

## Nature of Indian Federalism: An Analysis of Historical Basis and Problems

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**Abstract:** Federalism constitutes a complex governmental mechanism for the governance of a country. It binds into one political union several autonomous, distinct, separate and disparate entities or administrative units. It seeks to draw a balance between the forces working in favour of concentration of power at a central point and the forces which favour a dispersal of the power in a number of units. Federalism thus seeks to reconcile unity with multiplicity, centralisation with decentralization and nationalism with localism. The originality of the federal system which lies in that power is, at one and the same time, concentrated as well as divided. There is centralisation of administration and legislation in certain areas along with decentralisation in other areas. A federal constitution establishes a dual polity, comprising two levels of government—a central government having jurisdiction over the entire country in some areas, and state governments, each of which exercises jurisdiction within defined regional boundaries. A citizen in a federal country is subject to the decrees of two governments. The totality of governmental powers and functions are divided between the Centre and the states. Each level of government thus functions within its assigned field. The several governments do not, however, function in watertight compartments. They come in contact with each other at several points, and thus a host of inter-governmental relations arise in a federal country. The pattern of these relations is not static; it is dynamic and is constantly finding a new balance in response to the centripetal and centrifugal forces operating in the country, and, that is why the subject of inter-governmental relations is of much significance to a student of any federal constitution. The same is true of the Constitution of India which establishes a dual polity comprising a Central Government and several state governments.

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### I. Introduction

India have been governed by the foreign rulers since thousands of years i.e. French, Portuguese, Duchs, Shaka, Hunas, Kushanas, Mughalas and Britishers . Therefore, the type and legacy of Government and administration was definitely influenced by the working and theories of above said rulers. After Independence the Indian Parliamentary Democracy was established by the constituent making assembly. 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, And this was quoted by W.S.Mauris Jhons in his various research and findings.<sup>1</sup> 15<sup>th</sup> August 1947, India's struggle for freedom came to end and the Constituent Assembly was responsible for drafting a new constitution which came into effect on January 26, 1950. One of the important features of the Indian Constitution included the distribution of powers between Parliament and the state's legislative assemblies.

The federal features which influenced the founding fathers of the Indian Constitution were mainly from American, Canadian and Australian Federations. The framers of the Constitution were influenced by the federal principles, with exceptions and modifications of the US and Canadian constitutions. On the other hand, Indian Leaders like Jawaharlal Nehru who was a staunch supporter of liberal democracy, was committed to democratic socialism and agrarian redistribution. For their policies to be successful, they believed that there should be a centralized direction for the establishment of federal system in India.

### II. Defining Federalism

Federalism constitutes a complex governmental mechanism for the governance of a country. It binds into one political union several autonomous, distinct, separate and disparate entities or administrative units. It seeks to draw a balance between the forces working in favour of concentration of power at a central point and the forces which favour a dispersal of the power in a number of units.

Federalism thus seeks to reconcile unity with multiplicity, centralisation with decentralization and nationalism with localism. The originality of the federal system which lies in that power is, at one and the same time, concentrated as well as divided. There is centralisation of administration and legislation in certain areas along with decentralisation in other areas. A federal constitution establishes a dual polity, comprising two levels of government—a central government having jurisdiction over the entire country in some areas, and state governments, each of which exercises jurisdiction within defined regional boundaries. A citizen in a federal country is subject to the decrees of two governments.

The totality of governmental powers and functions are divided between the Centre and the states. Each level of government thus functions within its assigned field. The several governments do not, however, function in watertight compartments. They come in contact with each other at several points, and thus a host of inter-governmental relations arise in a federal country. The pattern of these relations is not static; it is dynamic and is constantly finding a new balance in response to the centripetal and centrifugal forces operating in the country, and, that is why the subject of inter-governmental relations is of much significance to a scholar of any federal constitution. The same is true of the Constitution of India which establishes a dual polity comprising a Central Government and twenty nine state governments.

### **III. Historical Roots & Legacy Of Federalism**

It is very important to know the historical legacies in the shaping of any polity. Especially when it comes to India because Indian socio-polito-economic was wrecked time to time by Huns, Delhi Sultanate, Mughals and lastly Britishers. And also through the development of mass communication, the spread of the English language and mass mobilisation under MK Gandhi which created political unity which the national leadership could build upon. The wisdom of founding fathers in the Constituent Assembly was great move in appeasing of existing system as their first mission. They surpass the immediate context to lay the foundation of durable democracy, forsaking neither principles nor their vision of what the Republic of India intended to represent.

