

Indian Federalism: A Study with Special Reference to S. R. Bommai v. Union of India

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Abstract – S. R. Bommai v. Union of India ([1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1) was a landmark judgment of the Supreme Court of India, where the Court discussed at length provisions of Article 356 of the Constitution of India and related issues. This case had huge impact on Centre-State Relations. The judgement attempted to curb blatant misuse of Article 356 of the Constitution of India, which allowed President's rule to be imposed over state governments.

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INTRODUCTION

The word federation is derived from the Latin word 'foedus' which means the treaty or agreement. Here treaty means the distribution of power between the union government and the state government. It is the supreme law of land as it contains division of power between centre and state. Federalism as a form of government came into practice in united states of America in 1789 when thirteen states of British colonies which were independent at that time they signed an agreement to form a new political unit to be known as USA. After this many countries like Canada, Australia, South Africa, and India follow this concept. According to Professor K.C. Wheare Federal principle means "The method of dividing powers so that the general and regional governments are each with a sphere coordinate and independent."¹ This definition refers the principle of distribution of power and each of them is independent in their respective sphere. Federalism means distribution of power of state among the number of coordinate bodies each of them controlled by the constitution. Professor Birch define federalism as the system of government in which there is a division of power between one general and several regional authorities each of them is independent in their respective areas. If the power of government is divided between coordinate independent authorities then we can say that it is federal in nature.

ESSENTIAL FEATURE OF FEDERALISM:

1. Duality of government:

In unitary state there is only one government that is central government while in federal state there are two or more governments for example central government, state government and local government.

2. Separation of power:

Separation of power between central government and state governments but the method of distribution may not be same in all the federal constitutions. Each layer of government is sovereign in their respective sphere.

3. Supremacy of constitution:

It means that constitution is binding on both centre and states government and neither the centre nor the states in position to change the provision of constitution by themselves. Constitution provision has to be change by the joint act of centre and states. Every action, policy and power executive, legislative and judicial whether it belongs to centre or state is control by the constitution and the supreme constitution is essential for the federal government.

4. Written Constitution:

In order of smooth functioning of federation the constitution should provide a clear demarcation of power between the centre and states which can only be provide by the written constitution. It is essential for federal government that all the provision of federal structure should be in writing for efficient working.

5. Rigidity:

It is not possible to maintain to these feature of federalism if the constitution is not rigid. In a rigid Constitution the procedure of amendment is very difficult but it does not mean that there is no scope for amendment it can be amend according to the circumstances.

6. Authority of courts:

Legal supremacy of constitution is essential for the federal system of the country and to ensure thus it is necessary to maintain the authority of courts because they must have the final power to interpret the provision of constitution

INDIAN CONSTITUTION: WHETHER FEDERAL OR QUASI FEDERAL:

All constitution is the heirs of past as well as the testators of the future. The government of India act 1935 contemplated in India which never materialized. India was a unitary state till the new constitution was made. The Indian constitution makers were fully conscious about the centrifugal tendencies which were at work India Pakistan partition. So the constitution maker found the federalism as a solution of many problem prevalent at that time in attempt to make constitution There are some other factor like geographical condition , education, language , diversity in India due to this we adopt federal type of government . Constitution maker realized that federal system ensure the efficient governance of country but reconcile the national unity with regional autonomy. So Indian federalism was designed according to the federalism in USA, Canada and Australia. There is difference of opinion among scholars regarding the nature of Indian constitution whether it is federal or not. The basic principle of federations is that the legislative and executive authority is partitioned between centre and states not by any law, but by the constitution itself. The states are no way depending upon the centre for their legislative or executive authority. The states and centre is co-equal in this matter. So we can say that Indian constitution is pure federal.

The word 'Federation' has not been used in the constitution under Article 1(1) "India that is Bharat shall be union of state". It is the fundamental feature of federal set up but at the same time our constitution maker avoided the 'tight mould of federalism' in which American constitution was formed earlier.

Dr B.R. Ambedkar wrote that "the committee has used the term "union" instead of Federation is deliberate. The drafting committee wants to make it clear that though India was to be a federation was not the result of agreement by the states to join federation that's why federation is not the result of an agreement and no states has the right to secede from it. The federation is a union because it is indestructible in nature."²

In Indian federalism with central and state government a third type government that is panchayats & Municipalities which were created through the 73rd and 74th constitutional amendments act. So that's why in India there is three level of government this is the new form of government,

unknown to the outside world. So we can say that Indian federalism is a sui generic system.

In *Ram Jawaya Kapoor v. Union of India*¹, in this case the issue was whether the constitution of India is a federal constitution? Chief Justice B.K. Mukherjee observed that Indian constitution has not recognized the federal principle in its absolute rigidity, but the functions of different branches of government sufficiently allocated. Thus it can very well be said that our constitution does not contemplate assumption by one organ .our constitution is federal in structure.

FEDERAL FEATURE OF INDIAN CONSTITUTION:

1. Multiple tier of government:

Indian constitution provide multiple tier of government that is central government , state government and after 73&74th amendment act in India the third tier of government came into existence that is local self-government. Each layer of government enjoying the powers clearly demarcated by the constitution.

2. Distribution of power:

Distribution of power mean division of power and existence of dual policy between central government and the government of unites of the federation. These two governments are not subordinates to each other but they are coordinating bodies. This distribution of power is existing in Indian constitution.

The seventh scheduled of Indian constitution make provision for the division of power. It contains 3 lists:

- i. Union list contain 97 subjects: union legislature alone has power to make law with respect to these matters.
- ii. State list 66 subjects of local importance. State government has power to make law with respect to these subjects.
- iii. Concurrent list 47 subjects both parliament and state legislature can make law on them.

