

Federalism in Jammu & Kashmir

Ishfaq Kaber Ganie^{1*} Dr. Usha Vaidya²

¹ M.Phil., Department of Political Science, Rabindranath Tagore University, AISECT, Bhopal

² Head Faculty of Humanities & Languages, Rabindranath Tagore University, AISECT, Bhopal

Abstract – The Indian federation has also evolved conference technique facilitating smooth union state relations and inter level cooperative periodic conferences between the representations of the union and the operative machinery of Indian federalism. One would come across a stream of regular conferences in India, conferences of the state governors, meetings of the state chief ministers, state ministers conferences and meetings of the Union and state officials. In the present paper, a complete scenario of Federalism is discussed with respect to Indian context as well as globally. Different government acts and commissions have also been discussed and verdicts of several scholars are mentioned regarding the federation policy followed in India. A brief layout of Article 370 with respect to Jammu & Kashmir is also discussed in the paper.

Keyword: - Federalism, India, Article 370, Federation Policy, State Governors

-----X-----

1. INTRODUCTION

Generally a federation has implied an association of a few states brought through the instrumentality of bargain or understanding. It is difficult to shape different sorts of associations, starting from a worldwide partnership and completion in a unitary state. In the middle of these two boundaries come another federation and a confederation. A Federal polity includes double arrangement of government. It is recognizable from a unitary framework, in light of the fact that not at all like a unitary framework, it has two arrangements of archives of intensity The national government and the state government. It is likewise discernable from a confederation it is just the state government which works straightforwardly upon the individuals and the focal government acts through the state government. Under a federation both focal and territorial governments work straightforwardly upon the individuals.

A Federation can be shaped in two different ways that is by method for reconciliation or by method for crumbling. In the principal case, various militarily frail or monetarily in reverse states (autonomous) met up to shape a major and a solid association, as, the U.S. In the subsequent case, a major unitary state is changed over into a federalism by giving Autonomy to the areas to advance local enthusiasm (for instance Canada). The U.S. is the first and the most seasoned federation on the planet. It was framed in 1787 after the American Revolution (1775-83). It includes 50 States (initially 13 States) and is taken as the model of federation. The Canadian federation

involving ten territories (initially 4 areas) is likewise very old-framed in 1867.

A federation not just represents the conveyance of forces among national and local govt. by it additionally wants true participation between the two arrangements of political associations so as to guarantee that the perfect of co-appointment and complete organization of the partitioned circles is accomplished as adequately as could be allowed. It is required for the conspicuous explanation that there is the region of between territorial provincial connections refusing any capable unit to keep itself totally off from others in light of a legitimate concern for regulatory productivity and patriot feelings.

2. OVERVIEW ON FEDERALISM

2.1 Meaning of Federation

K.C. wheare cited, "the strategy for separating so the general and territorial governments are each inside a circle, organize and autonomous. On the customary methodology K.C. wheare finds that there are just four federations working in United States, Canada, Australia and Switzerland. He places other federation in the classification of Quasi-federal. Then again the cutting edge approach discovers acknowledgment and detailing in the compositions of researchers like Birch and Vile.

K.C. Wheare watched, " in a federal framework, the forces of the govt. are isolated between the legislature for the entire nation and government for the pieces of the nation so that each govt. is legitimately free inside its own circle. The govt. for the entire nation has its own region of forces and it practices its position with no control from the administration of the constituent pieces of the nation and there later thus practice their forces without being constrained by the focal government specifically, the assembly of the entire nation has restricted forces."

In the meaning of Birch there is no such pre-essential. The cutting edge journalists rather talk about helpful federalism". Wherein the connection between the two arrangements of government is one of the shared collaboration and relationship as opposed to of autonomy and legitimate boundaries.

Amal Ray is of the sentiment that both the inside and the states are free and facilitate specialists getting a charge out of entire forces with their locale set by the constitution and every authority ought to be kept to its own circle.

M. Venkataragaiya supported the perspectives on A.C.Dicey, he stated, "The administration focal or neighborhood, must have total opportunity shared control and infringement in the assurance of their arrangements and the manner by which they are practiced it is the spirit of federalism

There is neither separated devotion nor energy however each degree of govt. works inside its very own circle. B. N. Gupta depicts "National solidarity and commonplace self-sufficiency must not be thought of as contenders for the residents faithfulness they are nevertheless aspects of something very similar an equivalent federal framework

3. FEDERALISM IN INDIA

Some of the features of federalism in India are:

1. There is no fairness of state portrayal. Portrayal in the parliament can shift generally starting with one state then onto the next relying upon various components including on various elements including demography and all out land territory.
2. None of the twofold citizenship for example no different citizenship for nation and state.
3. The assent of state isn't required by the parliament to adjust its limits.
4. None of the state with the exception of J&K can draw its very own constitution.