Prior to the formation of the Constituent Assembly, the Cabinet Mission Plan emphasized on a Central Government with very limited powers to be confined to foreign affairs, defense and Communication. In contrast, the Muslim League and the Indian National Congress did not agree to this. Despite of this, the first report of the Constituent Assembly envisaged a weak center upon the encouragement of Cripps and Cabinet Mission Plans. It was the passing of India Independence Act and the subsequent partition of India which made the Constituent Assembly to take up a more unitary version of federalism. Mahatma Gandhi also favored the decentralized structure and preferred a panchayat/village based federation. On the other hand, the then Prime Minister Jawaharlal Nehru and Dr BR Ambedkar were in favor of a unitary system of governance while the Home Minister Sardar Vallabhai Patel also stood for the idea of federalismii. All is well that ends well, and finally a healthy compromised was reached which resulted in a balance of power between the Centre and the State, and India was thus described as 'Union of States' and this union being indestructible. The structure prescribed for Union as well as State governments with a single citizenship policy rather than dual citizenshipiii.

The foundation of India's present day federal system is found in the government of India acts of 1919 and 1935. In the Act of 1919, it was for the first time the state and central subjects were separated from each other for legislative, financial and administrative purpose. The act blazed new trail and laid the foundation of Indian Federalism, the Act reveals first major step in the constitutional change of a unitary system of government.iv The Simon Commission which was published in May 1930 recommended complete autonomy in the provinces including the department of law and order, the Governor on the administrative side to be given overriding powers in certain matters like internal security.

The Commission also recommended federal government at the centre which included not only British India but also princely states. The Nehru report also projected the future Constitution of India as Federal and suggested a bicameral system of legislation with Supreme Court as the highest Court of appeal.

The Act of 1935 was a precursor for the federal state which eventually became a part of the constitution of India in 1950. According to the Act of 1935 the Indian Federal state will consist of both the British Indian provinces and the princely states. It was designed to establish a centralized federation with a fair amount of provincial autonomy. The unified legal and financial system, machinery for the resolution of water disputes, governors for the state and article 356 are also some of the distinctive features of the constitution today that we owe to the act of 1935.v

The 1946 Cabinet Mission endorsed the plan for a Central Government which has much less power and the provinces were granted high level of independence along with residuary powers. Despite recommendations for a weak Centre, the constitution makers finally adopted a federal system that was strongly in favor of more powers to the centre because of the experiences of partition and future consideration for maintaining unity and integrity in the country. In resonance with this, Ambedkar in his final report of the Union Powers Committee of the Constituent Assembly said, "it would be injurious 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".

Therefore, now In India, there are two governments in existence, the Union Government and the State Government. The two governments do not subordinate with each other rather cooperate with each other while working independently. Though the Indian constitution has the traits of being a federal constitution, but in its strict sense, it is not. The presence of features which are necessary for existence of a federation is quite a unique aspect of Indian Constitution but on the other side, there are provisions which give more power to the Union Government vis-à-vis that of State governments. Henceforth, the Indian Constitutional structure is a quasi-federal structure and it was made like this in the 1935 Act. This Act laid down the foundations of federal form of government in India. It provided for the distribution of legislative powers between the Union and the provinces (the structure at that time). These provisions were laid down for promoting harmony and resolving differences between the provinces. The Act further maintained for a sense of cooperative relationships amongst the provinces. Getting into nuances of this Act, Sections 131, 132 and 133 laid down provisions for resolving the water related disputes. Basically, these provisions dealt with the problems relating to inter Province Rivers and river valleys.

On the other hand, Section 135 of the 1935 Act laid down provisions for the creation of councils to deal with the coordination between the various provinces of the British India. The need for creating a cooperative relation between the provinces was felt even before the independence. The Indian Constitution has incorporated the principles in a detailed form which were actually laid down under the 1935 Act. These are the foundations over which the structure of federalism was established by the members of constituent assembly.vi

The Constitution of India which finally emerged is not Federal in its classic sense but it did contain all the important federal features. As expressed by Dr. B.R Ambedkar, "it is unitary in extra-ordinary circumstances such as war and other calamities and federal under normal circumstances". An agreement was made in the Constituent Assembly, refusing to accept India as a federation of states, while challenging the motion, Ambedkar wanted to expose the logical weaknesses and practical difficulties of imitating the classical federation like the US by saying that, "A well designed, and more important, 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 heights attained in development by the leading federations of the world – USA, Canada, Australia and Switzerland – demonstrate.

