

FEDERAL SYSTEM IN INDIA AND THE CONSTITUTIONAL PROVISIONS

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ABSTRACT

The federal system of India is governed in terms of the Constitution of India. The country of India is also referred to as the sovereign, secular, democratic, republic and has a parliamentary form of government. The nation is basically a union of 29 states and 7 union territories that work according to the Indian Constitution, which was adopted on the 16th of November 1949. In the Federal System of India, the head of the executive union is the president of the country. The real political as well as social power, however, resides in the hands of the Prime Minister, who in turn heads the Council of Ministers. According to the Federal System of India, it is clearly stated in the Article 74(1) of the Indian Constitution that the Prime Minister and his Council of Ministers will advise and help the President. The Council of Members is answerable to the Lok Sabha or the house of people as per the federal system prevailing in India.

Keywords: Federalism, Quasi-federal, Bargaining federalism, Democratic state, Division of Powers.

INTRODUCTION

According to Dr. Subhash Kashyap, "the Indian Constitution establishes a strong center." Paylee considers it as "perfectly federal." Morris Jones terms it "bargaining federalism" and for K.C. Wheare it is "quasi-federal." The above description leads to the conclusion that the structure of the constitution is federal but its spirit is unitary. Granville Austin remarks that the Indian Constitution is an example of cooperative federalism. There are various mechanisms which ensure cooperation between the Union and the state governments, such as provision for Inter-State Councils, Zonal Councils, All India Services, National Development Council, Planning Process, and Finance Commission. The constitution establishes a federal structure in India, i.e., there are separate governments of the union and states, and there is a division of powers between the two. However, there are other constitutional provisions and practices which impart unitary features to Indian federation by giving more powers and prominence to the union in comparison to states [1].

1. Supremacy of the constitution
2. Division of powers between the union and states
3. Independent supreme court as a federal court
4. The upper house of the parliament represents the states of the union
5. The written constitution.

INDIAN POLITICAL SYSTEM

The political system does not merely mean the formal constitution, but it includes besides constitution other non-constitutional elements such as political parties, pressure groups, and political culture. In fact, the constitution prescribes the legal framework of the political system. The political system results from the interaction of historical, social, economic, and constitutional elements. Thus, political system consists of both formal structures, i.e., constitution, and informal structures, i.e., political groups, socialization, and culture. The Indian political system has also resulted from the interaction of formal constitutional structures and historical, social and economic structures and processes; which provide the basis of the political system itself. The preamble of the constitution underlines the aims of the political system in India [2].

THE BRITISH LEGACY

The British government organized and structured the Indian political and administrative setup to serve its colonial interests. In the process, they constituted and evolved various public institutions, structures, and services in India. The backbone of their rule in India

was Indian bureaucracy which was patterned to subserve the interests and objectives of the alien rule in India. The concept of welfare administration was not encouraged deliberately. Instead, the British rule was based on the concept of the "police state" whose main functions were maintenance of law and order and collection of revenue. On the other hand, the process of evolution of responsible government was deliberately held up. Consequently, at the time of independence, India inherited a police state maintained by a strong bureaucratic administration, which was largely ignorant of new aspirations and desires of the Indian people.

"OBJECTIVE RESOLUTION" OF NEHRU

Jawaharlal Nehru introduced the "Objective Resolution" in the Constituent Assembly on December 13, 1946. This resolution as accepted by the constituent assembly forms the basis of the Indian political system. It guided the constitution making process [3]. The resolution states:

1. This constituent assembly solemnly resolves to constitute India into an independent, sovereign, democratic republic, and to frame a constitution to design the future political setup for India
2. The Indian provinces and other parts of India willing to be a part of free and sovereign India shall collectively form a Union of India (UOI)
3. All parts of independent India and their ruling institutions derive their power from the people of India.

THE PREAMBLE TO THE CONSTITUTION

The preamble to the Indian constitution is primarily based on the "Objective Resolution" of Nehru referred to above. The preamble is called the soul of the constitution. The maker of the Indian constitution expressed basic tenets of the political system and its inspirations and ideals through the preamble to the constitution. Dr. Subhash Kashyap, his article "The soul to the constitution: The preamble," writes that if the constitution is the body, the preamble is its soul; if the preamble is the foundation stone, the constitution is the building standing on it; if the preamble is the ideal, the constitution along with its various articles are a mean to realize this ideal. That means every idea inherent in the preamble is determinant of our future political system.

