

New Dimensions in the Area of Federal Laws and Policies In India – A Current Scenario

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ABSTRACT

Federalism in India is symmetrical in that the devolved powers of the constituent units are envisioned to be the same, it refers to relations between the Centre and States of Union of India. Federalism, in its basic sense means division of legislative and executive power between central government and regional governments so that each government can work independently in its own sphere. In a country like India the importance of federalism is vital because different people from different background and culture live together. Neither it would be possible for a single government to make laws for the whole country nor is it desirable in the interest of the people with varied cultures, language and diverse backgrounds. So, the Central government may make laws for the whole and any part of territory of India and the respective State governments may make and implement the laws according to social, economic and political conditions of the people living in different areas. Federalism in the modern age is a principle of reconciliation between two divergent tendencies, the widening range of common interests and the need for local autonomy. This paper explains about the Federal system of government, Relationship between Federalism and Indian Constitution, Judicial trends towards Federalism, Challenges to Indian Federalism. This paper examines the concept of federalism as well as the changing dimensions of federalism in India.

KEYWORDS: *Constitution, Federalism, Laws, Government, judiciary*

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I. INTRODUCTION

India became an independent democratic republic in 1947 and its Constitution, which came into force on 26th November 1949, is the supreme law. The Constitution is based on the Government of India Act 1935 passed by British Parliament. The Indian Constitution lays out a federal Union of 28 States, 6 union territories and 1 national capital territory. The Union and States have separate executive and legislative branches, whereas the territories are ruled by the national government. Law generated by the Union is superior to that of the States. The Constitution of India enumerates various items of legislation in three lists: Union List, Concurrent List and State List in the VII Schedule of the Constitution.¹ The three legislative lists enumerated the powers vested in the Parliament, the state legislature and to both of them concurrently. However, if a matter was not covered by any of the three Lists that would be treated as a residuary power of the Parliament.² The independent judiciary plays an important role as final interpreter of the Constitution in federal structure and uphold the constitutional values. Concept of federalism constitutes a complex governmental mechanism of a country and under this system there exist simultaneously a central, and state governments. Both the governments derive their power from the constitution.³

In a federal constitution, the powers are divided between Centre and State governments and the Central Government may make laws for the whole country and respective state governments may make laws for the whole of the state, in such a way, each government is legally independent within its own sphere. Each government has its own area of powers and exercises their powers without being controlled by other governments and in doing so neither is subordinate to the other but both are co-ordinate.⁴ Federal system of government is more common in the world than confederal systems. This system is based upon a compromise between unity and regional diversity, between the need for an effective central power and the need for checks or constraints on that power.⁵ A federal union may be formed in either two principal ways, having regard to the pre-existing condition of the component units, - (i) it may be formed by a voluntary agreement between a member of sovereign and independent states, for the administration of certain affairs of general concern, as in the case of the United States of America or Australia; or (ii) the provinces of unitary state may be transformed into a federal Union, as happened in case of Canada or India.⁶

Historically, the political organization were unitary not federal. But economic, political and social conditions forced the unitary states to enter into association with other states, so that they can solve common problems.⁷ First time in 1787, the constitution of United States (US) established a 'federation' and concept of federal state emerged in a definite shape. The US is considered as the model of federalism and is known as oldest and most respected member of the family of federal constitutions. Before 1787, US was 'Confederation'⁸ and it became the 'Federation'⁹ with the adoption of the Constitution of US in 1787. American constitution divided powers in such a way that the power of general government specified and the residue is left to regional governments.¹⁰ Many other countries subsequently adopted the federal form from America with some variations according to their local needs.¹¹

II. FEDERALISM

Federalism implies the sharing of constituent and political power, that is, the power to govern at two levels but there may be local governments also within a state. Every federal system requires division of powers between the Union and State Governments and both are independent in their own sphere and not subordinate to one another. To avoid the chaos and conflict between the two competing jurisdictions, the power has been divided between the centre and the States and division of power is one of the most important features of the federal constitutions. The English word 'Federation' derived from the Latin word "Foedus" which means 'treaties or agreement'. Federal states are those states which developed by a treaty or an agreement. It is a system where sovereignty is divided between the core-centre and peripheral-states. On the point of division of powers, federalism can be classified as 'Centripetal'¹² or 'Centrifugal'¹³. But Indian federalism is not the result of any agreement or treaty.

