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Federalism in the Indian Context: A Comprehensive Analysis

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ABSTRACT

The purpose of this paper is to provide a comprehensive analysis of the concept of federalism in the Indian context. Federalism is a form of government in which there are different governments at the Centre and the State levels. In India, we follow the quasi-federal system of government, which is a unique blend of both federal and unitary features. It highlights the significance of federalism in fostering harmony and cooperation between the Centre and the States. It explores how federalism serves as a mechanism for accommodating regional aspirations in India.

The paper outlines the constitutional framework of federalism in India along with the distribution of legislative powers between the Centre and the States. It also provides the historical evolution of federalism in India and discusses the Government of India Act, 1935 in brief.

It also elucidates the nature of federalism in India by referring to the works of Prof. K.C. Wheare and Ivor Jennings. It also delineates the defining features of Indian federalism such as dual polity, division of powers, strong centre, single citizenship, supremacy of the Constitution and emergency provisions, among others.

The paper also provides the description of the contemporary challenges to Indian federalism along with citing examples for the same. It explores the challenges faced by Indian federalism such as disputes for resource allocation and the need for improved fiscal federalism. Furthermore, it provides several recommendations for strengthening Indian federalism.

In conclusion, the comprehensive analysis presented in this paper underscores the dynamic and evolving nature of federalism in the Indian context and its crucial role in maintaining national unity while retaining diversity.

Keywords: *Federalism, Quasi-federal, Cooperative Federalism, Fiscal Federalism, Emergency Provisions.*

I. INTRODUCTION

Federalism is a form of government in which the powers are divided between two or more levels of government. Thus, a federal state has a Central government for the entire country and various

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State governments, at the provincial level. It allows for the accommodation of diversity and regional autonomy within a larger political unit.²

The Constitution of India establishes a federal polity with some unitary features. It contains all the typical features of a Federal Constitution such as two governments (Central government and State governments), division of powers, written Constitution, Supremacy of the Constitution, rigidity of the Constitution, independent judiciary and bicameralism. Along with this, the Indian Constitution has some unitary features such as the Emergency Provisions, Parliaments' power to legislate in the national interest and to form new States and alter boundaries of the existing States.

“Many of the political scholars who have studied the Indian Constitution in depth have come to a conclusion that the Indian Constitution is federal with a unitary bias so as to preserve the unity and the integrity of the nation. The scholars often refer to the Indian federalism as Federal Sui Generis.”³

The Supreme Court of India held that federalism is a part of the basic structure of the Indian Constitution in the case of *S.R. Bommai v. Union of India*⁴. Since, federalism is one of the basic features of the Indian Constitution and therefore, it cannot be amended by the government through any legislation. In the case of *Kuldip Nayar v. Union of India*⁵, the Court also held that the Indian variant of federalism upholds a strong Centre.⁶

The sustenance of federalism in a diverse country like India can be attributed to four prominent factors. First and foremost, India's vast landmass hosts a multitude of linguistic, cultural, religious, and regional diversities, making it imperative to have a federal structure that accommodates these variations.⁷ Secondly, political power is effectively distributed due to the emergence of coalition governments, the principles of financial federalism, and the presence of regional political parties.⁸ These factors contribute to a more balanced sharing of authority and

² "Complexity of Indian Federalism." *Drishti IAS*. June 24, 2023. <https://www.drishtiiias.com/daily-updates/daily-news-editorials/complexity-of-indian-federalism#:~:text=Federalism%20is%20a%20system%20of,within%20a%20larger%20political%20unit> (last visited on 4th October, 2023).

³ Sapra, Simran. "Indian Federalism." *Reader's Blog*. *Times of India*, December 28, 2021. <https://timesofindia.indiatimes.com/readersblog/realisitic-thoughts/indian-federalism-39970/> (last visited on 5th October, 2023).

