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Federalism in India and its Comparison with the US Federation

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ABSTRACT

India being the country with the most diversification in nature is also facing a lot of problem in withholding the concept of federalism especially when comes to the nation building and State formation in India, with the advent of different political party in different regime there has been a paradigm shift in the concept of federalism in India. In this instance, the paper is trying to begin with how the concept of federalism is being processed in the country by referring to the historical background wherein it has been witnessed that the post-independence period being regarded as the most rhetoric moment for India as there has been a security threat both internally as well as externally with some challenges in terms of the development in the country. Further, the paper will also identify as to the idea of the constituent assembly being discussed by the framers of the constitution with matters related to the incorporation of the concept of federalism in practice. As such the paper is also trying to highlight the points as to the development with changes in the concept of federalism especially in times of Covid wherein, the paper will categorically explore the impact of Covid 19 on federalism in India. With clear understanding about the concept of federalism in India, the author thereby goes on to compare the federal structure of both India and US by referring to ten yardsticks given by Ivo D Duchacek.

Keywords: federalism, political party, country, India, Centre, States, Constitution of India.

I. INTRODUCTION

Federalism is a concept of government wherein the form of government is divided between various units. These various units are centre, state and panchayats form of a government. The various units are interdependent upon each other in which the centre in the national level with its constituent units in the regional, state and local level. Foedus is the Latin term from which the term Federalism derived, meaning thereby a formal agreement, a covenant or a treaty. As stated by Justice Hugo. L. Black in the case of *Younger v. Harris*² the United States Supreme Court held that Federalism mean “a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance

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² 401 U.S. 37 (1971)

of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways". World wide it is seen that the theory of federalism one way or the other always have inconsistencies in their function. The countries like India and U.S has different approach upon the federal system of the government. Basically, In India, there is no straight jacket defining the term federalism and it is so inconsistent that the centre is called a Union as being provided under the constitution of India, 1950. Originally, the design of federal structure in India drew its inception from the Government of India Act, 1935³ and has inspired with the idea of centralizing tendency which always aimed at bringing a federation of a vast empire having a diverse impact upon their characteristics with a vision to promote social justice for all. It has also been observed from the fact that in order to avoid from falling apart of the idea of centralizing tendency, the constitution plays a pivotal role in providing separate power for both union and state so as to strengthen the unity and integrity of the nation as a whole however a higher degree of power is inclined towards the centre which went very well beyond the imperatives of economic planning. Under the U.S constitution, the term federalism is being exemplified as a relationship of shared authority between the two levels of government. It follows the strict division of powers between the two governments. As such there are not much dissimilarities and the federalism concept in India and the US has some basic similarities in it which will be discuss in a detailed manner in this paper.

II. IDEA OF CONSTITUENT ASSEMBLY ON FEDERALISM

The debate on the idea of federalism has been up for a very long time and in the constituent assembly it was an intense debate on this idea. JB Kripalni while outlining the proposed constitution, he stated that India should be federal in character with more autonomy to the States.

There was instances when Dr. B.R Ambedkar presented the draft proposed constitution in the constituent assembly, he proposed the federal nature of the constitution even though the word union is described under Article 1 of the Indian Constitution. However, he thereby clarified that Federation was not an agreement by the state to join one and no state had to secede from it because it was not a result of an agreement. Mr. N. Gopaldaswami Ayyangars simply argued with regards to the federal structure of the government where he opined that the most important feature of a Federal Constitution is that it must provide for a method of divide power of the Government at the Centre and the Governments in the Units and that they both must act within a defined sphere, co-ordinate and independent. He then believed that the concept of federalism

³ Govt of India Act, 1935

followed by the other different countries was not rigid and as such there was no clear demarcation of power between the Centre and the States and that they had to be dependent on each other⁴.

No doubt, from the start of the constituent assembly until the end there was always a talk about India is going to adopt a federal system of government hence it was seen the introduction of centralizing element in the process. The factor responsible is also due to the post partition the need for a strong centre is in a main stream. It is clearly seen from every advancement that, the concept of federalism did not go unnoticed in the constituent assembly and the adoption of this concept under the Indian Constitution is only after being followed from the inference of other western countries thereby it was later adopted by the drafters of the constitution. So also due to external innate and also the diversity of the country culture it is not possible for India to have just unitary system without any federal structure which had caused a fair census in the constituent assembly.