INDIA: A SOCIALIST STATE

This means that the physical resources of the country shall be subjected to the equitable distribution and the means of production and distribution shall not be concentrated in few hands. Since India

is a home for the people belonging to different religions, all religions are given equality of treatment and India has been declared a "Secular State" [4]. The Indian concept of secularism is distinct in itself. In the Western concept, secularism means the separation between religion and state but in the Indian context, it means equality of all religions or "Sarva Dharma Sambhav." Every citizen enjoys the right to freedom of religion any person can practice or propagate any religion. The state neither grants any special privilege to any religion nor discriminates among citizens belonging to different religions.

THE SOCIAL JUSTICE

It connotes giving equal treatment to all members of society without any social distinction as to caste, creed, religion, or sex. The commitment of the Indian constitution to the ideal of social justice can be gauged from the very fact that it allows positive discrimination in favor of weaker sections to realize this ideal. In practical forms, this means that the state can make special provisions in favor of socially and educationally backward sections of society. The policy of positive discrimination intends to bring forward the weaker sections at par with the advanced sections of society. The third aspect of justice is the economic justice which demands that the minimum needs of all citizens shall be fulfilled, and the property and other physical resources of society shall not be concentrated in few hands. The directive principles of state policy given in the fourth part of the constitution are a means to realize the ideal of economic justice [5]. For long, before 1935, British-India had been administered on a unitary basis. There existed a unitary system. In 1935, the unitary system was replaced by a federal system. The present federal system was built on the foundation of the 1935 system. It was, therefore, inevitable that because of its lineage the federal system had a unitary bias.

FEDERALISM IN INDIA

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, unlike other countries where the historical process has been for separate units to come together to form the federal union. In India, it was rather the reverse process, namely, to convert a unitary constitution into a federal constitution. In West Bengal vs. UOI, the supreme court took note of this process and rejected the claim of the states that they shared sovereignty with the center. Second, the past history of India conclusively establishes that in the absence of a strong central government, the country soon disintegrates. This belief was strengthened by the recent partition of the country. Therefore, adequate precautions have to be taken against any such future contingency by making the center strong. Owing to its vastness of territory and variety of people, India could not be governed efficiently as a unitary state and so a unitary constitution was out of the question. The fundamental principle of federalism is that the legislative and executive authority are partitioned between the center and states not by means of an ordinary law passed by the center, but by something more enduring, namely, the constitution. That is what the Indian constitution does [6,7]. The states do not depend on the center, for in normal times, the center cannot intrude in their domain. It may be that the center has been assigned a larger role than the states, but that by itself does not detract from the federal nature of the constitution, for it is not the essence of federalism to say that only so much and no more, power is to be given to the center. Federalism is not a static but a dynamic concept. It is always in the process of evolution and constant adjustments from time to time in the light of the contemporary needs and the demands being made on it. Constant discussions and negotiations between the center and the states in various forms can help in removing the frictions and difficulties in the area of inter-governmental cooperation and for sorting out these differences with a view to making the Indian Federalism a more robust and viable system so that India may successfully meet the great challenges of defence, external and internal security, and socioeconomic development.

INDIAN CONSTITUTION: WHETHER FEDERAL OR UNITARY?

