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Indian Federalism at Crossroads

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ABSTRACT

The framers of the Indian Constitution were influenced by variety of factors while establishing federation. During the British period, the provinces were not independent sovereign entities. They were administered on unitary basis by the Governor General. Though the provinces were enjoying autonomy, they were responsible to the Governor General but not the Provincial Assemblies.

Federalism has today become an elastic concept and it is used widely and with differing emphasis. Expressions like Coercive federalism, dual federalism, Cooperative federalism etc have come to be used with increasing frequency. In this article the essential conditions for the federal form of government and certain other conditions for federal constitution have been discussed.

Federal system has its own features or characteristics. In Indian federal system, constitution is the supreme. Division of powers is an important feature of the constitution. But concurrent list is common for Central and State Government but in America there are only two lists. Hence Concurrent list leads to conflicts between Central and State Governments, and ultimately Central law will prevail over the State law. According to K C Wheare, our constitution is described as Quasi Federal- tight Union of constituent units. There are certain articles in the Indian constitution which go against federalism in India. Thus Indian federalism has challenges. It cannot be static because the balance will have to be struck between National and Sub-national needs and aspirations. India has been able to achieve this through constitutional amendments. Indian federalism is quite unique on account of multi ethnic and multi cultural plural societies.

Keywords: Union of the States, Geographical contiguity, Emergency provisions, Concurrent list, Quasi federal, Flexible constitution, Division of power, Integrated Judiciary System, All India Services, Residuary powers

1. Introduction

In the study of constitutional developments, the concept of federalism occupies a key position even after two hundred years of the application of the concept of federalism. No concrete definition has been formulated which is acceptable to all the people. The term federalism is unclear and controversial. However several political scientists have made efforts to define federalism. Generally the term is defined as an association of states. Following are the factors for Federal Union: ⁽¹⁾

- 1) They must be in need for common defence.
- 2) Common community feelings, community of race, religion, language and nationality.
- 3) Similarity of social and political institutions, but they should not be autocratic or dictatorial.
- 4) Federalism demands forms of governments which have the characteristics associated with democracy or free government.
- 5) They must have the capacity to work together with social institutions.

In the light of the above mentioned observations, an attempt has been made in this article to analyze the various aspects of federalism with special reference to India.

The constitution of India came into force on 26th January 1950. There are divergent views regarding whether our constitution is Federal or Quasi federal. Prof. K C Wheare has defined Federal Principles. "According to him what is necessary for the federation is that the Central government and the Regional governments should operate directly upon the people. But each government should limit to its own sphere. Within that sphere each organ should be independent of one another. In his opinion following basic features must be present for the alliance:⁽²⁾

- There must be consent of the states for federal union. They must desire to be under the single Central government for some purpose at any rate.
- The communities concerned must desire at the same time to establish independent Regional Governments in some matters.
- They must have the capacity to work for the systems.
- They should have the desire for union on account of sense of military insecurity.
- They must Desire for economic advantage for union.
- They must have common political aspirations.
- They must have Geographical contiguity.

Comparing Features of Federal and Unitary Governments ⁽³⁾

Federal Government	Unitary Government
1. Dual Government (that is, national government and regional government) 2. Written Constitution 3. Division of powers between the national and regional government 4. Supremacy of the Constitution Unitary Government 5. Rigid constitution 6. Independent judiciary 7. Bicameral legislature	1. Single government, that is, the national government which may create regional governments 2. Constitution may be written (France) or unwritten (Britain) 3. No division of powers. All powers are vested in the national government 4. Constitution may be supreme (Japan) or may not be supreme (Britain) 5. Constitution may be rigid (France) or flexible (Britain) 6. Judiciary may be independent or may not be independent 7. Legislature may be bicameral (Britain) or unicameral (China)

1.1 Scientific definitions of Federalism

According to KC Wheare there must be some divergence between the units before federal union is constituted. Poor states desire federal union rather than unitary states. There is a problem in the working of the federal system as to how to harmonize the conflicting interests of these different units.

