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Federalism in India

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ABSTRACT

India, Bharat or Hindustan, a land of diversified culture, languages, religions, & geography, has survived as a democratic and sovereign nation for more than 7 decades with prosperity & unity. Our guiding force, Constitution of India, provide us the philosophy of Unity in Diversity. No other nation in this world has such a great diversity and living with unity. Constitution has played a vital role in successful governance of its own source of power, people of the land, & state. One of the most important pillar on which our governance system depends, stood as the basic structure of the constitution of India, is 'Federalism'.

In this article we will analyses 'whether our constitution is truly federal or it is quasi-federal or it is unitary in nature' or 'do we follow Federalism in India or not'. We will also look into, what federalism is? Why it is evolved as the effective form of governance? From where it got evolved, its theories? Does our constitution have any federal features? Then we will see which countries follows federalism and their comparison with India.

I. THEORIES OF FEDERALISM³:

Federalism means arrangement of powers between central government regional/state governments with two basic prerequisites, one is, each state is '**independent**' & secondly there is '**co-ordination**' between states and Centre for governance of people- K C Wheare.

According to above definition of Prof. Wheare, we can derive that:-

- 1) There should be two governing bodies one at central level & another at state level.
- 2) There should be division of powers between two governing bodies in such a way that at a point of time they are **independent of each other and also coordinating with each other.**

To be both, independent at one time & having co-ordination at the same there are some features to be existing, as laid down by prof. Wheare, known as famous

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³ A. K. Ghosal, *Federalism In The Indian Constitution*, Vol. 14, No. 4. The Indian Journal of Political Science, 317, 317-318 (1953).

Classical theory of federalism, are⁴:

- 1) Written Constitution
- 2) Supremacy of constitution
- 3) Rigidity of constitution
- 4) Independent Judiciary
- 5) Both government operate directly to Citizens
- 6) Adequate sources of Revenue for both government

Origin theory of federalism:

This theory describes circumstances favorable for establishing federalism unlike classical theory which describes what federalism means.

It is again divided into three categories:

- 1) Sociological Theory: given by William s. Livingston, in which he says that Federalism is, based on society's approach/condition, such as diverse territories, different religion, varied languages, etc.
- 2) Multiple Factor Theory : given by K C Wheare & Karl Deutsch, where they gave two requisite for federal system:
 - A) Desire for union and establishing independent state governments.
 - B) The capacity to give reality to the desire.
- 3) Political Theory: by William H Ricker, where he defines federalism is a solution of Political problem. He raised two questions:
 - A) What occasions the adoption of a federal government?
 - B) What induces society to maintain & preserve federal government they already have?

He also gave the answers to these questions:

- A) May be collapsing of an empire & political leaders wanted not to separate but still want some autonomy.
- B) To ensure future safety of external threat.

⁴ S. A. Paleker, *Federalism : A Conceptual Analysis*, Vol. 67, No. 2. The Indian Journal Of Political Science, 303, 304-305 (2006).

Functional Theory of Federalism: propounded by R L Watts,

Where he talked about a new concept of 'co-operative federalism' means interdependency & co-operation among general & regional government instead of independent and co-ordination for one and the same people.

II. BEGINNING OF FEDERAL STRUCTURE IN MODERN INDIA

India only had monarchical system till the arrival of British. India was a group of different provinces headed by the person appointed by the king at the Centre. King had the all centralized powers to be binding through-out the territory without being questioned. But British started sharing of powers beginning from Govt. of India Act, 1919. Prof. Wheare at that time quoted that "India had a federal government with a unitary state"

Central govt. was ruling through Delhi with provinces having Governor as head of Province. Governor runs the province through ministers appointed by him from among the elected members of the provincial legislative council. They had two departments Transferred & Reserved. So by this time provinces enjoying some delegated powers by central govt. of a unitary state⁵.

Government of India Act, 1935 gave more powers or autonomy to the states. According to this act provincial govt. now derive its powers from Emperor directly as central govt. Governors directly appointed by the Emperor of India. Part II of this act provide for a federal govt. by division of powers in 3 lists, namely, Central list, Provincial list & Concurrent list⁶. Then came historic Document of sovereign Indian Democracy, "The constitution of India", which was based on the outline of above act of 1935.