On the other hand, unless carefully crafted, federal systems do not endure as evidenced by the disintegration of many of the federal formations that came into being in the last century, such as Soviet Russia, Yugoslavia, Czechoslovakia, Rhodesia, and Nyasaland ." As earlier stated, the Indian constitution though, claims to be decentralized and federal is somehow too centrist. The Centre functions in a way which does not allow the State's autonomy to function freely in a completely decentralized way. Now, the question arises "Was it intended to be made this way?" This could be highlighted as one of the reasons of India's diminutive growth when compared to China, where complete autonomy to provinces in running their economies has resulted in much higher growth rates.

### **III. Safeguards Of Indian Federation**

1. Indian Constitution is written and relatively rigid.
2. Provision of amendment that can be done with the consent of a majority of the state legislatures.
3. The Supreme Court of India has original jurisdiction to decide disputes between  
Union and state or a group of states.  
State to another state or a group of states.  
Our group of states to another group of states.

#### **Nature of indian federation in the context of art. 356**

There are provisions which don't make Indian Constitution to be a federal in the sense of American Constitution. Though, it is said that within India, neither the Union nor the states enjoys [absolute] internal sovereignty due to the division of powers between the Union and the States in which both the Governments have plenary power within their assigned sphere, there exist certain provisions in the Constitution which are

considered to be going against the principle of federalism. For example, article 200 of the constitution in which it is said that certain bills passed by state legislatures may be reserved by the governors for the consideration of the president of India. The another article which is considered to be a deviation from the principle of federalism is Articles 356, 352 and 360 which gives the power to the president to declare emergency, which can transform federal system into a unitary system; however the provision is meant for temporary and can be used only under certain exceptional situations under certain restrictions created through judicial intervention, there are many circumstances in which the central government has used this power to dissolve the state governments of the opposite parties and to remain in power at the centre.vii

There has been a change in the construction of the nature of Indian federalism. Democracy and federalism are essential features of our constitution and are part of its basic structure. Dr. Baba Saheb Ambedkar, argued that Art. 356 of the Constitution of India as a dead letter of the Constitution but sadly with the help of Article 356 many State Governments in India are buried from their power.

In the constituent assembly debate it was suggested that Article 356 is liable to be abused for political purpose. In reply to this Dr. Ambedkar said that "such articles will never be called into operation and they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article .

But this was never the case the Presidents power to issue the proclamation under Article 356 has been abused most of the time. So far the power under the provision has been used on more than 90 occasions and in almost all cases against governments run by political parties in opposition. This makes *S. R. Bommai v. Union of India* a Land Mark Judgement in which Supreme Court had discussed at length the provision of Article 356 and various issues associated with the said provisions . The next another landmark case where the nature of the Indian Constitution questioned was *State of Rajasthan V. Union of India* . In this case, Chief Justice Hon'ble Court, while interpreting Article 356, observed "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 debate whether India has a 'Federal Constitution' and 'Federal Government' has been grappling the Apex court in India because of the theoretical label given to the Constitution of India, namely, federal, quasi-federal, unitary. The first significant case where this issue was discussed at length by the apex Court was *State of West Bengal V. Union of India* . The main issue involved in this case was the exercise of sovereign powers by the Indian states<sup>viii</sup>.

### **Challenges For Indian Federation**

#### ➤ Centralised Planning

Although economic and social planning is found in the Concurrent List of the Seventh Schedule to the Constitution, the Union Government enjoys unbridled authority over national and regional planning in India. Centralised planning, through the Planning Commission, now NITI Aayog appointed by the Centre, considerable preponderance in legislative power for the Union, the financial dependency of the states on the Centre's mercy, the administrative inferiority of the states make the states meek and weak. The States only fill the blank spaces meant for in the text for planning. There is no special planning commission for the states in India. It also adds to misery of states and pose smooth functioning of federal spirit across the country.

#### ➤ Language Conflicts

Diversity in languages in India sometimes causes a blow the federal spirit of the Constitution. There are 22 languages constitutionally approved in India. Besides, there hundreds of dialects are spoken across the country. Trouble arises when the strongest unit of the federation attempts to force a particular language on others. The tussle for official language in India is still a burning issue. The southern states' opposition to Hindi as the official language of India has led to deep-seated language crisis in India. It throws dirt on the federal character of the Union of India.

#### ➤ Issue of Religion

India is a fine example of religious heterogeneity that sometimes gives rise to turmoil to weaken the federation. But the religious process need not be always divisive. So long as there is a reasonable tolerance on

the part of the people and a genuine secular policy on the part of the government, religion may not cause imbalances in a federation.

