state and central subjects were separated for legislative, financial, and administrative purposes in the Act of 1919. The act blazed a new trail and laid the groundwork for Indian Federalism, revealing the first major step in the constitutional change of a unitary system of government. The Simon Commission, which was published in May 1930, recommended complete autonomy in the provinces, including the department of law and order, with the Governor having overriding powers in certain matters such as internal security.

The Commission also advocated for a federal government at the centre, which would include not only British India but also princely states. The Nehru report also proposed a bicameral legislative system with the Supreme Court as the highest court of appeal.

The Act of 1935 paved the way for the federal state, which was incorporated into India's constitution in 1950. According to the Act of 1935, the Indian Federal state will include both British Indian provinces and princely states. It was intended to establish a centralized federation with some provincial autonomy.

The unified legal and financial system, machinery for resolving water disputes, state governors, and article 356 are also some of the distinguishing features of the constitution today that we owe to the 1935 act.

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The 1946 Cabinet Mission endorsed the plan for a Central Government with far less power, and the provinces were granted significant autonomy as well as residuary powers. Despite recommendations for a weak Centre, the constitution's authors ultimately adopted a federal system that was strongly in favor of more powers for the centre due to partition experiences and future considerations for maintaining the country's unity and integrity. In agreement with this, Ambedkar stated in the final report of the Constituent Assembly's Union Powers Committee that "it would be detrimental to the interests of the country to provide for a weak central authority which could be incapable of ensuring peace and also of coordinating vital matters of common concern."

As a result, now there are two governments in India: the Union Government and the State Government. The two governments cooperate with each other while working independently, rather than subordinate to each other. Though the Indian constitution has characteristics of a federal constitution, it is not in the strictest sense. The presence of features required for the existence of a federation is a distinct feature of the Indian Constitution, but there are provisions that give the Union Government more power than state governments.

As of now, the Indian Constitutional structure is a quasi-federal structure, as established by the 1935 Act. This Act established India's federal form of government. It established a division of legislative authority between the Union and the provinces (the structure at that time). These provisions were established to promote harmony and resolve differences between provinces. The Act also maintained a sense of cooperation among the provinces. Getting into the nitty gritty of this Act, Sections 131, 132, and 133 established procedures for resolving water-related disputes.

Section 135 of the 1935 Act, on the other hand, provided for the formation of councils to deal with coordination between British India's various provinces. Even before independence, the need for provinces to work together was felt. The Indian Constitution has detailed the principles enshrined in the 1935 Act. The members of the constituent assembly laid the groundwork for the federalist structure.

While challenging the motion, Ambedkar wanted to expose the logical weaknesses and practical difficulties of imitating the classical federation like the US by saying, "A well-designed, and more importantly, well-functioning system of federal governance, by virtue of its manifold benefits, plays a key role in promoting the stability and prosperity of nations as the he said."

On the other hand, unless carefully crafted, federal systems do not last, as evidenced by the disintegration of many of the federal formations formed in the last century, such as Soviet Russia, Yugoslavia, Czechoslovakia, Rhodesia, and Nyasaland. As previously stated, the Indian constitution claims to be decentralized and federal, but it is far too centrist. The Centre operates in a way that prevents the State's autonomy from functioning freely and completely decentralized. The question now is, "Was it meant to be this way?" This could be cited as one of the reasons for India's slower growth when compared to China, where provinces have complete autonomy in running their economies, resulting in much higher growth rates.

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INDIAN FEDERALISM AND ITS SAFEGUARDS

1. The Indian Constitution is written and rather stringent.
2. Amendment provision that can be implemented with the approval of a majority of state legislatures.
3. The Supreme Court of India has exclusive jurisdiction over disputes between the Union and a state or group of states.
4. from one state to another or a group of states
5. Our state to another state

THE NATURE OF THE INDIAN FEDERATION IN THE CONTEXT OF ARTICLE 356

There are provisions in the Indian Constitution that prevent it from being a federal constitution in the sense of the American Constitution. Though it is claimed that neither the Union nor the states have [absolute] internal sovereignty within India due to the division of powers between the Union and the States, in which both governments have plenary power within their assigned spheres, certain provisions in the Constitution are considered to be in conflict with the principle of federalism. Article 200 of the Indian constitution, for example, states that certain bills passed by state legislatures may be reserved by governors for consideration by the president of India.

Another article that is considered to be a deviation from the principle of federalism is Articles 356, 352, and 360, which give the president the power to declare an emergency, which can transform the federal system into a unitary system; however, the provision is meant to be temporary and can be used only under certain exceptional circumstances under certain restrictions created through judicial intervention, and there are many circumstances in which the central government has usurped the power of the states.

The nature of Indian federalism has changed. Democracy and federalism are basic features of our constitution. Dr. Baba Saheb Ambedkar argued that Article 356 of the Indian Constitution was a dead letter, but unfortunately, with the help of Article 356, many state governments in India were buried from their power.

During the constituent assembly debate, it was suggested that Article 356 could be abused for political purposes. In response, Dr. Ambedkar stated that such articles would never be used and would remain a dead letter.

If they are implemented, I hope the President, who has these powers, will take appropriate precautions before suspending provincial administration. I hope the first thing he does is issue a simple warning to a province that has erred, that things were not happening in the way that the Constitution intended. If that warning fails, he will order an election to allow the people of the province to settle matters on their own. Only if these two remedies fail would he turn to this article. However, this was never the case, as the President's authority to issue proclamations under Article 356 was frequently abused. So far, the provision's power has been used on more than 90 occasions,

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almost always against governments run by opposition political parties. This makes *S. R. Bommai v. Union of India* a landmark decision in which the Supreme Court discussed the provision of Article 356 and various issues raised by the provision. Another landmark case in which the nature of the Indian Constitution was called into question was *State of Rajasthan v. Union of India*. In this case, Chief Justice Hon'ble Court observed that "our difficulty is that the language of Article 356 is so wide and loose that to circumscribe and confine it within a strait-jacket will not be just interpreting or construing it but will be Constitution-making legislation which, again, does not, strictly speaking, lie in our domain."