Any perusal of the political events would reveal that the states are not the agents or instrumentalities of the center. In spite of, the strong central tendency the states have been able to assert their rights. There have been territorial disputes between Karnataka and Maharashtra; and Punjab and Haryana. Disputes, over sharing of water took place between Karnataka and Tamil Nadu. Nagaland, Tripura, and Manipur have laid claims to each other's territory. A more stark fact supporting the existence of federalism is the spectacle of different parties in power in different states. In West Bengal and Kerala, the left front has formed the government a number of times. In Madhya Pradesh, Maharashtra, Uttar Pradesh, Himachal Pradesh, and Rajasthan the Bhartiya Janta Party led governments enjoyed power. In Tamil Nadu and Andhra Pradesh, the local parties have been in the seat of government for a long time. And all this when a different party or coalition was ruling at the center. It is the success of federalism in giving effect to the aspiration of the people that there is a never ending demand for creation of new states. In the constitution of 1950, there were 9 Part A and 5 Part B states. As of today (after abolition of Part B states), the total number of states is 28. Another piece of evidence is the loud clamor for obtaining more grants from the center and assertion of autonomy in matters pertaining to law and order (especially in West Bengal and Bihar). The central government has been paying more to the State government, then recommended by the Finance Commissions appointed under Article 280. What may have been the doubts of some foreign writers, our own scholars have proved right, and the federal principle can be felt and seen in India in vigorous operation in the policy. Federalism is the system of state government, in which several states while remaining independent in home affairs, combine themselves for national or general purposes, or common interests in respect of matters such as defense, customs. In such system, all the administrative powers are divided between the central and state governments by the constitution, and both are supreme within their respective spheres [8]. The existence of co-ordinate authorities (i.e., general and regional governments) independent of each other is the gist of the federal principle. The exceptions are permissible provided the federal principle is predominantly retained in the constitution. In a unitary constitution (U.K.), the powers of government are centralized in one government, i.e., center. The American constitution is universally regarded as an example of federal constitution. It establishes dual polity, i.e., the federal and the state governments. A federal constitution usually has the following essential characteristics: (i) Distribution of powers, (ii) Supremacy of written and rigid constitution, (iii) Authority of courts-the judiciary, in a federal polity, has the final power to interpret the constitution. The Indian federalism was designed on the basis of the working of the federalism in the U.S.A., Canada, and Australia. Yet, it deviates from those federalism in many respects and establishes its own distinctive features. In the following matters, it is pointed out; the Indian constitution modifies the strict application of the federal principle:

- i. Legislative Relations - Under Article 249, parliament is empowered to make laws with respect to every matter enumerated in the state list, if it is necessary in the national interest. In case of an overlapping between the matters of three lists, i.e., union, state, and concurrent list, predominance has been given to the union (Article 246).
- ii. Administrative/executive relations - all planning is at the union level (through planning commission), the state only implement the plans. The executive power of every state has to be exercised as to ensure compliance with the laws made by parliament.
- iii. Financial relations - the states depend largely on financial assistance from the Union.
- iv. Parliament's power to form new states and alter boundaries of existing states - the very existence of the state depends on the sweet will of union.
- v. Existence of union territories - these are directly governed by the central government.
- vi. Appointment of governors - the governors of states are appointed by president and answerable to him. There are provisions in constitution under which the governor is required to send certain state laws for the assent of president.

- vii. Inequality of representation in Rajya Sabha - the US Senate accords equal representation to all the states irrespective of their size, the Indian constitution accords representation to various states in the Rajya Sabha on the basis of their population.
- viii. Common All-India Services, centralized electron machinery/ controller, and Auditor-General/Inter-State Councils and Boards.
- ix. Emergency Provisions - under emergency, the normal distribution of powers between the Center and states undergo a vital change, and the center becomes all-powerful.

In the opinion of Prof. Wheare, the Indian constitutional is almost "quasi-federal"... a unitary state with subsidiary federal features, rather than a federal state with subsidiary unitary features. Jennings has characterized it as "a federation with a strong centralizing tendency." Austin and A.H. Birch used the term "Cooperative federalism" for Indian system, i.e., it is neither purely federal nor purely unitary, but a combination of both. Dicey holds that the extent of federalism in India is largely watered down by the needs or progress and development of a country which has to be nationally integrated, politically, and economically coordinated and socially, intellectually, and spiritually uplifted [9]. Although Dr. Ambedkar thought that our constitution is federal "in as much as it establishes a dual polity," he also said in the constituent assembly, that our Constitution makers had avoided the "tight mold of federalism" in which the American constitution was forged. Dr. Ambedkar, one of the principle architects of our constitution considered our constitution to be "both unitary as well as federal according to the requirements of time and circumstances." He said that rigidity and legalism were the two serious weaknesses of federalism. India adopted a federal structure as the different parts of the country were at different stages of development, and it would have been different to control from one center and to ensure minorities their due place. However, the Indian federalism is unique because of its mode of formation, i.e., from union to states (creation of autonomous units and then combining them into a federation), and not vice versa. It is to be noted that term "Union of States" and not "federation of states" is used in the constitution (the term "federal" or "federation" is not used anywhere in the constitution). In addition, the units have no right to secede (as in a confederation). In a classic federation, the federal government enjoys only those powers that are by an agreement surrendered to it by the units. Neither the parliament nor the state legislation is "sovereign" because each being limited by the constitutional provisions affecting the distribution of powers. The constitution enshrines the principle that in spite of federalism, the national interest ought to be paramount. Thus, the Indian constitution is mainly federal with unique safeguards for enforcing national unity and growth.