5. None of the state has the privilege to withdraw.

6. None of the division of Public Services

The constitution of India accommodates a federal arrangement of government in the nation. The composers received the federal framework because of the two fundamental reasons. The huge size of the nation and its socio-social assorted variety. They understood that the federal framework not just guarantees the effective Governance of the nation yet in addition accommodates national solidarity with territorial independence.

The Indian Federal framework depends on the 'Canadian Model' and not on the American model. The Canadian model contrasts generally from the American model in so far as it sets up a solid focus. The Indian Federation looks like the Canadian federation (I) in its development (ii) in its unifying propensity (for example vesting more powers in the middle opposite the states)

3.1 Feature of Indian Federation

Composed Constitution: India have an elegantly composed constitution which not just characterizes the structure and association of the legislature at the inside just as states.

Double Polity: The constitution sets up a double polity comprising the association at the inside and the states at the fringe each is supplied with sovereign forces to be practiced in the field relegated to them individually by the constitution.

Division of Powers: The constitution partitioned the forces between the inside and the state as far as the association list, state rundown and simultaneous rundown in the seventh timetable. The association rundown comprises of 100 subjects (initially 97)

Matchless quality of the constitution:- The constitution is the preeminent tradition that must be adhered to. The laws instituted by the inside and the states must affirm to its arrangements. Else they can be pronounced invalid by the incomparable court of the high courts through their capacity of legal survey.

Unbending Constitution:- The division of forces set up by the constitution can be referenced just if the strategy for its change is inflexible.

Autonomous Judiciary:- The constitution builds up a free legal executive headed by the Supreme Court for two purposes. One, secure the matchless quality of the constitution by practicing the intensity of legal audit, and two, to settle the questions between the states

Bicameralism:- The constitution accommodates a bicameral lawmaking body comprising of an upper house (Rajya Sabha) and the lower house (Lok Sabha). The Rajya Sabha speaks to the conditions of Indian federation while the Lok Sabha speaks to the individuals of India all in all.

Residuary Powers:- In a federation like that of the USA the residuary forces are delighted in by the states yet in the Indian federation the residuary forces are vested in the parliament

4. DYNAMICS OF INDIAN FEDERALISM

In India, the federalism was not received as it had been in the more established federation, to unite free states. Or maybe it was utilized to keep unblemished the political and regulatory solidarity which British expansionism had given to the nation. India was in every case some sort of a free federalism aside from at specific periods, for example, the age of the Maurya, The Gupta, And the Mughal Emperors, when an incredible ruler swooped downward on the neighboring areas and brought this under his suzerainty.

The east India organization, the successor of the Mughals needed to concentrate consideration on centralization of power as they were a little minority in India. The business foundations of the Company were in Bombay, Madras, and Calcutta. Starting with the three commonly autonomous administration gov't's..

The Act of 1833 imposed on the govt. of India duties too extensive and detailed to be carried out by a single group of men. It was probable, therefore, that the coming years, would be marked by an excessive uniformity of policy and decline in the efficient working of the administrative machinery due to the development of decentralization, in advance of communication.

The Act of 1861 was based on the recommendations of Lord Canning contained in his dispatches of 1859 and 1861 and restored to the govt. of Madras and Bombay, the limited powers of legislation.

The consideration of the royal commission were embodied in the **Govt. of India Act, 1909**. These reforms are popularly known as Morley Minto Reforms. It enlarged the size of provincial legislatures, increased the proportion of elected members and increased their power.

Government of India Act 1919 provided for the first time division of field of the administration into two spheres the central or government of India and the provincial government despite this provision the actual division was affected by a series of devolutions from the Governor General in council

who remained in undisturbed responsibility to parliament and fully equipped to fulfill that responsibility.

The statutory commission held the view that the ultimate constitution of India had to be federal. The **Indian Statutory Commission** (1927) recommended the maximum provincial autonomy consistent with the common interests of India as a whole and the abolition of diarchy where in the devolution was incomplete.

Government of India Act 1935, transformed the unitary system of British into a federal one with the usual features associated with a federal system. The provincial governments no longer derived their authority, political and fiscal by devolutions made by the centre but obtained it as a direct grant from the crown.