According to Prof Wheare¹⁴:

...the systems of Government embody predominantly on division of powers between Centre and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so is that Government federal?

Federalism means:¹⁵ A proper respect for state functions, recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. Therefore, federalism is not only just a matter of Centre-State relation but also it is a device to ensure participative role of the state in the decision-making process.¹⁶

2.1 Federalism in India

India has a **federal government**, yet it leans more toward a unitary government. Because it has elements of both a federal and a unitary system, it is frequently referred to as a quasi-federal system. The features of the federal system include a. Dual government polity, b. Division of powers between various levels, c. Rigidity of constitution, d. Independence judiciary, e. Dual citizenship and f. Bicameralism

- **'India, that is Bharat**, shall be a union of states,' states Article 1 of the Indian Constitution. The term "federation" is absent from the constitution.
- The **Government of India Act of 1919**, which divided powers between the central and provincial legislatures, introduced elements of federalism into **modern India**.

Federalism in India refers to relations between the Centre and States of Union of India. The Constitution of India establishes structure of the Indian Government. Part XI of the Indian Constitution specifies the distribution of legislative, administrative and executive powers between the union government and the States of India. Division of powers between the centre and the states - the Constitution's Seventh Schedule contains three lists, namely Union List, a State List and a Concurrent List, that detail the subjects over which each level has jurisdiction. The Indian Federalism was not a result of a compact between several sovereign units but a result of conversion of a unitary system into a federal system. Here, the movement has been from unity to union, from unitarism to federalism. In a country practicing Federalism, powers are usually distributed among the federal government and regional or state governments. In some countries such as Nigeria, powers and governmental duties are grouped into three different lists – the Exclusive, the Concurrent and the Residual list. These lists clearly define the scope and powers and limitations of each level of government.

2.2 Federalism and Indian Constitution

Till 1935, we had Unitary system in India, the Government of India Act, 1935 envisaged the federal scheme and first time introduced the federal concept in India and made legal use of the word 'Federation'¹⁷, even though, the process of decentralization and devolution of power had started since the earlier Government of India Act, 1919.¹⁸ Indian federal system is not a result of any treaty or agreement amongst the constituent units/states. In India, unitary system of government was converted into a federal one by giving certain powers and responsibilities to the states under the constitution. The framers of the Indian constitution aimed at

establishing a federal system in India in view of the social diversities and the vast size of the country.¹⁹ “In framing of the Constitution, the Constituent Assembly had many models to draw upon, but it wisely decided to take the Government of India Act, 1935²⁰ as the basis on which the new Constitution was to be formed.”²¹

The Indian Constitution was framed by the Constituent Assembly according to Cabinet Mission Plan and its first meeting was held on December 9, 1946 and the framers used the term federal in their speeches. In view of the external conditions as well as the vastness of the country and its heterogeneous elements, there was consensus in the Constituent Assembly that a unitary system was not only undesirable, but unworkable. Therefore, India was going to have a federal constitution.²² In order to bring the Indian States under the federal scheme, it was also announced that the Union should have only those three powers of defense, foreign affairs and communications, which had been conceded by the Cabinet Mission Plan, and the states of the federation shall be autonomous units, having all residuary powers.²³

The Mountbatten Plan of the June 3, 1947 announced partition of the country and a separate Constituent Assembly for the proposed state of Pakistan.²⁴ After the decision to partition the country was announced, immediately, the Union Constitution Committee met on the June 5, 1947 and decided that the Constitution of India should be federal with a strong centre.²⁵ It was also decided that there should be three legislative lists and residue was left unenumerated, should go to the union and not to states and it was affirmed by the Constituent Assembly and implemented by the Union Powers Committee.²⁶ The words ‘federation’ and ‘federal’²⁷ do not appear in any 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.”²⁸ The Union Constitution Committee had used the word ‘federation’ but the Drafting Committee of the Constituent Assembly substituted it with the word ‘Union’.²⁹ Moving the Draft Constitution for the consideration of the Constituent Assembly on November 4, 1948, B.R. Ambedkar, Chairman of the Drafting Committee explained the significance of the use of the expression “Union”³⁰ instead of the expression “Federation”³¹

