

Federalism

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Abstract – This article examines the characteristics of the federal system and process in India and aims to explain how they symbolize with national and state formation programmes in India. This is done through an overview of the fundamental structure and political restrictions of federalism in India. The axial principle of government in India is federalism together with legislature. Federalism in the Indians is not a static entity. Over the years, it has evolved into a primarily parliamentary structure. In the wake of the federal process, the State in India has been able to accommodate national ethnic movements in the form of new regions, expanding steadily the number of States and union governance. In the backdrop of India's last 10 years of economic reform, we will look at the federal process, its structure, its asymmetric federalism and the interplay between globalization and India's federal system.

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INTRODUCTION

The study of federalism offers, vast, interesting complex and fascinating field of study. The essence of federalism is a political system based upon two governments dividing power between the union/Central and states/regional governments' non written constellation and an Independent judiciary.

The federal structure in India offers unique or a peculiar type of use that has a combination of two classical models, the bests of the two worlds the British tradition i.e. based upon parliamentary sovereignty and U.S. principles of super and right separation of power, the written constitution and judicial review.

Due to the peculiar historical circumstances and consensus among the constituent assembly, the Indian federation is a union of states: Part IX of the Constitution specifies distribution of legislative, Executive, Judicial and Administrative powers between union / federating units/ state government. The Indian constitution prescribes clear cut distribution of legal authority across national and local governments by providing union list having 99 subjects (7 schedule), state list having 66 subjects list (now 59), concurrent list having- 52 subjects (earlier 47) under each domain. But by providing the provision of Residuary Power with Centre it has strengthened the power & position of union. This concentration of power in the hands of Centre as enshrined in the constitution was further increased by the amendments made by the successive government, e.g. Article 249 provides that parliament is authorized to legislate on a subject of state list in the National interest if Rajya Sabha passes a resolution by 2/3rd the majority. In such a situation National interest becomes the catch phrase, to empower Parliament to legislate on such matters.

Article 256 and Article 257 of the constitution also give extraordinary powers to Centre over states in normal as well as extraordinary circumstances to override their power in such manner that it does not contradict with the law passed by the union parliament and existing laws.

In the Principle of division of Power the matter of National importance such as defense, railways, currency, war, peace & foreign affairs which are allotted to Centre and local matter of regional importance such as education, health, Police, local administration etc. are assigned to states and matters related to both e.g. criminal law, forests, economic & social planning etc. are allocated within the concurrent list over which central legislation will supersede over states, in case of conflict. The emergency provisions under article 352, 356, 360 also require compulsory compliance by states with the laws enacted by Parliament and the existing Laws.

Dr. B.R. Ambedkar, the chairperson of the drafting committee of the Constitution of India was extremely cautious while defending the federal system in India having Local need and Local circumstance in his mind. He said, "This diversity when goes beyond a certain point is capable of producing chaos." Therefore, Indian constitution is federal in soul and unitary in structure & a combination of both makes Indian federal system a curious mixture of union and state resulting in, sometimes labeled as quasi federal. Because, it has tilt towards unitary principle e.g. (i) single constitution for entire nation (ii) Absence of dual citizenship (iii) Single integrated independent judicial system (iv) Single centralized system of elections (v) Common all India services for all

important posts of government (vi) Uniformity in fundamental laws both civil and criminal.

Similarly, Article 3 of the Indian constitution empowers the Centre by allowing the Union parliament to form a new state by separating/dividing from any state or uniting/merging two or more states e.g. states such as Chhattisgarh, Jharkhand & Telangana were created by dividing Madhya Pradesh, Bihar & Andhra Pradesh. Further it can enhance or decrease the area of any state and it also allows the Parliament to alter their names and boundaries.

ISSUES AND CHALLENGES FACED BY INDIAN FEDERALISM:

India is a nation with all diversity such as linguistic, ethnic, cultural and religious etc., in other words it can be well said that Indian state is necessarily a multi-cultural society with pre-dominant overtone of regionalism. We are a vast country with a large landmass and densely populated large population, which makes it practically difficult to run the administration from Delhi. The Northeastern states & southern states in particular are far off from Delhi, therefore, knowingly or unknowingly, intentionally or otherwise these states normally does not receive right attention of Centre on multiple issues.

Resultantly, regional sentiments overpowers/overshadows at regular intervals even compromising national importance. The appeal for Gorkha Land, the demand for Bodoland & separate state of Vidharbha by carving out it from Maharashtra, Saurashtra from Gujarat and Bundelkhand/Poorvanchal, Harit Pradesh/Paschimi Pradesh/Braj Pradesh by dividing Uttar Pradesh. Such demand of separatism to have smaller state is natural & in some cases genuine looking at the vastness and diversity of India, however, the more the number of states the more it becomes challenging to administer the states and certainly the existence of Federalism gets into jeopardy and further the Centre becomes hostage of states on issues of national importance like in the matter of Teesta River Water Treaty between India & Bangladesh, the state of West Bengal protested and threatened New Delhi. After much persuasion West Bengal decided to go ahead with the Water Treaty.