III. FEDERAL FEATURES OF CONSTITUTION OF INDIA⁷:

1. Division of Powers⁸:

Concept of federalism is based on the division of powers between the central & the state govt. Indian Constitution provide this Division of powers in schedule VII where powers are divided in 3 lists, Union list, state list & concurrent list. Central govt. was created to look after the matters of National importance, such as Defense, Foreign Affairs, etc. which is enumerated in the union list (97), state's govt. role is to maintain law & order in the state,

⁵ K. H. Cheluva Raju, Indian Federalism And Integrity Of The Nation, Vol. 49, No. 1. The Indian Journal Of Political Science, 1, 1-13 (1988).

⁶ *Id.*

⁷ Chapter-II, *Nature Of The Indian Federal System*, Shodhganga.
http://shodhganga.inflibnet.ac.in/bitstream/10603/98721/8/08_chapter%202.pdf.

⁸ *Id.*

administration, etc. which are given under the state list (67). Concurrent list (47) includes those matters where state & central both can make law, & if conflict arises then central law will prevail.

If it is compared with U. S. constitution there also powers are divided between Centre & state but most of the powers are with states unlike India. Apart from this Residuary Powers are left to the states under US constitution but in India it is with central.

2. Supremacy Of Constitution⁹:

Constitution is the Grundnorm of the land. All laws derive authority from constitution.

For federalism there must be law which divide and demarcates the powers between the Centre & the state as if authority given to a man, he might get arbitrary. So power must come from the independent and unbiased source. In India also constitution is supreme, as it is the only authority which gives powers to both Centre & state. K C Wheare had rightly said “supremacy of the constitution is essential if the govt. to be federal; but the written constitution is essential if the federal govt. has to work well”.

3. Written constitution¹⁰:

Indian constitution was enacted with 395 articles and 8 schedules and it is still one of the lengthiest written constitutions. As in the above point K C Wheare had rightly mentioned that if federal govt. wants to work well there must be written constitution. It is the base for maintaining division of powers & supremacy of the constitution. It clearly specifies the boundaries of extent or powers with duties with which both tier has to work. U S also has the written constitution.

4. Rigid Constitution¹¹:

Constitution must be rigid as it would be difficult for any one party (union or state) to amend it arbitrarily. It can be amended by only 3 ways provided under Article 368 of Indian Constitution; i) simple majority, ii) 2/3 majority of parliament with 50% members present & voting & iii) 2/3 majority of parliament with 50% members present & voting + 50% ratification of the states. If the federal structure is to be amending then it can only be done through iii) point, means states consent is required.

In U S it is ¾ of states which has to ratify the amendment brought by & passed by the 2/3 of majority of congress. So it is more rigid to amend constitution in US compared to India.

⁹ Nature Of The Indian Federal System, *supra* note 6.

¹⁰ Nature Of The Indian Federal System, *supra* note 6.

¹¹ Nature Of The Indian Federal System, *supra* note 6.

However basic structure such as federalism, fundamental rights, etc. can't be amended by Parliament as decided by apex court¹².

5. Independent judiciary¹³:

Judiciary in India is completely a separate hierarchy other than the executive and legislative, as it derives its powers from constitution directly. If there is any dispute between Centre & state or state & state, Supreme Court can enter into matter & resolve it by virtue of Article 131. Not only this law made by central or state legislative bodies can be challenged in the apex court and can be declared invalid if it violates constitution as it got power of judicial review under article 13(2) & 245(1). So judiciary is the custodian of the constitution. U S also has the same judicial system but their states also have their own supreme court.

6. Bi-cameral legislature¹⁴:

Parliament consists of both Lok Sabha & Rajya Sabha, where later ensures the representation of states at the union level in every decision of lower house. So state has very important stake in decision making of executive. It is essential for federalism to have equal say in every decision.

U S also has the same concept of bi-cameral.

IV. UNITARY FEATURES OF CONSTITUTION OF INDIA:

1) Article 1¹⁵:

Article 1 of Indian Constitution clearly states that "India, that is Bharat, shall be a Union of states". So our constitution clearly spells out that India is a unitary state, where power lies with central govt., not with state.