⁴ AIR 1994 SC 1918

⁵ AIR 2006 SC 3127

⁶ "Discourse on Federalism." *Next IAS*, May 3, 2022. <https://www.nextias.com/current-affairs/03-05-2022/discourse-on-federalism/> (last visited on 5th October, 2023).

⁷ "Relevancy of Indian Federalism in Indian Constitution: A Critical Approach." *Journal of Legal Research and Juridical Sciences*. Accessed October 9, 23. <https://jlrs.com/relevancy-of-indian-federalism-in-indian-constitution-a-critical-approach/>.

⁸ *Ibid*.

responsibilities between the central and state governments.

Furthermore, institutions like the Supreme Court and the Governor's Office act as impartial arbiters and safeguards the federal principles. Lastly, India's federalism is sustained by special exemptions and provisions for certain states, such as those in the North East and Jammu & Kashmir, which acknowledge the unique circumstances and needs of these regions, reinforcing the federal spirit within the Indian Union.⁹

Federalism is required, in a diverse country like India, to protect the pluralism of culture, language and religion. It is also needed to safeguard rights of linguistic minorities in the States and to minimise interference by the Centre in the face of increasing centralisation. It also fosters harmony and cooperation among various linguistic, ethnic, cultural and religious groups in a diverse country like India.

Federalism is also needed to improve the quality and efficiency of governance. It enables the State governments to formulate regional policies, according to local needs and requirements, for the betterment of the people at the grassroot level. It also promotes inclusivity by ensuring an equitable and transparent distribution of resources and opportunities among different levels of the government.¹⁰

II. HISTORICAL EVOLUTION OF FEDERALISM IN INDIA

Federalism in India has its roots in the Government of India Act, 1935. "The basic features of the Act were the introduction of partial responsibility at the Centre, Provincial Autonomy and an All-India Federation."¹¹ Thus, it gave a degree of autonomy to the erstwhile Indian provinces and established responsible governments at the Centre as well as in the provinces.

A kind of dyarchy was introduced at the Centre under the Government of India Act, 1935.¹² Under the Act, the executive consisted of the Governor-General and a Council of Ministers. "The Governor-General had to act on the advice of the Council of Ministers except in matters which were either left to his discretion such as external affairs, defence, ecclesiastical affairs and administration of tribal areas or matters which were in his special responsibility."¹³

The Act made a three-fold division of power between the Centre and the Provinces through the

⁹ Ibid.

¹⁰ "Complexity of Indian Federalism." Indian Polity. Drishti IAS, June 24, 23. <https://www.drishtiiias.com/daily-updates/daily-news-editorials/complexity-of-indian-federalism> (last visited on 8th October, 2023)

¹¹ Pandey, J.N. 1965. *Constitutional Law of India*. 59th ed. Allahabad: Central Law Agency, p. 11.

¹² Singh, M.P. 2006. *Outlines of Indian Legal and Constitutional History*. 9th ed. Universal Law Publishing, p. 166.

¹³ Ibid.

Federal List, Provincial List and Concurrent List.¹⁴ The Federal Legislature had the sole power to legislate on the subjects mentioned in the Federal List. The Provincial Legislature had the jurisdiction to make laws on subjects listed in the Provincial list. The Provincial and Federal Legislatures collectively legislated on the subjects mentioned in the Concurrent list.

The present arrangement of power-sharing between the Central government and the State governments, in the form of the Union List, State List and Concurrent List, is also derived from the Government of India Act, 1935.

III. CONSTITUTIONAL FRAMEWORK OF INDIAN FEDERALISM

(A) Article 1, 2 and 3 of the Indian Constitution

India has been described as a “Union of States” in Article 1¹⁵ of the Indian Constitution. This implies that the Indian federation is not a result of an agreement by the States and no State has the right to secede from the Indian federation. Article 2¹⁶ of the Indian Constitution empowers the Union Parliament to admit new States into the Union of India and to establish new States.