According to JS Mill, "there should not be any one state more powerful than the rest. If there is only one such state, it will insist upon becoming the master of the joint deliberations. If there are such two states they will be adamant to agree. Size of the units in the area and population is most important. There must be some sort of reasonable balance among the units. If the Federal government is to work effectively there must be a supply of men with capacity to govern. There must be sufficient economic resources available to both Central Government and Regional governments".⁽⁴⁾

According to William Livingston, an authority on federalism- 'The essential nature of federalism is to be shot not in the shadings of legal and constitutional terminology, but in the forces- economic, social, political and cultural.' Federal government is a device in which the federal qualities of the society are protected.⁽⁵⁾ William Livingston agrees "with Prof. K C Wheare when he says that federal government is suitable only to those that are organized upon Democratic and Republican foundation".

Federalism presupposes both unity and diversity and constitutes a device for compromising the opposite tendencies. It demands mutual respect among the federating units. If some of the federating units possess a democratic background and others possess autocracy, the success of federalism will be questionable. In other words a Living Stone is opposite to the simple numerical majority of the normal democratic theory.

A democratic government is viewed as limited government by him. The limits must be placed upon the participants involved in the political process whenever the central government has to decide a particular issue which may affect the interests of the states. The Central Government must take the consent of the states in the process of making decision. There must be conscious opinion on the particular issues. Federalism cannot be dismissed as evil because it cannot fit into the theory of majoritarian democracy.

William Riker on federalism does not attach much importance to the social economic conditions but he attaches importance to the political aspects of unification.⁽⁶⁾

Professor KC Wheare after examining the features of the Indian constitution has come to the conclusion that the Indian constitution is Quasi Federal in nature by pointing out the following tenets:

- a. Some subjects are exclusively assigned to the union list and some subjects are assigned to the State list.
- b. Some powers are assigned to the Central government regarding the intervention in the affairs of the states given by the constitution.
- c. Emergency provisions enable the Central Government to convert the union into Unitary State.

1.2 Departures from federalism

If there are certain departures from the classical federations they arise on account of historical circumstances and prevailing social, economic, political, regional and cultural factors. If there are certain departures in the constitution they are added as unique features among the federations of the world.

When the states were reorganized on linguistic basis on 1st November 1956 the distinction between the part A- part B- part C and part D states was abolished. Subsequently they were put on equal footing. Seven schedules were also amended. The state of Bombay came to be divided into

Maharashtra and Gujarat states. Punjab state, Assam state and Andhra state have been reorganized from time to time.

Thus the central leadership has succeeded in maintaining the territorial integrity and unity of the nation. The creation of the linguistic states had led to Inculcation of state loyalties- regional loyalties and caste loyalties. The people of the particular region want that they should be represented in the cabinet and office of chief ministership should be rotated among the leaders representing the different regions. The Union government depends upon the State government to implement the National Policies, schemes and programs affecting the entire nation.

There are certain articles in Indian constitution which go against federalism in India. They are known as unfederal provisions. They are described below:

1. The Articles 200 and 201 deal with reservation of State Bills. The Governor has power to reserve the bills for consideration of the President. Article 201 deals with giving assent or vetoing such bills by the President. Such provisions are contrary to the pure concept of federalism. Under these articles the Central ruling political party at the Central may harass state governments led by opposition parties in the legislative fields.
2. Article 249 is a negation of State Autonomy and according to K Santhanam this article is wholly derogatory to the concept of federalism. Parliament has power to enact any law on any item of the State list in the name of National interest on the basis of the resolution passed by the Rajya Sabha by two thirds majority under article 249.
3. Articles 256 and 257 direct the states to comply with the Union laws and not impede or prejudice the exercise of Executive power of the union respectively. The Unilateral decision of the centre under these two articles not only violates the Federal Principle but also leads to the emergence of authoritarianism.
4. The provision relating to presidential rule under article 356 has become most irritating in the field of centre -state relations. The phrases in the constitution like in accordance with the provision of the constitution and failure of the constitutional machinery are vague about their meanings. Such vague provisions will give undue advantage to the central ruling political party to dabble in State politics. ⁽⁷⁾