2) Single Citizenship:

Indian Constitution provide only for single citizenship, i.e. Citizen of India under 'article 5'. However other federations such as US provide for dual citizenship. US constitution gives citizenship as Citizen of America & every state's own constitution gave them the citizen of that state, say for citizen of New York, etc.

3) A Strong Centre:

In India more is rests in the hands of central govt. As the powers are divided into 3 lists as

¹² Kesavananda Bharati , *supra* note 1.

¹³ Nature Of The Indian Federal System, *supra* note 6.

¹⁴ Nature Of The Indian Federal System, *supra* note 6.

¹⁵ K. H. Cheluva Raju, *Dr. B. R. Ambedkar And Making Of The Constitution: A Case Study Of Indian Federalism*, , Vol. 52, No. 2. The Indian Journal Of Political Science, 153,153-164 (1991).

mentioned above where maximum subjects are in Union lists more than 90 as compared with state list which has only 67 subjects, even residuary powers are with central govt.¹⁶ In US central govt. has only cover 16 subjects rest left for state's discretion & states has residuary powers not Centre. So in US, more powers are to states unlike India¹⁷.

4) Single Constitution for union & state:

Generally a federal structure has two constitution one for union and other for the state. But in India we have only one Constitution for whole of territory of India. If compared with US, there is a central Constitution which is Constitution of America & each state has its own separate constitution.

5) A Single Judiciary:

India has a single united Judiciary where Supreme Court of India is the highest court, with High court in the states & district courts in each districts. But in US every state has its own Supreme Court to deals with the matter of their states & also Supreme court of America at union level.

6) Inequality of representation in council of states:

As per the traditional features of federation every state has equal representation in the Centre. But in India, seats are divided in respect of population, means state which has more population has more seats. However in US the council or senate has equal representation from the states in the form of 2 members from every state irrespective of population.

7) Appointment of Governor:

In India Governor is appointed by the President of India as the head of the state and holds office at the discretion of President. But in US Governor is directly elected by the people of the respective states¹⁸. President works on the advice of council of ministers so it is only Centre who appoints the Governor of the state.

V. FEDERALISM AS EXPLAINED BY SUPREME COURT OF INDIA¹⁹:

In State of Rajasthan v UOI, 1977, former Chief Justice beg said constitution as 'amphibian',

"....If then our Constitution creates a Central Government which is 'amphibian', in the sense that it can move either on the federal or on the unitary plane, according to

¹⁶ A. K. Ghosal, *supra* note 2

¹⁷ Raghav Dhoot, *Comparative Analysis Of Indian And American Federalism*, Volume 4, Issue 1. International Journal Of Advance Research, Ideas And Innovations In Technology, 490, 490-496 (2018)

¹⁸ K. H. Cheluva Raju, *supra* note 14.

¹⁹ Sahil Arora, *Federalism – The Indian Constitutional Context*, <https://www.lawctopus.com/academike/federalism-indian-constitutional-context/>

the needs of the situation and circumstances of a case...”

Similarly in S.R. Bommai v Union of India, “pragmatic federalism” was used. Quoting Justice Ahmadi,

“....It would thus seem that the Indian Constitution has, in it, not only features of a pragmatic federalism which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strong unitary features...”

The phrase ‘semi-federal’ was used for India in State of Haryana v. State of Punjab, whereas in Shamsher Singh v. State of Punjab, the constitution was called ‘more unitary than federal.’

Another case on this issue is that of State of West Bengal V. Union of India. This case dealt with the issue of exercise of sovereign powers by the Indian states. The Supreme Court in this case held that the Indian Constitution does not promote a principle of absolute federalism. The court further outlined four characteristics highlighting the fact that the Indian Constitution is not a “traditional federal Constitution”

VI. CONCLUSION

Indian constitution has both federal and unitary features in it as explained above after comparing it other established federations. So it will be wrong for going any extreme. Even Supreme Court in many cases took the middle stance. Hence, it can be concluded that India is neither a complete Federal nor complete Unitary, it is a blend of both, or it is a ‘Quasi Federal’ structure of governance.