3. Supremacy of constitution:

It means that the constitution is binding on centre and state both. Indian constitution is endowed with supremacy. The constitution is grundnorm of all the laws that is central and state. The states and centre has to work within their sphere which prescribed by the constitution. If the pass any law which not according to the provision of constitution

or they go beyond their legislative authority then it can be declare ultra-virus of the constitution by three supreme court of India. In India constitution is supreme and the supreme constitution is essential for the federal form of government. Every action and policy of centre or state is control by the constitution.

4. **Written constitution:**

In order to smooth functioning of federation the constitution should provide clear demarcation of power between centre and state which can only be provided by the written constitution. It is essential for the federal government is to work very well. The Indian constitution contains more than 400 article and 12 schedules.

5. **Rigid constitution:**

Rigidity does not mean that entire constitution provision shall be rigid, this condition should be satisfy if those provision that take part in the division of power alone are rigid and the rest of the constitution provision may or may not be rigid. Indian constitution is a rigid constitution as far as the federal provision is concerned. The following provision can be amended if it is ratified by the two - third majority of the both houses of parliament and approved by the half of the state legislature:

- i. Article- 54, 55 : Election of president.
- ii. Article 73 & 162 Executive power of the union and states.
- iii. Article 124, chapter – IV of part V and Chapter V of Part VI related to the Supreme Court and High Courts.
- iv. Article 80-81and 4th Schedule related to the representation of state in the parliament.
- v. Article 368 Amendment of the Constitution.
- vi. Any list in the 7th Schedule.
- vii. Chapter I of Part XI, Distribution of legislative powers between the union and states.

6. **Authority of courts: It involves two related things:**

- i. There shall be exist of an authority independent from the centre and state government preferably a court of law conferred with power to finally interpreter of the constitution, whose interpretation shall be binding on both centre and states.
- ii. The second issue is that there shall be a court of authority with the power to resolve the dispute that may arise between the

centre and the states government or between the state governments. The decision of the court shall be binding on the party concern.

Under the Indian constitution this power has been extended to the Supreme court of India, which is final interpretator and sole arbitrator of the dispute between the centre and state government.

7. **Supreme Court view on Indian Federalism: S. R. Bommai v. Union of India:**

In State of West Bengal v. Union of India³, The Supreme Court held by majority that it is not truly federal because states are not coordinating with the union. In Re Keshav Singh Case¹ the Supreme Court has characterized that Indian constitution is federal. In State of Rajasthan v. Union of India¹, the Supreme Court characterized the Indian constitution more unitary than federal.

CASE: S.R. BOMMAI v. UNION OF INDIA⁴,

Facts:

In 1989, Janta Dal government headed by S.R. Bommai was in power in state of Karnataka. On 15 April 1989, the Ministry was expended which cause dissatisfaction to some of aspirants. After this several member of Janta Dal party defected, giving rise to the question of majority support of the government. The state Chief Minister requested the Governor to call a session of legislative assembly to test the majority on the floor of the house but the Governor not agreed with this suggestion of the chief minister. Neither he tried to find out the possibilities of alternate government. He wrote to the president to take action under Article 356 of Indian Constitution as horse trading was going on and the situation was getting vitiated.

After this President issued a proclamation on April 29, 1989. The Constitutional validity of this proclamation was challenged by the S.R. Bommai in high court, where the Court observed that the word 'satisfaction' of the president was not outside the judicial review' if this satisfaction under article 356(1) is based upon mollified fides, irrelevant grounds. But the high court did not found the 'satisfaction' suffering on any of the above ground and upheld the proclamation. S.R. Bommai appealed to the Supreme Court against the ruling of High Court.

Issue:

The scope of judicial review of President Rule in state under Article 356 and the character of Indian polity.

DECISION:

Majority of judges in 9 judge bench is as follow:

- i. Federalism is like basic structure of the Constitution.
- ii. In order to maintain unity and integrity of the nation our constitution maker were in favors of the strong centre while distributing the power between the centre and states. This becomes clear from that overview of the constitution. But it does not mean that states are mere watchdog of centre. Within the sphere allocated to them states are supreme.
- iii. People of India are only legal sovereign while political sovereignty is distributed in the centre and states.
- iv. 'Federation' and 'federal form of government' has no fix meaning. It indicates a division of powers between a federal government and the unites.
- v. Presidential proclamation for dissolving a state assembly is subject to judicial review but the word 'satisfaction' cannot be question in court of law.
- vi. No wholesale dismissal of opposition rule state government when new political party assume in the centre.
- vii. If the President rule is imposed only on political reason the court can even restore the state assembly.
- viii. Imposition of president rule and dissolution of state assembly cannot be done together. State assembly can be dissolved only after parliament approve President rule.
- ix. If the state governments work against secularism the president rule can be imposed.
- x. Supreme Court and High Court can compel the Union government to disclose the material on which basis the President rule is imposed.
- xi. The power of President under Article 356 is Constitutional power & it is not absolute power. The existence of material facts or reason is pre condition to form the satisfaction to impose the President rule.

CONCLUSION:

India adopted a federal structure as the different parts of the country at different stage of development and it would have been difficult to control from one centre. However, the Indian federalism is unique because of its mode of formation. It is to be noted that the term 'union of state' is used and not the 'federation' is used in the Indian constitution and the units has no right to secede from the centre as in confederation. The constitution of India is neither purely federal nor purely unitary but it is a combination of both. It is a union of composite states of new type neither the parliament nor the state legislature is sovereign because each being limited by the constitutional provision affecting the distribution of power the constitution enshrines the principle that in spite of federalism the national interest ought to be paramount. The Indian constitution is mainly federal with unique safeguard for enforcing national unity, growth and welfare of the country. India adopted a federal structure with good enough centralizing tendency and it's a federation of sui generis.

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