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

Differences economic standards and relative economic and fiscal incompatibilities among the constituent states also pose a threat to a federation. The forces of imbalances in the field are demands for economic planning and development and for regional economic equality and financial autonomy of states. Demand for a financial equality of a region creates problems in a federation. In India some states are declared as poor and on the principle of equalization, are getting grants-in-aid. But the dilemma in a federation emerges that if the principle of equalization is adhered to, the national income and the total income growth will suffer. Again, if much attention is paid to economic development, equalization of all units cannot be attained.

➤ **Physical Environment**

Physical environment may also create hurdles for a federation by affecting communication. A federation in which the lines of communication are long and difficult has to face the difficulty of keeping in touch with all the units. It is easy for creating misunderstanding and conflict and perhaps this was one of the important causes for the separation of the east wing from Pakistan. Moreover, in the absence of good communication, the poorer units tend to develop a complex of neglect and feel that they are receiving less than their fair share of resources for development. In India, the North- Eastern states are having similar feelings and creating problems for the federation.

➤ **External Forces**

External forces also create hindrances for a federation. The tension in North Eastern States in India is due to interference of neighboring countries. China's claim on some portion of the territory of Arunachal Pradesh on LAC threatens the territorial integrity of India. The Tamil issue in Sri Lanka creates disruptive forces in India. The alleged Pak hand in Khalistan movement in the past also has a say in weakening the Indian federation.

➤ **Challenges from Globalization**

Globalization provides challenges as well as opportunities to federal systems such as India's. Federalism faces difficult challenges in the era of globalization, since the latter has created pressures for reforms in economic and political organization. Due to liberalization of economy in the wake of globalization, the states also desire economic development by allowing foreign direct investment and SEZ model of economic havens within their territories. It has given rise to multiple readjustments and structural changes in the economy of India. Market-driven economy has largely redefined the erstwhile centre-state relations especially in economic spheres. Gradual deregulation of the Indian economy, has given rise to competition between the Indian states to secure investment, especially from foreign sources. It has had an adverse impact in accentuating regional imbalances, increasing the gap between have and have-not states. On one hand forward and developed states enhance their pace of economic development through FDIs, on the other the backward states remain underdeveloped due lack of feasible socio-political economic environment. The latter needs assistance and cooperation in this regard by the Union Government. It will promote cooperative federalism in India. Also at the grassroots level the relationship between the state and panchayats is passing through changes due to all-penetrating effect of globalization. There is a need for more decentralization at each level for federalism to thrive. Globalization has resulted in emergence of new concepts like 'New localism, people's empowerment etc. Globalization has made both the centre and states active partners in establishing political stability and peace and harmony. The use of Article 356 has been drastically reduced since the onset of liberalization in 1990.

#### **IV. Conclusion**

As conclusion , federalism or federal form of government is the most suitable form for a vast and pluralistic country like India. It tries to facilitate the socio-political cooperation between two sets of identities through various structural mechanisms of 'shared rule'. However, the because of above factors centre-state relations and the state autonomy have become the cardinal issues of the Indian federalism. The Sarkaria Commission in 1983 appointed by the Government of India to examine and review the working of the Indian Federalism, did not make any useful recommendations for structuring the Indian federalism in a proper manner. This reveals the fact that even though our constitution is said to be a federal, but this overemphasis on the power of the federal government makes unable to deal effectively with socioeconomic challenges and strengthening national unity. There is need for restructuring Indian Federalism to make it more viable and resilient in paving the way for promoting effective centre-state relation and perpetuating a federal tradition across the country. Though India was to be a federation, the federation was not the result of an agreement by the States to join in a



federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single emporium derived from a single source. Today, India's political institutions are widely recognized as federal species. Self rule and shared ruled have been linked in unorthodox ways which have enabled the union of India to not only survive, but also flourish and enhance in all its diversity.

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<sup>i</sup> W.H.Morris Jones, " Jones , " Politics in India", Orient Longman, Madras, 1978, PP. 200-392.

<sup>ii</sup> "Constitution Assembly Debates," Vol-I, PP. 57-68.

<sup>iii</sup> Mahendra P.Singh, "Constitution of India", Estern Book Company, Lucknow, 2007, PP. 1-6.

<sup>iv</sup> Subhash C. Kashyap, "Our Constitution", National Book Trust, 2001, PP. 19-21.

<sup>v</sup> W.H.Morris Jones, "The Government and Politics of India", Hutchinson, 1971, PP. 80-150.

<sup>vi</sup> Subhash C.Kashyap, Ibid, PP. 22-24.

<sup>vii</sup> Mahendra P. Singh, Ibid, PP. 833-842.

<sup>viii</sup> Subhash Shukla, "Issues in Indian Polity", Anamika Pub. & Distributers, 2008, PP. 100-290.

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