5. CENTRE-STATE RELATIONS UNDER INDIAN FEDERALISM

The relationship between the union and the states has been subjected to conspicuous stresses and strains since the 1967 General Elections when the political map of India underwent a considerable change following installation of non-congress coalition governments in some states, but this does not mean that the country is falling apart, as seems to be the fear of some Cassandra's.

The content of the nature of Indian Federation can be perceived in the context of Centre-State Relationship. This can be examined on at least five courts.

1. Legislative Relations
2. Administrative relations.
3. Financial Relations
4. Emergency provisions and their implications for centre state relations and
5. Planning and development in terms of centre State relations.

The centre state relations in India have been dominated by the historical background of the relations that subsisted between the centre and the then provinces in British India, and the family resemblance that the constitution respects the government of India act 1935, that had been enacted by the British parliament long before we became an independent nation. There is no doubt that in the fields resting exclusively in the central sphere such as defense, foreign affairs and external economic relations, there is no strain in Centre state relations. It is only when we come to the spheres which are placed by the constitution

either exclusively in the states list or in the concurrent list major problems arise in centre state relations.

6. WORKING OF INDIAN FEDERALISM AND SPECIAL STATUS (ARTICLE 370)

The centre has displayed both the will and the capacity not only to keep the state government from overruling its own decision but also to completely overawe them to expect on a few occasions and that especially between 1969 & 1971. In India federalism, the control of the centre over state is not a paramount or totalitarian in character as on certain occasions the centre had to yield to the pressure of the state leaders to accommodate here regional sentiments like the creation linguistic state. So for that the centre had to give up its original stand all these should, however be regarded as exception to the general trend.

The arrangement of the federal co-activity existing under the Indian constitution, through allotment by the association of the charges gathered or direct awards or portion of plan assets don't essential militate against the idea of federalism which produce a solid control government yet it doesn't really bring about powerless common government that are to a great extent regulatory offices for focal strategies.

The successive 5 years plans from time to time have been formulated and implemented for this purpose. Planning should be regarded as a joint enterprise of both centre and the state and this is why the constitution makers includes social and economic planning in the concurrent list. There are bodies like planning commission and national development council entrusted with the work of formulation of plans and seeing their proper execution are entirely under the control of the centre. Before the five year plan is given its shape, each state is asked to prepare its own plan in the light of target and priorities laid down by the planning commission.

Article 370 provides for a special status for the state of Jammu and Kashmir. Sub-Clause (I) lays down that Article 238 shall not apply to the state of Jammu and Kashmir Paras (i) limit the powers of the Indian parliament to legislate for the state only with regard to those matters in the union and concurrent lists which in constitution with the state Government the president may declare to correspond to matters specified in the instrument of accession governing the accession of the state to the dominion of India. The parliament may also legislate for the state on such matters in the union and concurrent lists as the president with concurrence of the state Government may be order specify.

Article 370 can be made imperative only by an amendment of the constitution Article 370 in no way creates doubts with regard to the accession of the state to India. It is based on the clear understanding

that Jammu and Kashmir state is an integral part of India. The issue of Accession is thus closed for ever by Article 370. The only justification of this Article was to bring about a gradual integration of the state with India a purely domestic matter. It is because of this fact that the article has been kept in the temporary and transitory provisions. The discussion for the Amendment of Article 370 and the subsequent extensions of Art 356 and 357 to Kashmir led to expected reactions from Pakistan which threatened to use other means and warned India of dangerous consequences

Constitution of Jammu and Kashmir

Main article: [Constitution of Jammu and Kashmir](#)

Article 1 of the Constitution of Jammu and Kashmir expresses that the State of Jammu and Kashmir is and will be an essential piece of the Union of India. Article 5 expresses that the official and administrative intensity of the State doesn't reach out to issues aside from those as for which Parliament has capacity to make laws for the State under the arrangements of the Constitution of India. These arrangements can't be revised. The constitution was embraced and sanctioned on 17 November 1956.

Applicability of the Constitution of India to J&K

In practice of the forces presented by condition (1) of article 370 of the Constitution, the President, with the simultaneousness of the Government of the State of Jammu and Kashmir made The Constitution (Application to Jammu and Kashmir) Order, 1950 which came into power on 26 Jan 1950 and was later supplanted by the Constitution (Application to Jammu and Kashmir) Order, 1954 which came into power on 14 May 1954.

Applicability of Central Acts to J&K

Acts which were implemented by Parliament of India have been expanded to Jammu & Kashmir ended a retro of period. The Central Laws (Extension To Jammu And Kashmir) Act, 1956 The Central Laws (Extension To Jammu And Kashmir) Act, 1968

Claims of Non Applicability of Central Acts

Non applicability of National Human Rights Commission (NHRC) Act by claiming recourse to Article 370 was set aside in 2010.