III. PROVISION RELATING TO FEDERALISM UNDER THE CONSTITUTION OF INDIA

No where under the Constitution of India the word 'Federal' is mentioned. However, as stated above, the concept of federalism was being influenced by the British India Government of India Act, 1935 so also due to the popularity of Federalism in the 20th century. Even the framers of the Indian Constitution are far sighted by the federal set up in the country nevertheless they were not influenced by the then national mood.

Under the Constitution of India, Article 1⁵ stated, "India as a Union of States" whereas the founding father labeled it as a federal when brought it in the Constituent Assembly. He clarified that Federation was not an agreement by the state to join one and no state had to secede from it because it was not a result of an agreement. Also the fact, Federation became Union due to its indissoluble. Dr. D.D Basu, in his opinion he believes that it is difficult to agree with the definition of a federal state thus a liberal attitude should be put into consideration as it is an inevitable view. Also he opined that, whether a state is federal or unitary and the answer will always depend upon how many federal features it possesses.

There are various features of federalism being incorporated under the Constitution. Firstly the federalism concept affirms the supremacy of a written and a rigid Constitution which is clearly laid down in the Constitution that no organ of the State can transgress its area of authority.

⁴ Ambedkar ,B.R., (1948)' Unusual Features of the Constitution' , Speech in the Constituent Assembly of India, 4 November , CAD,VII(1).

⁵ INDIA CONST. art. 1.

Secondly, under the seventh schedule of the Indian constitution it clearly deal with the division of power between centre and state whereby it mentioned about the three list and they are Union List, State List and Concurrent List⁶. Here the centre and the state should not overlapped to each other except when in the case of concurrent list where the centre has overriding authority in matters contained in concurrent list so also the residuary power are given to the Centre only. Thirdly, the feature of independence of Judiciary, where the supreme court act as the guardian of the constitution that gives authority to the Supreme Court with its original jurisdiction to settle the dispute between the Centre and the States. In simple term, it has the word to interpret the Constitution and it is the final resort. Fourthly, the Indian Parliament has two houses which is termed as a Bicameral Legislature with the upper house known as the Rajya Sabha and the lower house known as the Lok Sabha.

From the above characteristics of federalism in India, it is seen that, though expressly there is no clear cut definition of the term federalism under the constitution of India whereas, the constitution of India relatively provides for a clear division of power between the Centre and the state legislature as enumerated under the seventh schedule of the Indian constitution. There are also institutional organization being constituted in order to serve as a bridging mechanism between the Centre and the State like Finance Commission, the interstate council, the interstate tribunal, the national development council etc.

IV. INDIAN CONTEXT

(A) Historical background

There exist a serious threat towards those who reign during the post independence as the state were besieged by the threat of India's security both from the internal as well as external and not only that, it is also the country faced with some challenges upon the development of the nation. Therefore, the moving towards of a strong federalism was being adopted in order to safeguard the interest of the regional groups in India.

There was a time in the year 1960⁷ when Pt Jawaharlal Nehru was the prime minister of India wherein he took Democracy seriously and after the first election was held in the year 1951 both in the National Government and the Provincial Assemblies where he provides full and free participation in the election. So also he went on seriously to each chief minister's of the state and write to them in particular about their performance every month in an effort to keep them informed of the state of the nation and on top of that he asked them about their opinion in an

⁶ SEVENTH SCHEDULE, THE CONSTITUTION OF INDIA

⁷ Chanchal Kumar, *Federalism in India: A Critical Appraisal* (2014)

attempt to build consensus, this is the phase of One Party Federalism. Again if we see another phase (Expressive Federalism) of federalism in India where the fourth election was conducted in the year 1967 in which there seen to be a drastic change in the centre state relation after the strength of the congress party was reduced in the parliament to a simple majority and witnessed half of the state were moving out of the control of the congress party and join hands with the opposition party or in coalition. Therefore it is seen that the period between 1967 to 1969 being considered as the period of transitions whereby the essential principles of accommodation and consultation was held and the Congress which is in the Center began cohabiting with the regional level of opposition parties. It was only in the year 1969 after the split of Congress then the balance was lost thus Indira Gandhi became the Prime Minister strategized a federal government into a strong centralizing tendency. In this phase, the rise of centralizing tendency is to a great extent. Which in turn in the early 1975⁸, the federal nature of the government is being reduced to a unitary state. Lately in the 1980's that is the third phase of federalism (1989-2014) where the end of Congress national dominance and a number of political, economic and institutional factors emerged. This phase is also marked as the beginning of the era of coalition politics in India at the national level. Due to the coalition of national level shaped the federal dynamic of the country. In this era, the attempt of the coalition of regional parties was also provide decentralized governance. Even the attempt appeared to be fragile and short lived however, the aspirations of the regional leaders to climb up the political ladder to the national level through its coalition led them to define their regional demands in the larger context as such the mixed of national and regional politics paved the way for a more decentralize with a multi party federalism in India.