SUPREME COURT'S VIEWS ON FEDERALISM

In state of West Bengal vs. UOI [10] held that the Indian constitution is not truly federal because the states are not coordinate with the union and are not sovereign. In re under Article 143 (AIR 1965 SC 745), it characterized the constitution as federal. In the state of Rajasthan vs. UOI (AIR 1977 SC 1361), it characterized the constitution more unitary than federal. In Satpal vs. state of Punjab [11], it express the view that there is combination of federal structure with unitary feature in the Indian constitution. In Jain case [12] held that India is not a compact of sovereign states which have come together to form a federation by ceding a part of their sovereignty to the federal State and thus, India cannot be characterized as a federal state.

In state of Haryana versus state of Punjab [13], the apex court discussed the concept of federation and the federal character of India. It observed in a semi-federal system of government, which has been adopted under the Indian constitution, all the essential powers, both legislative and executive have been conferred on the central government. True federalism means the distribution of powers between a central authority and the constitution units. In this case, the supreme court also held that the decision of one government relating to governance of a state or its execution would bind the successor government when it does not involve any political philosophy. The successor government must complete the unfinished job.

In *Kuldip Nayar vs. UOI* [14], the petitioners challenged the representation of the people (amendment) Act, 2003 by which the requirement of "domicile" in the state concerned for getting elected to the Rajya Sabha was deleted, which according to them violated the principle of federalism, a basic feature of the constitution. The supreme court held that it is no part of federal principle that the representatives of the states must belong to that state. There is no such principle discernible as an essential attribute of federalism. The nature of federalism in the Indian Constitution is no longer *res integra* (matter not yet decide). There can be no quarrel with the proposition that the Indian model is broadly based on a federal form of governance but with a tilt toward the center. Under strict federalism, the lower house ("the people") and the upper house ("Union" of the federation) have equal legislative and financial powers. However, in the Indian context, strict federalism was not adopted. The Indian union has been described as the "holding together" of different areas by the Constitution-framers, unlike the "coming together" of constituent units as in the case of the USA and the confederation of Canada.

PARLIAMENT SOVEREIGNTY V JUDICIAL SUPREMACY

In India, the constitution has arrived at a compromise between the British sovereignty of parliament and American judicial supremacy. We are governed by the rule of law, and judicial review of administrative action is an essential part of rule of law. Thus, courts can determine not only the constitutionality of the law but also the procedural part of administrative action [15]. However, since we have 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 declare a law passed by parliament ultravires 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.

CITIZENSHIP

In keeping with their aim of building an integrated Indian fraternity and a united nation, the founding fathers provided for "single citizenship" despite the federal structure. In federal states, such as the USA and Switzerland, there is a dual citizenship, namely, the federal or national citizenship and the citizenship of the state where a person is born or permanently resides. Unlike the U.S., there was to be no separate citizenship of the union and the states, and all citizens were entitled to same rights all over the country without any discrimination subject to a few special protections in case of the state of Jammu and Kashmir, tribal areas etc. [16]. The population is divided into two classes: Citizens and non-citizens. Non-citizens or aliens do not enjoy all rights granted by the constitution. Dual or two sets of governments. In a unitary state as the name indicates there is only one government-the national government. In a federation, two sets of governments coexist. The national also called central or federal government and the government of each constituent state. These two governments derive their powers from the same source (the constitution) and are controlled not by the other but by the constitution. However, it would be erroneous to assume that they work in watertight compartments. They govern the same people, and their object is to serve the same populace, i.e., of citizens so naturally their functions many at times touch and effect each other. They must necessarily work not in isolation but in active cooperation with the other. That is why States cooperate the Center in establishment of the provision of one citizenship, i.e., the Indian citizenship only and not Punjabi or Gujarati citizenship.

Indian citizens exclusively possess the following rights:

- i. Some of the fundamental rights, namely, Articles 15, 16, 19, 29, and 30.
- ii. Only citizens are eligible for offices such as those of the president (Article 58); vice president (Article 66); judge of the supreme

- court (Article 124) or a high court (Article 217); attorney general (Article 76); governor (Article 157).
- iii. The right to vote (Article 326); the right to become a member of parliament (Article 57), and state legislature (Article 191).