Following are the examples(3):

- i. Twelve times during Jawaharlal Nehru era.
- ii. Two times during LalBahadurShastri era.
- iii. Twenty five times during Morarji Desai era.
- iv. Fifty one times during Mrs. Indira Gandhi era.
- v. Eight times during Rajiv Gandhi period.
- vi. Twelve times during PV Narsimha Rao period.
- vii. Five times during Atal Bihari Vajpayee era.
- viii. Twelve times during Man mohan Singh period.
- ix. Four times during Narendra Modi period.

Thus one thirty one time's state emergency declarations were issued by the President on the basis of recommendations made by the respective Governors of different states. Similarly presidential rule was been imposed several times in the union territories under section 51 of Union Territories Act 1953.

- 5) Article 254 relates to the repugnancy of laws made by the state with the laws made by the parliament. Article 254 deals with inconsistency between the laws made by the parliament and the laws made by the legislatures of the states.

If any provision of a law made by the legislature of a state is repugnant to any provision of a law made by the parliament, which parliament is competent to enact or to any provision of any existing law with respect to one of the matters enumerated in the concurrent list, then the law made by the parliament whether passed before or after the law made by the legislature of such states or as case may be, the existing law shall prevail and the law made by the legislature of the state shall to the extent of repugnancy be void. (2) M. Lakshmikan: Indian polity third edition, TATA McGraw Hill Publications, New Delhi, 2009 P - Chapter 12.2

- 6). Where a law made by the legislature of a state with respect to one of the matters enumerated in the concurrent list, contains any provisions repugnant to the provision of an earlier law made by parliament or any existing law with respect to that matter, then the laws made by the legislature of such states shall, if it has been reserved for consideration of the President and has received assent shall prevail in the state.

The effect in the case of inconsistency between the legislations made by the parliament and legislations made by the state legislature on the subject covered by the list. The matter has been decided by the Supreme Court in several cases.⁽⁸⁾

1.3 Questionnaire for testing federalism⁽⁹⁾:

Q1 Has the Central authority have exclusive control over diplomacy and defence as it fits a nation state in its relations with other nation states.

Answer: Union government of India has exclusive control over diplomacy and defence in its relations with other Nation States.

Q1 Is the federal union constitutionally immune against the dissolution by succession?

Answer: Federal Union of India is constitutionally immune.

Q2 Is the exercise of Central authority as it reaches all citizens, directly independent of the individual approval and resources of component units?

Answer: There is harmonious relationship between the Central Government and the State Government.

Q3 Who has the ultimate control over amendments to the constitution?

Answer: a) In respect of some amendments, two-thirds majority of each house of parliament and consent of one half of the States is required.

b) In respect of some amendments, two-thirds majority in each house of the parliament is required. c) In respect of some amendments simple majority in each house of parliament is required.

Q4 Are the component units immune to elimination of their identity?

Answer: They are not immune since they are subject to elimination. It may be illustrated by example. Soon after the inauguration of the constitution, four categories of the states known as A, B, C and D were classified. But upon reorganization of the states based on linguistic basis, the old classification of the states was cancelled and the new states were formed. Again Bombay state was bifurcated into Maharashtra and Gujarat states. Again Andhra Pradesh was bifurcated into Andhra state and Telangana state. Thus the states in India are being eliminated and it is a departure from the federal principle.

Q5 Is the collective sharing in federal rulemaking adequately secured by equal representation of unequal units in a bicameral system and what are constitutional provisions for collective sharing in the executive and judicial rule implementation?

Answer: There is no equal representation for the states in the upper chamber of Indian parliament. The seats in Rajyasabha are determined on the basis of population. Hence different states have different numbers of representatives, but in America all the 50 states irrespective of population have equal representation. Each state will send two representatives each. Hence there is the departure from the Federal principle.

