

FEDERALISM: THE ESSENCE OF INDIAN CONSTITUTION

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Abstract: Federalism requires the division of constitutional and political power, i.e. the ability to govern at two levels; however, a state may also contain local governments. Every federal system requires a division of powers between the federal and state governments, each of which is autonomous and not subservient to the other. Power has been divided between the centre and the states to avoid anarchy and conflict between the two competing jurisdictions, and the division of power is one of the most important aspects of federal constitutions. The Indian Constitution's Seventh Schedule contains three lists of legislation: the Union List, the Concurrent List, and the State List. The three legislative lists specified the powers conferred in Parliament, state legislatures, and both at the same time. However, if an issue is not addressed by any of the three Lists, it is considered a residual power of the Parliament. In a federal system, the independent judiciary serves as the final interpreter of the Constitution and the guardian of constitutional ideals. In this article, we shall discuss the nature of federalism in India and explore the division of powers between the federal and state governments.

Keywords: Federalism, Indian Constitution, Government.

1.0 Introduction

Federalism is a system of government in which powers have been divided between the center and its constituent parts such as states or provinces. It is an institutional mechanism to accommodate two sets of politics, one at the center or national level and second at the regional or provincial level. In a federation system, there are two seats of power that are autonomous in their own spheres. A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.

Federalism is compound mode of two governments. That is, in one system there will be a mixture of two governments – state government with central government. In India, we can describe federalism as a distribution of authority around local, national, and state governments. This is similar to Canadian model of political organization.

Federalism is at its core a system where the dual machinery of government functions. Generally, under federalism, there are two levels of government. One is a central authority which looks after the major affairs of the country. The other is more of a local government which looks after the day-to-day functioning and activities of their particular region.

For example, our Indian Constitution says that India too is a federal country. As you know we have two levels of parliament, the at center the Union government and at State level, we have the individual State governments.

2.0 Features of Federalism:

1. The essential feature, which is the definition of federalism is that there are two levels of governance in the country at least. There can even be more. But the entire power is not concentrated with one government.
2. All levels of governance will govern the same citizens, but their jurisdiction will be different. This means that each level of government will have a specific power to form laws, legislate and execute these laws. Both of the governments will have clearly marked jurisdiction. It will not be that one of the governments is just a figurehead government.
3. Another important feature is that the constitution must guarantee this federal system of government. Which means the powers and duties of both or all governments must be listed down in the constitution of that country hence guaranteeing a federal system of governance.
4. As stated above the federalism of a country must be prescribed by the constitution. But it is also important that just one level of government cannot make unilateral changes or amendments to the important and essential provisions of the constitution. Such changes must be approved by all the levels of the government to be carried through.

5. Now there are two levels of government with separate jurisdictions and separate duties. Yet there is still a possibility that a conflict may arise between the two. Well in a federal state, it will fall upon the courts or rather the judiciary to resolve this conflict. The courts must have the power to interfere in such a situation and reach a resolution.
6. While there is power sharing between the two levels of government, there should also be a system in place for revenue sharing. Both levels of government should have their own autonomous revenue streams. Because if one such government depends on the other for funds to carry out its functions, it really is not autonomous in its true nature.

3.0 Federalism in India:

India is a federal system but with more tilt towards a unitary system of government. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, ‘India, that is Bharat, shall be a **union of states**. The word federation is not mentioned in the constitution. Elements of federalism were introduced into modern India by the Government of India Act of 1919 which separated powers between the center and the provincial legislatures.

When Dr. B.R. Ambedkar introduced the draft Constitution in the Constituent Assembly in 1948, he spoke of introducing a dual polity, consisting of “the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution.” He underlined the deliberate attempt of its makers to describe India as a Union of States and not a federation, an attempt reflected in Article 1 of the Constitution.

India’s states are a mosaic of conflicting ethnicities, religions, languages, political aspirations and socio-economic handicaps. When the nation came into being, the quasi-federal structure was adopted to both allow for the preservation of unique regional identities and to ensure the continuance of the nation as a harmonious whole, with a strong Centre.

The Constituent Assembly had many reservations on the subject of federalism. The constitution of India has not described India as a federation. However, Article 1 of Indian constitution describes India as a “Union of States.” This means India is a union comprising of various states which are an integral part of it. Here, the states cannot break away from the union. They do not have the power to secede from the union. In a true federation, the constituting units or the states have the freedom to come out of the union. India is not a true federal government because it combines features of a federal government and the features of unitary government which can also be called as a quasi-federal government.