Article 3¹⁷ of the Constitution permits the Parliament to form new States by separating the territory or by uniting the territory of two or more States. The Parliament may also, by law, increase or decrease the area of any State or alter the name of any State. “Thus, the States have no guarantee of their territorial integrity.”¹⁸

Therefore, Article 1, 2 and 3 are the unitary features of the Constitution of India which vest much more powers in the Central government as compared to the State governments.

(B) Distribution of Legislative Powers

In India, the Union government acts as a strong centralised authority which overlooks the functioning of the State governments and has the exclusive power to legislate on the subjects listed under the Union List. Both the Central and the State governments can legislate on the subjects mentioned in the Concurrent List. However, in case a dispute or discrepancy, the laws made by the Union government will prevail over the State laws.

Also, during the proclamation of an Emergency, the normal distribution of powers between the Central and the State governments undergoes a significant change and the Union Parliament is empowered to legislate on any of the subjects mentioned in the State List. The Central

¹⁴ Supra note 11.

¹⁵ The Constitution of India, 1950

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Shukla, V.N. 1949. *Constitution of India*. 14th ed. Lucknow: Eastern Book Company, p. 8.

government is also empowered to give directions to States in the manner in which the States should exercise their executive powers.

Moreover, the financial arrangements between the Centre and the States can also be altered by the Union government during an Emergency. Thus, during the proclamation of an emergency, all powers are centralised in the hands of the Union government and the Indian Constitution acquires a unitary character.¹⁹

IV. NATURE OF INDIAN FEDERALISM

The nature of Indian Federalism can be described as “quasi-federal” or “cooperative federalism.” It presents a unique blend of unitary and federal elements. While the powers are divided between the Central government and the State governments, the Central government wields more power as compared to the State governments, particularly in the areas of national importance.

Cooperative federalism is a hallmark of India's federal system. The Central and the State governments frequently collaborate on matters like economic planning, infrastructure development, and social programs. This cooperative spirit fosters a sense of unity and diversity within a complex and diverse nation, ensuring that regional needs and national priorities are addressed effectively.

Prof. K.C. Wheare made a distinction of degree between a federal and a ‘quasi-federal’ Constitution. He termed the Indian Constitution as *quasi-federal*, in his book ‘Federal Government’. “In a quasi-federal Constitution, though there is a division of powers between the Union and the Regions, in the division of powers, the predominance is given to the Union and there are provisions for Union intervention in the affairs of the States, so that it can hardly be said that the States have a domain where it is independent of Union control.”²⁰

He defines the ‘*federal principle*’, in his book ‘Federal Government’, without which no polity can be called ‘federal’. According to Prof. K.C. Wheare, when “the field of government is divided between the Federal and State governments, neither of which is subordinate to the other, but are co-ordinate and independent within the sphere allotted to them.”²¹

Ivor Jennings also regarded the Indian Constitution as a “federation with a strong centralising tendency.” This can be justified by the fact that the word ‘federation’ appears nowhere in the Indian Constitution. Also, the Union government acts as a strong centralised authority that

¹⁹ Supra note 11

²⁰ Basu, Dr. Durga D. 2008. *Comparative Federalism*. 2nd ed. Nagpur: Wadhwa Nagpur, p. 144.

²¹ Myneni, Dr. S.R. 2004. *Political Science for Law Students*. 3rd ed. New Delhi: Allahabad Law Agency, p. 336.

coordinates the functioning of the State governments and has the exclusive power to legislate on the subjects listed under the Union List.

V. FEATURES OF INDIAN FEDERALISM

The Indian federalism has several defining features that distinguish it from other federal systems around the world. These features can be delineated as follows:

1. Dual polity

India has two levels of government i.e., the Union Government for the entire country and the State Governments for individual states. Both these governments have their own jurisdictions and their powers as well as responsibilities are clearly defined in the Indian Constitution.

2. Division of Powers

The Constitution of India divides powers between the Central and State governments through three lists i.e., the Union List, State list and the Concurrent List. Union list comprises of the subjects on which only the Central government can legislate. The State List comprises of the subjects on which only the State governments can legislate. The Concurrent List comprises of the subjects on which both the Central and State governments can make laws.