Since 2014, we have again experienced with the return of the Dominant Party federalism whereby the 2014 general election has eroded the coalition politics in the national level. In one way or the other, we have also witnessed that somehow the concept of cooperative federalism has been incorporated whereby a major steps being taken by the Union government for instance, the replacement of the Centralized Planning Commission to NITI Aayog which in turn would give active involvement of the States in the name of Cooperative Federalism. Likewise, the Goods and Services Tax was implemented in order to enable the Centre and State government to become equal fiscal partners in sharing a common indirect tax base. The 14th Finance Commission⁹ recommendation also the one to give the States 42 percent share of the funds from the Central Pool.

⁸ Sethi, R. R. & Mahajan, V. D., *Constitutional History of India*, 136 (S. Chand & Co., Delhi 1956).

⁹ Recommendations of the 14th Finance Commission

We see that the federal form of government in India has evolved in a very exciting ways in which there was a huge interactions between various non governmental institutions stakeholder in policy making process especially when turn towards the economical situation as well as polity and society participatory clearly notifies a significant changes. Therefore, the idea is purely to avoid the boundary line between the national government and the regional government so as to showcase the true understanding of the concept of federalism.

Even the international study suggest that Federalism concept is not at all a rigid structure hence it is more than an ever evolving of science, complex and a dynamic interactions between the government¹⁰. In fact, in order to bring about a federation in the Country, it should evolve as ongoing contracts and remain by their very nature under constant renegotiation.

V. FEDERALISM AS A VICTIM IN COVID TIMES

Evidently, during the outbreak of Covid 19, there was no coordination between the Centre and the States in any manner. A lot of feature was exposed between centre and state relation and also most of the power of the State was diluted. A separate in the federal structure of the government is requiring for both the centre and the state so as to avoid from being fractious. As far concerned, it is a known fact that, after the outbreak of Covid 19 many issues came into the lime light as of Health related issues, roadmap for lifting restrictions, management of lockdown, management of the disease from wide spread, allocation of funds to tackle the health issue, social and economic challenges ahead therefore a need of an hour to have a strong politics shift in favour of a federalism in which it is the need for Central government to provide a broad guidelines in order to enable the state to tackle the challenges faced. The problem that different States is facing, especially in a one month long national lockdown, wherein the States were in the verge of a fault line of system from competing with the alternate solution¹¹. The problem arose during this period is extensively on the basis of the health sector whereby there was a conflict of interest between the centre and the states wherein the Centre managed the disease by implementing the Disaster Management Act¹² whereas the States are concerned with issuing certain guidelines, making rules and regulations under the Epidemic Act. The financial crunch faced by the State government was also one of the major challenges that are unavoidable as such most of the States were unable to perform their functions properly due to the lack of

¹⁰ Chanchal Kumar Sharma, *Reimagining Federalism in India: Exploring the Frontiers of Collaborative Federal Architecture*, 15 ASIA PAC. SOC. SCI. REV. (2015), <https://escholarship.org/uc/item/48k2w4xr> (last visited Nov 14, 2022).

¹¹ The COVID-19 Challenge to Indian Federalism
NIRANJAN SAHOOAMBAR KUMAR GHOSH

¹² Disaster Management Act, 2005

resources both financially as well as physically. Centre approach as one size fits all is not good as different States are not given a freedom to work according to their needs.