Use of word ‘Union of States’ and not the ‘Federal of Federation’ connotes a unique distinctive character and nature of the Indian Constitution. The expression ‘federal’ was avoided due to historic, cultural, social and political experiences.³² B.R. Ambedkar had no misgivings about the federal nature of the constitution. He stated in the Constituent Assembly:³³

“The basic principle of Federation is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the constitution itself The chief mark of federalism as said lies in the partition of the legislative and executive authority between the Centre and the Units of the constitution. This is the principle embodied in our constitution. There can be no mistake about it.”

Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the Constitution³⁴, division of power between the Union and the State governments³⁵, existence of an independent judiciary and a rigid procedure for amendment of the constitution. Every federal system requires division of powers between the Union and state governments. It is prescribed in our Constitution by part XI along with VII schedule³⁶. While articles 245 to 255 deal with distribution of legislative powers, the distribution of administrative powers is dealt with in articles 256 to 261 of the Constitution.³⁷

2.3 Judicial Trends towards Federalism

In India, the Constitution is governed by the rule of law, and judicial review of administrative action is an essential part of the rule of law. Thus, courts can determine not only the constitutionality of the law but also the procedural part of administrative action. However, since it is a written constitution and the powers and functions of every organ are defined and delimited by the constitution, there is no question of any organ, not even parliament being sovereign. Both Parliament and the Supreme Court are supreme in their respective spheres.

While the Supreme Court may decide a law passed by parliament ultra-virus as being violative of the Constitution, parliament may within certain restriction amend most parts of the Constitution. This judicial supremacy makes India a truly federal state which is the heart of Indian federal structure. It is because of independent of judiciary that “basic structure of constitution” theory has been adopted which somehow limits the powers of parliament from being amended the basic fundamental structure of constitution. The judiciary is independent rather than federal in structure. The highest appellate court of the judiciary is the Supreme Court of India, which often decides the legislative powers demarcated by the Constitution for Union and States. Prior to Independence in 1947, the highest appellate court was the Privy Council in London and its decisions can still be binding unless overruled by the Supreme Court. High Courts are situated in each State, with subordinate criminal and civil courts.

Article 131 confers exclusive jurisdiction on the Supreme Court in disputes involving States, or the Centre on the one hand and one or more States on the other. This means no other court can entertain such a dispute. It is well-known that both High Courts and the Supreme Court have the power to adjudicate cases

against the State and Central governments. In particular, the validity of any executive or legislative action is normally challenged by way of writ petitions under Article 226 of the Constitution in respect of High Courts, and, in respect to fundamental rights violations, under Article 32 in the Supreme Court. Independent judiciary is one of the essential features of federalism, if any government transgresses its limit assigned by the Constitution, the Court has power to interpret every word.

The Supreme Court has delivered many judgments on federalism, but its stand on federalism has been inconsistent.

In the *Automobile Transport v. State of Rajasthan*³⁸, case while the seven judges' bench of Supreme Court interpreted the impact of Article 301 of the Constitution said that Indian constitution is a federal constitution.

In *State of West Bengal v. Union of India*³⁹, the Union Government enacted the Coal Bearing Areas (Acquisition and Development) Act, 1957 and acquired certain coal mines which vested in the state. The state government challenged the law in the court on the ground that Parliament is not competent to make law and to authorised the Union to acquire land which is vested in a state. The state contended that: (i) Indian Constitution is federal, (ii) States shared sovereignty with the centre and (iii) centre has no power to acquire state properties. The majority of the Supreme Court rejected all three contentions and held that the Union was entitled to acquire the coal mines vested in the state of West Bengal.

In *Keshavananda Bharti V. State of Kerala*⁴⁰, Sikri C. J. and other judges of the full bench considered the federal character of the constitution as a basic feature of our constitution.