Demands for abrogation

There has been request by BJP and RSS for annulment of Article 370.[12] Congress pioneer Karan Singh, child of Maharaja Hari Singh, has additionally opined that a basic survey of Article

370 is past due and needs participation not showdown.

7. CONCLUSION

A federation is traditionally formed when two or more independent neighboring states unite for defined purpose of common interest by divesting themselves of a measure of sovereignty which come to be vested in the federal government. A federation is formed when a sovereign authority creates autonomous states and combines them in a union in one and the same enactment, determining therein their respective powers, functions and fiscal authority.

Although India had a unitary form of government till 1919, there had been a progressive transfer of responsibility to the provinces in the earlier years. The unitary concept had been preserved in the government of India Act 1919, but there had been a perceptible change in the relations between the central and provincial governments.

India is a federation. Now in order to have our ideas clear on this matter, we must know what is criterion of a federation. In a federation there should be a central government and state governments. Secondly the powers and functions of both the central and state governments should be defined by a written constitution. The third criterion is that there should exist an exclusive field for the center and another exclusive field for the states before it can be called for federation.

In India the control of the union on the states in the area of administration is manifest not only in the existence and power of unified all India services, but also in the authority given to the union to control the states and achieve coordination by:

- a. Giving directions to the state governments
- b. Delegating union functions to states and
- c. Providing grants to the states.

The issue relating to the centralization of powers has been one of the growing factors of centre-state relations.

A genuinely federal type of government imagines a reduced or understanding among autonomous and sovereign units to give up incompletely their expert to their greatest advantage and vesting it in an association and holding the buildup of the expert in the constituent units. Commonly every constituent unit has its different constitution by which it is represented in all matters with the exception of those gave up to the association, and the constitution of the association principally works upon the organization of the units.

Dispersion of forces between the association and the states or provincial units in its circles facilitate and autonomous of the other. The premise of such dissemination of intensity is that is matters of national significance in which a uniform strategy is alluring in light of a legitimate concern for the units, authority is depended to the association and matters of neighborhood concern stays with the states.

In fine, it might be repeated that the constitution of India is neither absolutely federal nor simply unitary yet it is a blend of both. It is an association or composite condition of a maritime sort. It reverses the rule that regardless of federalism, the national intrigue should be fundamental

8. REFERENCES

1. Prasad Anirudh and Justice Desai, D.A. (1981). Centre and State Powers under Indian Federalism, Deep and Deep publications New Delhi, p. 23.
2. Rath Sharada (1984). Federalism Today, Sterling Publications Private Limited New Delhi, p. 1
3. Laxmikanth M., Indian Polity, Tata MG Graw Hill Education Pvt. Ltd. New Delhi, Ed. 3. p. 12.2.
4. Venkataragaiya M. (1953). Federalism in Government, Andhra University, Waltaire, p. 169.
5. Prasad Anirudh and Justice Desai D. A., N. 1. p. 23.
6. Ray Amal (1966). Inter Government relations in India, Study of Indian Federalism , Asia publ. house Bombay, p. 1.
7. Venkatragaiya. M, n.4, p. 170.
8. Fadia B.L. (2013). Indian Government And politics, Sahitya Bhawan, Agra, p. 219
9. Gupta. B.N. (1970). Indian Federal Finance and Budgetary Policy, Chitanya Publishing house, Allahabad, p. 4
10. Babu. K.A. and Kumar, Sajit (2014). UGC Political Science, true men publishers, New Edition, p. 413.
11. Chatterjee. S.K. (1988). Indian Administration, Surjeet publications, Delhi, pp. 50-51.

12. Khan. Rasheedudin (1992). Federal India – A design for Change, Vikas Pub. H. pvt. Ltd. New Delhi, pp. 6-7.
13. Prasad Anirudh and Justice Desai D.A. (1981). Centre and state powers under Indian Federalism, Deep and Deep Publications, New Delhi, p. 285.
14. Ram Hari (1983). Special status in Indian federalism-Jammu and Kashmir, seema publications, Delhi, pp. 59-60.
15. Pal Chandra (1997). Indian Federalism, Journal of parliamentary and constitutional studies Vol XXXI, No. 1-2 Delhi.

Corresponding Author

Ishfaq Kaber Ganie*

M.Phil., Department of Political Science,
Rabindranath Tagore University, AISECT, Bhopal