To solve the problem faced by different States during the times of Covid 19 is the strong shift from Centre centric power to Federalism. This is to say that there should be a pure coordination between the Centre and the States. So also, the Centre should issue broader guidelines for the management of epidemic and lockdown with a freedom to the States to let them decide for their own benefits. As it is also evident that the issue of migrant labour crisis served as a major problem and it needs to be addressed at the behest of the demand of the situation by having a proper coordination between the interstate so as to ensure proper checking of entry and exit point of each and every state. The problem of supply of food is also a major setback for the States and hence there should be a commitment between the Border States to support each other in case there exist shortage of food in one of the State so as to ensure that there is enough food supply in this regard. The Economic restraint is also a biggest problem faced by the State as they do not have enough financial resources to support its people in long term therefore the need for the Centre and State to adjust the revenue and each issue to be discussed between the Centre and States with the Centre should continue its Economic activity such that the poor gets some work with the help of Government Schemes. To sum up all, it is to be understood that the Centre and State should work more closely to each other with an intention in mind that they have to take suggestions from each other to tackle any unforeseen circumstances in such times.

VI. JUDICIAL INTERPRETATION

Through a plethora of judicial pronouncements had interpreted the concept of federalism in different angle.

In the case of *State of West Bengal V Union of India*¹³, the Supreme Court came up with the idea that the Indian Constitution is not truly a federal by interpreting that the division of power between the centre and the states only on such powers that are in the local sphere whereas those are concerned with the economic industrial and commercial unity of the country is left with the Union.

In the case of *State of Rajasthan V Union of India*¹⁴, Chief Justice Beg stated called constitution as an amphibians in a sense, Indian Union is a federal but the extent of federalism in its entirety is being watered down by the needs and the progress of the country. Which he believed that if it can move either on the unitary as well as on the federal plane according to the

¹³ 1 SCR 371 (1964)

¹⁴ (1978) 1 S.C.R. 1

needs of the situation and circumstances of the case.

Whereas in the case of *State of Karnataka V Union of India*¹⁵, the Supreme Court held that, Indian Constitution is not federal in character but characterized as quasi federal in nature.

Similarly, in the case of *S.R Bommai V Union of India*¹⁶, Justice Ahmadi observed that the significant absence of such expression like federal or federation in the constitution declared it as quasi federal.

Lastly, the case of *Keshavananda Bharti*¹⁷, in 1973, some of the Judges in the Full Bench considered federalism as one of the ‘basic features’ of the Constitution of India.

VII. COMPARISON OF INDIAN FEDERALISM WITH UNITED STATES

To have a comparative study on the federalism in India and United States, it can be understood by draw a parallel from ten yardsticks given by Ivo D. Duchacek¹⁸ they are :

Firstly, with regards to the diplomacy and defenses, generally the central government has exclusive power on the issue of foreign policy. Likewise in the case of US for instances, Article 1, Section 10, Clause 3 of the US Constitution prescribes for the total control over the foreign policy like defenses and diplomacy is left with the Central Government.

Similarly, in India, under Seventh Schedule, List 1 of the Indian Constitution, it gives power to the Union with respect to the powers with respect to diplomacy and defense. So also, Article 53(2) prescribes President with the Supreme Command of the Defense Forces of the Union. Article 352, 353 and 355 also speak about the Union’s power during the times of national emergency. It implies that, Indian Constitution explain more elaborately about the existence of these powers than US constitution.

Secondly, Article 4, Section 3 of the U.S. Constitution stated that ”no new states shall be formed or erected within the jurisdiction of any other state without the consent of the legislatures of the states concerned as well as of the Congress”. The verdict of US Supreme Court in *Texas V. White*¹⁹ has settled the Law that “United States is an indestructible Union of indestructible states”

Article 1 of the Indian Constitution²⁰ stated India as Union of States. Which means as,

¹⁵ 1978 (2) SCR 1

¹⁶ 1994] 2 SCR 644

¹⁷ AIR 1973 SC 1461

¹⁸ Ivo D. Duchacek was Professor Emeritus of Political Science, City University of New York. He was also the author of the book *Comparative Federalism* (1970)

¹⁹ *Texas v. White*, 74 U.S. 700 (1869)

²⁰ INDIA CONST. art. 1, cl. 2.

Federation was not an agreement by the state to join one and no state had to secede from it because it was not a result of an agreement.

Thirdly, in the subject matter of tax, the Sixteenth amendment of the US constitution gave congress a power to levy tax without apportionment of several states and without regards to any consensus and or enumeration.

In India, the Central government is very much independent as to the imposition of tax. It need no approval from any constituent units with regards to financial and other resources.