In *State of Rajasthan V. Union of India*⁴¹, Beg, J. observed:⁴²the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually uplifted. In such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government.

In *State of Karnataka V. Union of India*⁴³, the majority judgement⁴⁴ was not in support of federal structure as such but Kailasam, J. (Minority View) held:⁴⁵

In the distribution of powers, it is clear there is strong tilt in favour of the Union. According to the Constitution, the Union can assume powers of the State Government by taking over the State Government by taking over the State Administration under certain contingencies provided for in the constitution. But the Union Government cannot claim any power which is not vested in it under the provisions of the constitution. There is no overriding power with the Union Government. It cannot deal with the State Government as its delegate, for the source of power for the Union as well as the State, is the Constitution and the Union Government cannot claim any powers over the State which are not found in the Constitution.

In *S.R. Bommai v. Union of India*⁴⁶, a nine-judge bench has clearly enunciated that Indian Constitution is federal.⁴⁷ The court held that:⁴⁸

The constitution provide the more power to Central government but the state is also supreme within its spheres" ...The constitution of India is differently described, more appropriately as 'quasi-federal' because it is a mixture of the federal and unitary elements, leaning more towards the latter but then what is there in a name, what is important to bear in mind is the thrust and implications of the various provisions of the constitution bearing on the controversy in regard to scope and ambit of the Presidential power under Article 356 and related provisions.

In *Kuldip Nayar v. Union of India*,⁴⁹ the Parliament in 2003 amended the Representative of People Act, 1951 wherein it deleted the requirement of "domicile" in the State concerned for getting elected to the Council of States. The issue in this case was: Whether 2003 amendment Act violated the principle of Federalism, a basic structure of the constitution? The petitioner contended that the impugned amendment to section 3 of the Representative of People Act 1951offended the principle of federalism.⁵⁰ The court rejected the petitioner's contention and held:⁵¹

India is a federal state of its kind and it is no part of federal principle that representatives of state must belong to that state. Hence, if Indian Parliament in its wisdom had chosen not to require residential qualification, it would definitely not violate basic feature of federalism.

*The Constitution Bench of the Supreme Court in Govt. (NCT of Delhi) v. Union of India*⁵² bench observed:

"The constitutional vision beckons both the Central and the State Governments alike with the aim to have a holistic edifice. Thus, the Union and the State Governments must embrace a collaborative federal architecture by displaying harmonious coexistence and interdependence so as to avoid any possible constitutional discord. Acceptance of pragmatic federalism and achieving federal balance has become a necessity requiring disciplined wisdom on the part of the Union and the State Governments by demonstrating a pragmatic orientation." This judgment is really very significant for centre and state relationship and it focused that co-operation and collaboration between two government is required, if we want to achieve constitutional enshrined in the preamble of the Constitution. The people should not suffer due to conflict between the two *i.e.*, the Central government and the state governments.

2.4 Challenges to Indian Federalism

Federalism is often seen as a concept subject to changing economic, social, and political conditions, and the need for adaptability is stressed in this context more often than in other areas of constitutional law.⁵³ The dimension of federalism in India constantly have been changing from time to time. Actually, federal principle could not be executed in India till 1967⁵⁴ due to dominance of one political party at centre and states and centre emerged as a guardian of states, there was rarely any problem between centre and states, if any problem arose it could easily be solved within the party itself.⁵⁵ The states were not in position to defy from any direction of Union because all ruled by one party and they were bound to follow the ideology of party which is not necessary if the other party ruling in states.

Indira Gandhi had imposed an internal emergency in the country and after emergency when election was held, first time Congress lost and Janata Party came to power at the centre and in large number of states. For the first time the importance of federalism was realized by ministers of Congress ruled state.⁵⁶ Even the Congress came back to power in 1980. Thereafter, Congress party's dominance come to an end and advent of multiparty system and coalition governments⁵⁷ followed on the heels of the 1989 parliamentary election and this new system cleared the way for federal power sharing by smaller and national parties.⁵⁸ With the change in governance from one party rule to coalition government, the concept of federalism also changed, on one side it (Multi-Party System) helps in strengthening the concept of federalism, on the other side, it also creates conflict between the centre and state because of different parties ruling at two different levels of government. And in coalition government, different political parties share power and all political parties have their own party line and ideology and some time, it also becomes an obstacle in passing a law or making any policy.