3. Residuary Powers

Residuary powers are the powers to legislate on the subjects not listed in any of the three lists i.e., **the Union List, State list and the Concurrent List**. In India, residuary powers are vested solely with the Central government.

4. Strong Centre

The Constitution of India gives more power to the Central government as compared to the States. The Central government has the authority to dismiss State governments under special circumstances. It can even take over the administration machinery in the States through the imposition of President's rule in that particular State.

5. Single Citizenship

In India, all citizens possess single citizenship i.e., all citizens are citizens of India, and not citizens of any particular state. This is in contrast to the federal setup in the United States, where a person possesses dual citizenship and is a citizen of both the country and of a specific state.

6. Integrated Judiciary

India has an integrated judiciary, with the Supreme Court at its apex. The Supreme Court has the power to interpret the Indian Constitution and to resolve disputes between The Union and a

State or between two or more States. The Indian judiciary is also independent in nature and its decisions are binding upon the Union and the States.

7. Supremacy of the Constitution

India possesses the longest written Constitution in the world, which consists of 395 articles divided into 22 parts and 12 schedules.²² The Indian Constitution is the supreme law of the land and no other law is above it.²³ Any law which is in contravention with the Constitution is void. The Constitution clearly defines the powers and functions of both the Central government and the State governments.

8. Asymmetrical Federalism

Indian federalism is asymmetrical in nature, with different states having varying degrees of autonomy and powers. Some states have been vested with special powers and privileges. Special provisions were made for some states like the erstwhile state of Jammu and Kashmir. For instance, until 2019, Jammu and Kashmir had its own Constitution, state flag and most of the laws made by the Union Parliament were not applicable there. This distinct constitutional arrangement for Jammu and Kashmir ended with the abrogation of Article 370²⁴ of the Constitution by the Jammu and Kashmir Reorganisation Act, 2019.²⁵

9. Emergency Provisions

The Union government can declare three types of Emergencies which are the National, State and Financial Emergencies. The Central government is vested with extra-ordinary powers during declaration of an Emergency. It can legislate on the subjects given in the State list and can issue directions to the States for proper governance.

National Emergency can be declared under Article 352²⁶ during situations of war, external aggression or armed rebellion. State Emergency can be declared under Article 356²⁷ in case of failure of constitutional machinery in the States. Financial Emergency can be declared under Article 360²⁸ when there is a threat to the financial stability of the nation or any part of its territory.

²² "Federalism under the Indian Constitution – Meaning and Features." iPleaders Blog. LawSikho, February 6, 2019. <https://blog.iplayers.in/what-is-federalism/> (last visited on 8th October, 2023).

²³ Ibid.

²⁴ The Constitution of India, 1950

²⁵ The Jammu and Kashmir Reorganisation Act, 2019 (Act No. 34 of 2019)

²⁶ The Constitution of India, 1950

²⁷ Ibid.

²⁸ Ibid.

10. Language-based States

In India, after independence, many states were reorganised on basis of the linguistic principle. This move not only gave a boost to linguistic and cultural identities but also helped in the preservation of languages and empowered linguistic communities. It also facilitated effective governance by enhancing administrative efficiency and political representation.

VI. CONTEMPORARY CHALLENGES TO INDIAN FEDERALISM

Indian federalism has faced numerous challenges since its inception which can be delineated as follows:

1. Regionalism

The rise of regional political parties and movements, based on linguistic, ethnic and religious principles, has posed a significant challenge to national unity of India. "Some regions or groups have demanded more autonomy, special status or even secession from the Indian union. For example, the demand for Gorkhaland in West Bengal, Bodoland in Assam, etc."²⁹

2. Division of Powers

The division of powers between the Central and the State governments is vague and unbalanced. The Central government had been vested with much more powers and resources than the State governments. The Centre can interfere in the functioning of the States through various constitutional provisions such as the President's rule or the Governor's rule.