4.0 Federalism in India Vs. USA and EU:

USA	EU	India
States cannot unilaterally secede from the Union.	Any member state may choose to leave the single market at any time. For this, usually, a withdrawal agreement has to be negotiated, and there may be a transition period.	Territorial integrity is not part of the basic structure of the Constitution. The territory is ceded to Bangladesh under the 9th and 100th constitutional amendment act. According to articles one to four of the Constitution of India, no State can secede from the Union.
Merging or splitting of States is not allowed except with the consent of the U.S. Congress and the affected States.	Merging or splitting of member states is only possible with the consent of the citizens of the respective member state.	Article Three of the Indian Constitution provides for the merging or splitting of States. Such power is exclusively vested in the Government of India.
The President of the United States is elected by the citizens of the United States via the Electoral College. The US is a presidential republic.	The power of the EU is exercised collectively by the European Council, a collegiate body that defines the overall priorities and political directions of the European Union. It comprises the heads of state or government of the EU member states, the President of the	The President of India is indirectly elected. The Prime Minister is usually a leader of either the majority party or the largest party in the Lok Sabha (House of the People) and can either be directly elected by the citizens of a particular Lok Sabha constituency or be indirectly

	European Council, and the President of the European Commission (the latter two have no voting power).	elected as a member of the Rajya Sabha.
The citizens of the individual States directly elect their Governor.	The election of the head of state varies from member state to member state.	The President appoints the Governors of the States with the advice of the Union government. The Chief Ministers (heads of the State governments) are usually leaders of the majority party or the largest party in the State Legislative Assemblies (Vidhan Sabha) who are either directly elected by the citizens from a particular Legislative Assembly constituency or indirectly elected as the member of the State legislative councils (Vidhan Parishad).
Free movement of labor and goods is permitted between the States.	The main purpose of the EU is the free movement of labor and goods between member states.	Free movement of labour and goods is permitted between the States per Articles 301 and 303 of the Constitution of India. The interests of migrant workers are protected by the Interstate Migrant Workmen Act 1979.
There is a single currency, foreign policy, and armed forces under the control of a federal government.	There is a single currency for all EU member states who are part of the eurozone; foreign policy and the armed forces are the responsibility of the individual member states.	There is a single currency, foreign policy, and armed forces under the control of the Government of India.
Every State has the constitutional right to impose taxes and raise debt.	The EU by itself has no power to raise taxes and raise debt, but the European Central Bank can indirectly influence fiscal policy.	Every State has the constitutional right to impose certain taxes and raise debt. Part of Union government revenue is devolved to the States for public purposes.
In general, people speak one language and follow multiple religions under a secular constitution.	Generally, multilingual people follow one religion under secular constitutions.	Multilingual people follow multiple religions under a secular constitution.
A highly developed democratic country.	A union of highly developed democratic countries.	One of the largest developing democratic countries.

5.0 Federal Features of the Indian Union

5.1 Governments at two levels : center and states

5.2 Division of powers between the center and states: There are three lists given in the Seventh Schedule of the Constitution which gives the subjects each level has jurisdiction in:

- Union List
- State List
- Concurrent List

5.3 Supremacy of the constitution : The basic structure of the constitution is indestructible as laid out by the judiciary. The constitution is the supreme law in India.

5.4 Independent judiciary: The constitution provides for an independent and integrated judiciary. The lower and district courts are at the bottom levels, the high courts are at the state levels and at the topmost position is the Supreme Court of India. All courts are subordinate to the Supreme Court.

6.0 Unitary Features of the Indian Union

6.1 The flexibility of the constitution : The constitution is a blend of flexibility and rigidity. Certain provisions of the constitution can be easily amended. In case the amendments seek to change aspects of federalism in India, the provision to bring about such amendments is not easy.

6.2 More power vests with the Centre : The constitution guarantees more powers with the Union List. On the Concurrent List subjects, the parliament can make laws that can override the laws made by a state legislature on some matters. The parliament can also make laws regarding certain subjects in the State List.

6.3 Unequal representation of states in the Rajya Sabha : The representation of the states in the upper house is based on the states' populations. For example, Uttar Pradesh has 31 seats and Goa, 1 in the Rajya Sabha. In an ideal federal system, all the states should have equal representation.