Q6 Are there two independent sets of courts? One interpreting and adjudicating the federal laws and the other interpreting and adjudicating the state laws?

Answer: In India there is single unified judiciary right from the Subordinate courts to the Supreme court. The High courts and Supreme Court in India have the power of interpreting and adjudicating both the central laws and the state laws. Thus there is a departure from the federal principle.

Q7 Is there a judicial authority for the Central government and the component units to determine their respective rights?

Answer: There are no separate judicial authorities to determine the rights of the Central government rights and the rights of the State government. Hence there is a departure from the Federal Principle.

Q8 Have the components units retain all the powers that the constitution has not given to the central authority and are these powers retained by the states?

Answer: Residuary powers in India are vested in the Central government. But in America they are vested with the State government. Hence there is a departure from the Federal principle.

Q9 Is the territorial division of authority, clear and unambiguous?

Answer: there is no clear division of authority between the Central government and the State governments because in India there are three lists of subjects known as Central list, State list and Concurrent list.

But Concurrent list is common for Central and State governments, but in America there are only two lists. Hence Concurrent list leads to conflicts between the Central Government and the State Governments and ultimately Central law will prevail over the State law.

The following are the federal features of the Indian constitution⁽¹⁰⁾:

1. Dual Polity
2. Written constitution
3. Division of powers
4. Supremacy of the constitution
5. Rigid constitution
6. Independent judiciary
7. Bicameralism

1.4 Quasi Federal characteristics of the Constitution

Following are the unfederal provisions of the Indian Constitution:

1. Single constitution.
2. Strong centre.

3. Single citizenship.
4. Integrated Judicial System
5. Emergency powers of the constitution.
6. Flexible constitution.
7. Appointment of State Governors by the President.
8. All India Services.
9. Union of States but not Federation of States.
10. Parliament can change the boundaries of the states.
11. Amendment procedures favour the Centre but not the states.
12. Division of powers is tilted in favour of the centre.
13. Parliament can make inroads into the sphere of state powers.
14. Declaration of emergency transforms the Federal system into a unitary system.
15. The centre has right to send Executive directions to the state.
16. The Governor is an agent of the centre.
17. Financial control is exercised by the centre over the states.
18. National planning by the centre has contributed to the upsetting of the federal balance.
19. All India services are controlled by the union.
20. There is one Election Commission for the Central and the States.

Thus all the above mentioned features are heavily loaded in favour of the Unitary Constitution.

1.5 Conclusion

Thus the Indian federalism has challenges. But in the Indian context, federalism will have to stay, because it has successfully mediated between the opposing pulls and pressures of individual identities and the needs of the larger National identity. Federalism as a concept cannot be static because balance will have to be struck down between National and Sub-National needs and aspirations. Economic development has been one of the biggest drives of past few decades. Technological development has bearing on the evolution of the Indian federalism. Recent developments in the Information, Communication and Technology sectors have enabled vigorous participation and accountability. The challenge of founding fathers of the constitution was to design a federal architecture with flexibility to manage contradictions over our policy issues like health care, education, law and order are best dealt with at decentralized levels of governance.

India has been able to achieve this through constitutional amendments. We have to address the issue of fiscal federalism. The responsibilities for public expenditure and their financing by taxation and other instruments are shared between the Central and the States. There are inbuilt devices by way of evolution of Central taxes and Grants in aid in favour of states. But there are challenges of inter regional disparities. Both NITI Ayoga and Finance Commission will have to play the constructive role in reducing the inter-regional disparities through a system of transfer of resources from centre to the states and promoting balance in social and economic development across the country. There is a case of multi party model where political parties exist with limited Sub National approach. These parties are having narrow political considerations based on regional and sectional loyalties. Thus the Indian

federalism is quite unique on account of multi-ethnic and multicultural plural societies. Managing all these issues is a challenge for Indian Federalism.

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