The Supreme Court of India has been grappling with the debate over whether India has a 'Federal Constitution' and a 'Federal Government' because of the theoretical label given to the Indian Constitution, namely, federal, quasi-federal, unitary. *State of West Bengal v. Union of India* was the first significant case in which the Supreme Court addressed this issue in depth. The main issue in this case was the exercise of sovereign powers by the Indian states.

FEDERALISM & CHALLENGES AHEAD

Centralized Planning

Although economic and social planning are mentioned in the Concurrent List of the Seventh Schedule to the Constitution, the Union Government has complete control over national and regional planning in India. Centralized planning through the Planning Commission, now NITI Aayog appointed by the Centre, significant preponderance in legislative power for the Union, financial dependency of the states on the mercy of the Centre, administrative inferiority of the states make the states meek and weak. The states only fill in the blanks in the text for planning purposes. In India, there is no special planning commission for states. It also adds to the misery of states and jeopardizes the smooth operation of the federal spirit across the country.

Language Differences

Language diversity in India occasionally undermines the federal spirit of the Constitution. India's constitution recognizes 22 languages. Moreover, hundreds of dialects are spoken throughout the country. When the strongest unit of the federation attempts to impose a particular language on others, trouble ensues. The battle over India's official language is still raging. The southern states' opposition to Hindi as India's official language has resulted in a deep language crisis in the country. It tarnishes the Union of India's federal character.

Religion Issue

India is a prime example of religious heterogeneity, which occasionally causes strife in order to weaken the federation. However, the religious process does not have to be divisive all of the time. Religion may not cause imbalances in a federation if there is reasonable tolerance on the part of the people and a genuine secular policy on the part of the government.

Economic and fiscal incompatibilities between the units

Differences in economic standards, as well as relative economic and fiscal incompatibilities among

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constituent states, pose another threat to the federation. Demands for economic planning and development, as well as regional economic equality and state financial autonomy, are the forces of imbalance in the field. The demand for regional financial equality causes problems in a federation. In India, some states have been designated as poor and receive grants-in-aid based on the principle of equalization. However, in a federation, the dilemma arises that if the principle of equalization is followed, national income and total income growth suffer. Again, even if economic development is prioritized, equalization of all units is not possible.

Physical Setting

The physical environment can also stymie federation communication. A federation with long and difficult communication lines must deal with the challenge of keeping in touch with all units. It is easy to create misunderstanding and conflict, which may have been one of the major reasons for the east wing's separation from Pakistan. Furthermore, in the absence of effective communication, the poorer units develop a sense of neglect and believe that they are receiving less than their fair share of development resources. Similar feelings exist in India's North-Eastern states, which are causing problems for the federation.

External Influences

External forces can also cause problems for a federation. The tension in India's North Eastern states is caused by neighboring countries' interference. China's claim on a portion of Arunachal Pradesh's territory on LAC jeopardizes India's territorial integrity. The Tamil issue in Sri Lanka is causing havoc in India. The alleged Pakistani hand in the Khalistan movement has also played a role in weakening the Indian federation in the past.

Globalization's Challenges

Globalization presents both challenges and opportunities for federal systems such as India's. Federalism faces difficult challenges in the age of globalization, which has created pressures for economic and political reforms. Because of the economic liberalization that has occurred as a result of globalization, states desire economic development by allowing foreign direct investment and the SEZ model of economic havens within their borders. It has resulted in numerous readjustments and structural changes in India's economy. Market-driven economies have significantly reshaped previous center-state relations, particularly in economic spheres. The gradual deregulation of the Indian economy has increased competition among Indian states for investment, particularly from foreign sources. It has exacerbated regional imbalances, widening the gap between have and have-not states. On the one hand, forward and developed countries accelerate their economic development through FDIs, while backward countries remain underdeveloped due to a lack of a viable sociopolitical-economic environment. The Union Government must assist and collaborate with the latter in this regard. It will promote cooperative federalism in India. The relationship between the state and panchayats is also changing at the grassroots level as a result of the all-encompassing effect of globalization. For federalism to thrive, more decentralization at each level is required. Globalization has resulted in the emergence of new concepts such as new localism, people's empowerment, and so

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on. Globalization has made both the centre and the states active partners in establishing political stability, peace, and harmony. Since the start of liberalization in 1990, the use of Article 356 has been drastically reduced.

CONCLUSION

In conclusion, federalism or the federal form of government is the best fit for a vast and pluralistic country like India. It attempts to facilitate sociopolitical cooperation between two sets of identities through various structural mechanisms of shared rule. However, as a result of the aforementioned factors, center-state relations and state autonomy have emerged as critical issues in Indian federalism. The Sarkaria Commission, appointed by the Government of India in 1983 to examine and review the functioning of Indian Federalism, did not make any useful recommendations for properly structuring Indian federalism. This demonstrates that, while our constitution is said to be federal, the federal government's overemphasis on power makes it incapable of dealing effectively with socioeconomic challenges and strengthening national unity. There is a need to restructure Indian Federalism in order to make it more viable and resilient in terms of promoting effective center-state relations and sustaining the federal tradition across the country. Though India was to be a federation, the federation was not the result of a federation agreement by the states, and because the federation was not the result of an agreement, no state has the right to secede from it. The Federation is a Union because it cannot be destroyed.

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