From 1989 till date the era of coalition government is continuing.⁵⁹ "In the last 30 years, because of fractured verdicts leading to the formation of coalition governments, plural power centres emerged that impacted the role of the Prime Minister. This also led to the erosion of the pre-eminent position of the Prime Minister."⁶⁰ "Past experience shows that in our federal set-up a Prime Minister with a national image can be more powerful than an individual who is identified with a region of the country. Jawaharlal Nehru and Indira Gandhi emerged as strong Prime Ministers."⁶¹ But now Mr. Narendra Modi came to power with absolute majority in 2014 and it was repeated in the 17th Lok Sabha election and emerged as a strong Prime Minister. In 2014 or 2019, BJP secured clear majority on its own but they are running coalition government in which many regional parties are having share. These regional parties basically focused on regional issues and some time the central government take decisions on the pressure of regional parties. We had 15 states and 6 Union territories in 1956 but today, we have 28 States and 9⁶² Union territories. There are many challenges before India federalism in the present-day scenario. The following are the some of the challenges which Indian federalism is facing:

1. Regionalism
2. Language conflict
3. The indestructible union and destructible units
4. Role of Governor
5. Economic and Social Planning
6. Row over Central Bureau of Investigation
7. Legislative conflicts

India is facing the problem of Terrorism, militancy, organised crimes etc. and to curb this problem there is an urgent need that the country as a whole comes together and the state governments must help the centre so that we can save the nation. There is a need that both the Union and states government must work with the co-ordination with the other.

III. CONCLUSION

Actually, federalism in India has totally been changed with the beginning of an era of coalition governments. Political ambitions are prevailing over the administrative and financial aspect of the Union-state relations. If same party is in power at the centre and states there is a rare possibility of any conflict but if opposite parties are there, then the position will be different. All states work on their own whims and resort to ludicrous dole-outs like girl marriages, unemployment cheques, distribution of sarees, laptops, cycles *etc* and various handouts with little thrust on development for natural well-being of the people. These gimmicks result in a colossal waste of wealth and drag the states to heavy debts and people to poverty. We as a nation have to adopt a holistic approach for the whole nation to ensure prosperity and well-being for all, through exhaustive planning. A government which believes it represents "the Will of the People" due to its majority in Parliament, has failed to understand that it governs under a federal constitution, where each state is autonomous. So, there should be common agenda for the development of the nation.

Decentralisation in administration is the core objectives of federalism and power is divided between the Centre and the states, but by 73rd and 74th constitutional amendments, another level has been created *viz.*,

Panchayats and Municipalities. This may be regarded as a third tier of government. So, in India we have three levels of government and it is considered novel form of federation unknown to other countries in the world. Therefore, we can say that the Indian federalism is unique in nature and offered a possible solution to a number of problems. It has been tailored according to specific needs of the country. Based on the foregoing discussion, it can be concluded that Indian constitution has all the features of federal constitution, the centre and states are independent to make laws in their respective field assigned by the Constitution. However, the centre has supremacy in certain situations that is also mentioned in the Constitution itself. The concept of federalism in India keeps changing since the commencement of the Constitution. With the change in the political system *i.e.* from dominance of one-party rule to the era of coalition government. Following the rise of regional parties and fragile coalition governments, the federation has to grow more flexible and conciliatory, particularly in its financial aspects. The GST is an example where States equally has power to impose tax so that they can enjoy autonomy, which is a big tax reform in fiscal history of India. Both centre and state governments supposed to work in co-operation and coordination with each other instead of being involved in conflict.

No policy and programme can be implemented effectively unless both the governments work together for achieving the constitutional goal. It is need of the times that in India we have to adhere to the principle of co-operative/collaborated federalism. The people elected government at three levels and government at each level is accountable to their respective electorates and it is the constitutional obligation of each government to work for the welfare of the people. So, keeping in view the changes *i.e.*, globalization, technological advancement and paradigm shift in economic policy, it is necessary that the Union and states government must co-operate and collaborate with each other along with local bodies to address the common needs of the people.