India has 22 recognized languages and more than 100 dialects which makes it a gigantic task to have one link language for imparting/providing hassle free administration by the Centre. The Southern states vehemently oppose imposition/usage of Hindi no end, therefore Hindi could not become Official Language. Hence, there could not be a consensus to have one Official Language for the entire nation throwing the spirit of Federalism into the dustbin. The feeling of Brotherhood being the touch stone of Co-operation & Federalism is badly hurt which needs immediate attention and correction. Thus, the issues which are

cogent with regionalism and separatism throws the spirit of Federalism into turmoil.

Similarly the predominant influence of bigger/larger states over smaller units/states with regard to representation in the upper house (Rajya Sabha), which creates imbalance in healthy Centre-state relationship. Again the central governments sweeping powers to appoint a partisan Governor- who acts as an agent of Centre, who is not elected by people becomes a problem for the state government particularly where there is an unfriendly/ different party is in power e.g. West Bengal. It has been witnessed and experience says that the office of governor has been misused infrequently by the party in power at Centre to dismiss the state government headed by unfriendly parties/regional parties by invoking Article 356 on the ground of breakdown of constitutional machinery. This very provision being used as a tool defeats the very purpose of Federalism.

Imposition of President Rule under Article 356 and the Judgment of Supreme Court in S.R. Bommas Vs Union Of India case was a landmark as the order said the imposition of President Rule can be reviewed and scrutinized by court of law and it should pass the litmus test of ascertainment of majority on the floor of the house and not within the fore walls of Raj Bhawans.

Later on the Anandpur Sahib resolution passed by Punjab assembly, the Bengal Movement for more autonomy resulted in appointing of Rajamannar committee to look into the aspect of more Power & Financial autonomy to the states. As a matter of fact no functional autonomy is given to the states as regards financial matters are concerned, so on and so forth, the states came out openly against the superior position of the Centre.

The most contentious & piercing aspect in centre state relations is the financial relations. Although Art 368 provides the basis of relationship & formula of distribution of financial resources between Centre and states, ratification of half of the states is required for limited areas. The constitution expressly vested greater power to Centre in general and particularly in financial matters. The value and amount of resources go overview mingle in favor of Centre. It is seen that the value & amount of resources go overwhelmingly in support of Centre. At present we have vertical and horizontal disparity in Centre-state relationship.

The finance commission while determining Centre-state tax revenue sharing tried to correct imbalance. The paradox of the Centre- state financial relations is that only 40% of central revenue is transferred to states including the grants they get from planning commission and central ministries to carry out developmental functions and projects having huge budget outlay. Mostly the states are at the mercy of

the Centre to meet out their financial requirement and there dependence always remains. The central Government have been allocating huge funds to politically friendly & ambivalent states and allocates bare minimum to the state who are not favored states, further the integrated centralized planning by planning commission and now Niti-Ayog appointed by the Centre, replacing planning commission, the consolidated accounts and audit provides that dependence of states upon the Centre is very much in play all the time. The administrative lowliness of states does make them meek and weak.

Once the GST regime came to existence the concept of one nation one tax became the reality, however, the politically unfriendly states have been raising their voice against discriminatory approach of the Centre for sharing GST revenue, mines and mineral royalty with the states. Very recently some states have protested against non-representation of ministers from politically unfriendly states in the council of group of ministers (GOM) for the GST. Such discriminatory approach and the attitude of union government deflates and derails the concept of co-operative federalism, if so, this will remain as an ideal concept rather than a reality.

In the circumstances, it is noteworthy that the working experience of Centre-state relations establishes that curious mixture of United Nations of America Centre-state relations & parliamentary supremacy that of United Kingdom has made it illogical, irrational & unworkable for federating units i.e. the states. Therefore, the voices of protest have been heard from time to time by states against the Centre.

In Order to assuage and soothe the hard feelings of states against the Centre, the union government keeps setting up review committees and appointed commissions from time to time. The Sarkaria Commission appointed in 1983, gave 1600 page report in 1988 which was not implemented and just remained a bundle of papers. Similarly, The Punchhi Commission setup in 2007 which was chaired by Justice Madan Mohan Punchhi, gave 273 suggestions and /or recommendations in March 2010, that advocated basically the retention of the above mentioned provisions with minor corrective measures here and there so as to check the misuse of power by the Centre and maintaining a healthy balance between, over centralization & states autonomy. The corner stone of Centre-state relations is to make certain time tested radical changes in the distribution of powers so as to arrive at a balanced equilibrium.

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