6.4 The executive is a part of the legislature: In India, the executive in both the center and the states is a part of the legislature. This goes against the principle of division of powers between the different organs of the government.

6.5 Lok Sabha is more powerful than the Rajya Sabha : In our system, the Lok Sabha is more powerful than the upper house and unequal powers to two houses is against the principle of federalism.

6.6 Emergency powers : The center is provided with emergency powers. When an emergency is imposed, the center has increased control over states. This undermines the autonomy of the states.

6.7 Integrated judiciary : The judiciary in India is integrated. There is no separate judiciary at the center and the state levels.

6.8 Single citizenship : In India, only single citizenship is available to citizens. They cannot be citizens of the state as well. This helps in increasing the feeling of nationality as it forges unity amidst regional and cultural differences. It also augments fundamental rights such as the freedom of movement and residence in any part of the nation.

6.9 Governor's appointment : The governor of a state acts as the center's representative in the state. The state government does not appoint the governor, the center does.

7.0 New states formation : The parliament has the power to alter the territory of a state by increasing or reducing the area of the state. It can also change the name of a state.

7.1 All India Services : Through the All-India Services such as the IAS, IPS, etc. the center interferes in the executive powers of the states. These services also offer uniformity in administration throughout the nation.

7.2 Integrated election machinery : The Election Commission of India is responsible for conducting free and fair elections at both the center and the state levels in India. The members of the EC are appointed by the president.

7.3 Veto over states bills :The governor of a state can reserves certain kinds of bills for the president's consideration. The president enjoys absolute veto on these bills. He can even reject the bill at the second instance that is when the bill is sent after reconsideration by the state legislature. This provision is a departure from the principles of federalism.

7.4 Integrated audit machinery : The president of the country appoints the CAG who audits accounts of both the center and the states.

7.5 Power to remove key officials : The state government or state legislature does not have the authority to remove certain key government officials even at the state level like the election commissioner of a state, judges of the high courts, or the chairman of the state public service commissions.

8.0 Conclusion:

Though India's federal system has an inherent central bias, the diverse and localized demands and aspirations of identity, autonomy, and development from different regions have compelled the polity to be accommodative in many ways. In all four phases, the attempts of centralization and homogenization have been resisted by regional actors safeguarding the original federal design. The addition of third-tier local-self-government has also effectively emerged as the strong pillar of Indian federalism by decentralizing power at the lowest level of governance. However, two major challenges inhibit greater federal cooperation. First, federal relations in India remains heavily marred by concerns of political partisanship as mutual distrust and electoral competition amongst rival parties at the Centre and the states obfuscates chances of political dialogue and consensus-making. Second, due to such festering political divide and suspicion, the inter-governmental institutions like Inter-State Council, GST Council, NITI Aayog, and Zonal Council remain largely under-utilized for resolving Centre-state and inter-state differences over vital issues of governance. Further, the COVID-19 pandemic as recently acknowledged by Prime Minister Modi has once again reinforced the undeniable need for a robust federal architecture to deliver effective governance and development in a country as diverse as India.

9.0 References:

- i. Bednar, Jenna (2011). "The Political Science of Federalism". *Annual Review of Law and Social Science*. 7: 269–288. doi:10.1146/annurev-lawsocsci-102510-105522
- ii. Broschek, Jorg (2016). "Federalism in Europe, America and Africa: A Comparative Analysis". *Federalism and Decentralization: Perceptions for Political and Institutional Reforms*
- iii. Forsyth, Murray (1981). *Unions of States: The Theory and Practice of Confederation*. Leicester University Press. OCLC 1170233780.
- iv. Gerven, Walter van (2005). *The European Union: A Polity of States and Peoples*. Stanford: Stanford University Press. ISBN 9780804750646.
- v. Wheare, Kenneth (1946). *Federal Government*. London: Oxford University Press
- vi. Bulmer, Elliot. "Federalism" (PDF). *International IDEA Constitution-Building Primer 12: 12*
- vii. Law, John (2012) "Sense on Federalism", in *Political Quarterly*, Vol. 83, No. 3, pp. 543–544.
- viii. <https://www.britannica.com/topic/federalism>
- ix. <https://ncert.nic.in/textbook/pdf/jess402.pdf>
- x. <https://plato.stanford.edu/entries/federalism/>