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- [2]. Ibid.
- [3]. Durga Das Basu, Comparative Federalism 5 – 6 (Wadhwa, Nagpur, 2008).
- [4]. K.C. Wheare, Modern Constitutions 19 (Oxford University Press, London, 1975).
- [5]. Andrew Heywood, Politics 167 (Palgrave Macmillan, New York, 2007).
- [6]. Supra note 3 at 81.
- [7]. Id. At 4.
- [8]. 'Confederation' may be used to describe a form of association between governments whereby they set up a common organization to regulate matters of common concern but retain to themselves, to a greater or less degree, some control over this common organization. A confederation is loose association of two or more sovereign states and it allows the states to secede.
- [9]. 'Federation' is an intimate legal association between two units *i.e.* the centre and the states. Centre is only and the states may be any number and it is indissoluble, the states have no right to secede.
- [10]. K.C. Wheare, Federal Government 12 (Oxford University Press, London 1945).
- [11]. Supra note 3 at 5.
- [12]. Centripetal federalism means the power has been divided between centre and state and residue power remain with centre. The division of power between centre and state has been done keeping in view the historical, geographical, political and cultural facts, so that the good of common welfare can be achieved through federalism in social-cultural economic spheres.
- [13]. In centrifugal federalism, residue power lies with division of power.
- [14]. K.C. Wheare, Federal Government 33 (Oxford University Press, London, 1963).
- [15]. Younger V. Harris, 401 U.S. 37 (1971), available at: https://www.ripublication.com/gjps/gjpsv1n1_02.pdf. (Last visited on July 10, 2019).
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- [17]. The Government of India Act, 1919 introduced the diarchy of dual government. See, M.P. Singh, Outlines of Indian Legal and Constitutional History 169 (Wadhwa and Co, Nagpur, 2003).
- [18]. Pratiyogita Darpan, Indian Polity, 76 (2003). For solution of constitutional problem of multi-racial, multi-lingual and multi-communal country like India with a vast area and a huge population, federalism was only natural choice.
- [19]. Broadly modelled on the pattern of The British North America Act, now Canada constitution Act, 1867.
- [20]. H.M. Seervai, Constitutional Law of India (Vol.1) 286 (Universal Law Publishing, New Delhi, 2008).
- [21]. XI, Constituent Assembly Debates, 657-58.
- [22]. I, Constituent Assembly Debates, 57-58
- [23]. Supra note 22 at 6.
- [24]. Supra note 26.
- [25]. Supra note 3 at 117.
- [26]. The term 'federal' complicates the matter as it involves various facets such as political federalism, institutional federalism and fiscal federalism etc.
- [27]. Chief Justice RS French, Federalism in The Supreme Court of India and the High Court of Australia, available at: <http://www.hcourt.gov.au/assets/publications/speeches/currentjustices/frenchcj03june09.pdf> (last visited on Oct.31, 2019).
- [28]. VII, Constitutional Assembly Debates, 33.
- [29]. It may be noted that the word Union was employed by Stafford Cripps in his proposals and was also used in the Cabinet Mission Plan. The word Union is not decisive of any characteristics.
- [30]. Supra note 32 at 43. Also see, Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat, AIR 2008 SC 1892.
- [31]. Satish Chandra Srivastava, Nature of Federalism in India 45 (July 2010).
- [32]. Brij Kishor Sharma, Introduction to constitution of India 40 (PHI, Delhi, 2011).
- [33]. In Special Reference No.1 of 1964 UP Assembly Case, AIR SC 745. The court observed: "The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member