Fourthly, it deals with the amendment provision wherein under Article 5 of the US Constitution²¹, it provides the manner in which the amendment can be made in the constitution and it requires ratification of 3/4th States.

Whereas in India, whenever the amendment under Article 4, Schedule VI and under Article 368 of the Indian Constitution²² is made, there is no need of ratification by the States in all amendments.

Fifthly, the question was whether the constituent units is immune to elimination of their identity, in which as referred above and by virtue of Article 4, Section 3 of US Constitution, read with case of Texas v. White, “which held as *United States is an indestructible Union of indestructible states*”. In simple it can be said as the states cannot be destroyed, their boundaries cannot be altered and not even their names.

In India, the position is different wherein, under Article 2 of the Indian Constitution, the Parliament has the power to admit and establish new states. Further, Article 3 of the Constitution gives Parliament the power to alter the boundaries of the States or change the name of the existing ones.

Sixthly, with regards to the residuary power, in US constitution, under Article 1 of Section 8 it prescribes with the subject matter of the Centre and the States, the residuary power is basically given to the States.

In India, apart from the Seventh Schedule of the Indian Constitution that provides the three lists i.e. Union List, State List and Concurrent List, however, under Article 248 of the Indian Constitution it is seen that the residuary power is vested with the Union. In this yardstick, it is also recognized that, India reflects unitary features from the fact that union is allowed to make laws even in the subject matter of the State.

²¹ U.S. CONSTI. art. 5

²² INDIA CONST. art. 368

Seventhly, deals with equal representation in Bicameral System, in United States equal representation in the senate is secured by virtue of Article 5 where, in US every state irrespective of its size have 2 seats in senate.

As such in India, under Schedule IV read with Article 80 (2) of the constitution it prescribes with the allocation of seats in the Rajya Sabha. States are represented unequally in the Rajya-Sabha on the basis of population of an individual State.

Eighthly, this yardstick deals with the questions as to whether there is two sets of independent court. Where it is a matter of fact that in USA there are two different sets of court in which one is Federal Court and the other is State Court.

Unlike in US, in India there is only one unified legal system with the Supreme Court is the Apex body followed by the 25 High Courts.

Ninthly, deals with the question relating to judicial authority in the central authority but Standing above that Central Authority and the Components Units to determine their respective rights. Which it is believed from the inference from the case of *Mculloh v. Maryland* is the classic case where judicial review was used in the centre state dispute.

Witnessing the same, in India, Article 131 of the Indian Constitution deals with the original jurisdiction of the Supreme Court of India to try centre state dispute. So also, Judicial Review being considered as the basic structure under Article 13(2), Article 32 and Article 226 of the Indian constitution

Tenthly, the question as to if there is no ambiguity in the division of power between Centre and State. Under Article 1, Section 8 of the US Constitution it clearly stated that the federal has power over 18 subject matter whereas the residuary power is given to the States.

In India, under the Seventh Schedule of the Constitution clearly provide power for both the Centre and States and ensures that clarity being provided and conflicts can be avoided.

VIII. CONCLUSION

Summing up all, unlike in United States of America, the concept of pure Federalism in India has not been clearly followed in a strict sense or we can say that, under the constitution of India a mixed feature of both the unitary as well as federal feature is seen. Even though there is no expressed provision defining the term 'federalism' and Article 1 of the constitution only stated, India as union of states. Henceforth, under various provision of constitution the concept of federal structure is being enhanced. Also it can be said that the development of this concept is only on the basis of a judicial construct where Supreme Court has even reiterated that

Federalism is a basic structure of the Constitution. From the plain understanding of the yardsticks as mentioned above, it is very clear federalism is important as it is able to manage the diversities and multiplicities of the nation. It is a matter of fact that there is no federal State and it is impracticable to have a pure federal in nature. The reason is that, it depends upon the time and circumstances and also the different geographical conditions and with the diverse in the nature of most of the countries it is difficult to set up the federal system in that particular country so also it is impossible to decode on the specific yardstick of the federalism. Even Dr. Ambedkar, in his constituent assembly debate, He opined that the provision that make the Indian Constitution both unitary as well as Federal is according to the requirement of time and circumstances. He further opined that during the normal times it is framed to work as a federal system but in times of war and emergency it is so designed so as to make it work as though it was unitary system.

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