It may be noted that the rights guaranteed by Articles 14 and 21 are available to aliens also. The enemy aliens, however, suffer from a special handicap. They are not entitled to the benefit of Article 22. The constitution does not lay down a permanent or comprehensive provision relating to citizenship in India. Part II of the constitution simply describes classes of person who would be deemed to be the citizen of India at the commencement of the constitution, the 26th January 1950. The parliament under Article 11 has enacted the Indian Citizenship Act, 1955, which provides for the acquisition and termination of citizenship subsequent to the commencement of the constitution.

INDEPENDENT JUDICIARY AND UNION OF STATES

The constitution of India establishes the provision of an independent judiciary having powers of judicial review. The supreme court and high courts form a single integrated judicial structure with jurisdiction over all laws - union, state, civil, criminal, or constitutional. Unlike the U.S., we do not have separate federal and State court systems. The entire judiciary is one hierarchy of courts. It not only adjudicates disputes and acts as the custodian of individual rights and freedoms but also may from time to time need to interpret the constitution and review legislation to determine its vires vis-à-vis the constitution. Article 1 (1) declares specifically that "India, that is Bharat, shall be a Union of States." The word "Union" indicates that the Indian federation is not the result of an agreement between the units it constituted of and that the component units have no freedom to secede from the union so created. Article 1 (3) mentions that the "territory of India" comprises the (a) state territories, (b) union territories, and (c) such other territories as may be acquired by the government of India at any time. With regard to Independent of Judiciary, it is also to be noted that judges of a state high court are appointed by the president in consultation with the governor of state and some other functionaries. The states have a very limited role.

FEDERATION AND CONFEDERATION EXPLAINED

It would not be out of place to try to understand the two different yet related concepts of federation and confederation.

1. A federation is an intimate legal association between two units the center and the states. Center is only one, but the states may be any number, either two or more. A confederation is a loose association of two or more sovereign states usually born of a treaty.
2. A federation is usually indissoluble and the states have no right to secede. This is the case in the U.S.A., India, Canada, and Australia. The confederation being a loose combination allows the states to secede, for example, common wealth of independent states called CIS of erstwhile Union of Soviet Socialist Republics.
3. The federation is a sovereign body and is an international person i.e., a person recognized by international law. A confederation is not an international person. It is not a sovereign body. The constituent states are sovereign and may enjoy independent status in international law.
4. In a federation, there is a legal relationship between the individual and the federation called citizenship. In a confederation, the people are citizens of a state and not that of the confederation.

CONCLUSION

The federal structure of 1935 influenced the India's choice of constitution after freedom and led to the adoption of a "cooperative federation" [17]. In effect, the 1935 scheme of the divisions of power between the center and units came to the generally adopted by the constitution of India. The

policy of linking democratization to federalism encouraged dissention and confrontation by inspiring forces of regionalism and complicated the entire question of constitutional reforms by compounding it with the problems of princely states. In attending to accommodate the concept of responsible government in ten provinces within the specifications of their federal design wherein the center was to remain in real control and authority over the provinces the British created a federal pattern which combined the parliamentary system [18]. This federal pattern draws out a fine distinction between the expression "UOI" and "Territory of India." The former includes only the states which enjoy the status of being members of the federal system and share a distinction of powers with the union. The latter includes the entire territory over which the sovereignty of India for the time being extends and "territory of India" comprises the territories of states, union territories and other territories which can be acquired from time to time. Article 1 (3) (c) does not expressly confer power on the government of India to acquire new territories, but it is the inherent right of a sovereign state to acquire a foreign territory, and no parliamentary legislation is required for this purpose. It is to be noted that only "States" are the members of the UOI (by virtue of Article 1[1]). In state of Haryana vs. state of Punjab [19], "semi federal" was used. And in Shamsher Singh vs. state of Punjab, the constitution was called "more unitary than federal" [20]. In India, the union is indissoluble but not so the states. No state can secede. The supreme court has described the Indian polity as an indestructible union composed of destructible states. It means that the union cannot be destroyed by succession. No state possesses the right to separate itself from the federation. It is the success of federalism in giving effect to the aspiration of people that there is a never ending demand for creation of new states. In the constitution of 1950, there were a 9 Part A and 5 Part B states. As of today, the total number of states is 29 and Part B has been abolished. Hence, the constitutional provisions made India truly federal and it is duty of everyone to respect the legal and moral sanctity of the provisions of such a great constitution.

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