- States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity.”
- [35]. Part XI deals with the Relations between the Union and the States; Ch. I of Part XI deals with Legislative Relations and distribution of Legislative Powers while Ch. II deals with Administrative Relations ‘between the Union and the States. The distribution of powers between the Union and the States can be discerned from the various provisions of the constitution. A machinery is also provided for, for settling their disputes in the constitution.
- [36]. There is a three-fold distribution of legislative powers between the Union and the States, made by three Lists (Union list, State list and Concurrent list) in the Seventh Schedule of the Constitution.
- [37]. Supra note 40.
- [38]. AIR 1962 SC 1406.
- [39]. AIR 1963 SC 1241.
- [40]. AIR 1973 SC 1461.
- [41]. AIR 1977 SC 1361.
- [42]. Id., at 1382
- [43]. AIR 1978 SC 68.
- [44]. Ibid. Justice Untwalia (speaking for Justice Singhal, Justice Jaswant Singh and for himself), observed as follows: “Strictly speaking, our constitution is not of a federal character where separate, independent and sovereign State could be said to have joined to form a nation as in the United States of America or as may be the position in some other countries of the world. It is because of that reason that sometimes it has been characterized as quasi-federal in nature.
- [45]. Id. At 161.
- [46]. AIR 1994 SC 1918.
- [47]. Ibid. The court said: “Federalism is a concept which unites States into a Union without sacrificing their own fundamental political integrity. Separate States, therefore, desire to unite so that all the member-States may share in formulation of the basic policies applicable to all and participate in the execution of decisions made in pursuance of such basic policies.”
- [48]. Ibid. The court described that “the essence of federalism, therefore, is distribution of the power of the State among its coordinate bodies. Each is organised and controlled by the constitution. The division of power between the Union and the States is made in such a way that whatever has been the power distributed, legislative and executive, be exercised by the respective units making each a sovereign in its sphere and the rule of law requires that there should be a responsible Government.”
- [49]. AIR 2006 SC 3127.
- [50]. Ibid. “It seeks to change the character of republic which is the foundation of our democracy and that it distorts the balance of power between the Union and the States and is, therefore, violative of the provisions of the constitution. It was urged by the counsel that the Council of States is a House of Parliament constituted to provide representation of various States and Union Territories; that its members have to represent the people of different States to enable them to legislate after understanding their problems; that the nomenclature “Council of States” indicates the federal character of the House and a representative who is not ordinarily resident and who does not belong to the State concerned cannot effectively represent the State”.
- [51]. Ibid. The court, while dealing with the question of state domicile for elections to the Rajya Sabha, opined that “it is true that the federal principle is dominant in our constitution and the said principle is one of its basic features but it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism.”
- [52]. (2018) 8 SCC 501. The court observed: “constitutional statesmanship between the two levels of governance, the Centre and the Union Territory, ought to ensure that practical issues are resolved with a sense of political maturity and administrative experience.”
- [53]. M.P.V. Sundaramier and Co. v. State of Andhra Pradesh, AIR SC 468, Venkatarama Aiyer, J observed: “In a Federal constitution where legislative powers are distributed between bodies, the competence of the legislature to enact a particular law must depend upon whether the topic of that legislation has been assigned by the constitution Act to that legislature. If a law is on a field not within the domain of the legislature, it is absolutely null and void.”
- [54]. After the general election in 1967 the main conflict between centre and states emerged because in many states non congress parties formed government e.g. Kerala, Orissa, West Bengal, Punjab and Madras non congress parties formed government.
- [55]. C.S. Pandit, “Changing Pattern of Centre’s Relations with States” Indian Express, Mar. 30, 1969.
- [56]. Supra note 25 at 285.
- [57]. In coalition government, many political parties come together either through pre poll alliance or post poll alliance.
- [58]. Mahendra Prasad Singh, “Federalism, Nationalism and Multicultural Secularism in India” 13 (1) Indian Journal of Federal Studies 22 (2012)
- [59]. There are two major alliances i.e., NDA and UPA and sometime Third front (Even BJP have majority in parliament but many parties are part of government).
- [60]. K. Subramanian, “A Prime Ministerial Form of Government” The Hindu, Jun. 17, 2014.
- [61]. Ibid.
- [62]. Jammu and Kashmir Reorganisation Act, 2019, it reconstitutes the state of Jammu and Kashmir into two Union Territories, one to be called Jammu and Kashmir (With Legislative Assembly) and the other Ladakh.