For instance, President's rule was imposed in the state of Arunachal Pradesh and Uttarakhand in 2016 on the grounds of breakdown of constitutional machinery, but later it was revoked by the Supreme Court.

3. Absence of Fiscal Federalism

"The fiscal relations between the Centre and the states are not equitable and transparent."³⁰ Most of the taxes are collected by the Central government and hence, the distribution of taxes among the State governments is uneven and arbitrary. The State governments depend on the Central government for grants-in-aids, loans and various other kinds of transfers.³¹ Some states are allotted inadequate amount of funds which poses a challenge to their proper development.

²⁹ "Complexity of Indian Federalism." Indian Polity. Drishti IAS, June 24, 23. <https://www.drishtiiias.com/daily-updates/daily-news-editorials/complexity-of-indian-federalism> (last visited on 10th October, 2023)

³⁰ Ibid.

³¹ Ibid.

4. Unequal Representation of States in the Parliament

The representation of States in the Union Parliament is not proportional to their population or area. Certain states have a surplus of representation, whereas others have a deficit in their representation. For example, Uttar Pradesh has 80 seats in the Lok Sabha whereas Sikkim has been provided with only a single Lok Sabha seat. This is detrimental to democracy as it has an adverse impact on decision-making and resource allocation.

5. Centralised Amendment Powers

“The power to amend the Constitution is vested in the Parliament with a special majority. The States have no say in the amendment procedure except in the matters directly affecting them.”³² For instance, The Centre’s decision to abrogate Article 370 of the Indian Constitution and to bifurcate the State of Jammu and Kashmir into two union territories in 2019 was taken without consulting the State government and other stakeholders involved. The creation of Telangana from Andhra Pradesh was opposed by Andhra Pradesh and even led to protests and widespread violence.

VII. RECOMMENDATIONS FOR STRENGTHENING INDIAN FEDERALISM

Federalism can be strengthened by increasing the legislative powers of the States. This can be done by amending the Constitutional Lists and adding more subjects in the State List and Concurrent List to provide a degree of autonomy to the States. Federalism can also be strengthened by allocating more financial resources to the States to increase their fiscal autonomy.

Federalism can also be strengthened by fostering cooperative and competitive federalism among states by encouraging them to work on common issues and challenges.³³ Cooperative federalism can be achieved through the sharing of resources, collaborative policymaking, and joint decision-making between the Central and the State governments.

Furthermore, federalism can be strengthened by respecting federal principles and spirit in all matters by adhering to the constitutional provisions related to federalism.³⁴ This can be done by avoiding arbitrary and unilateral actions by the Centre and resolving disputes through judicial intervention. Digital governance and e-governance initiatives also have the potential to enhance federalism by promoting transparency, efficiency, and participation by all citizens.

³² Ibid.

³³ "Complexity of Indian Federalism." Indian Polity. Drishti IAS, June 24, 23. <https://www.drishtiiias.com/daily-updates/daily-news-editorials/complexity-of-indian-federalism> (last visited on 12th October, 2023)

³⁴ Ibid.

VIII. CONCLUSION

In conclusion, this paper provides a comprehensive analysis of federalism in the Indian context by shedding light on its unique character and the challenges it faces in contemporary times. Indian federalism, often described as "quasi-federal" or "cooperative federalism," is a system that seeks to balance the diverse and complex nature of the country while maintaining national unity. It accommodates the distinct linguistic, cultural, religious, and regional identities that make India a vibrant tapestry of diversity.

The historical evolution of Indian federalism can be traced back to the Government of India Act, 1935, which laid the foundation for the division of powers between the Centre and the States. The Indian Constitution further established the framework for federalism, delineating the roles and responsibilities of the Central and State governments.

While Indian federalism has several defining features, including dual polity, division of powers, and strong central authority, it has faced contemporary challenges such as regionalism, unequal representation, and fiscal imbalances. These issues have sometimes strained the delicate balance between unity and diversity.

To strengthen Indian federalism, it is crucial to consider recommendations that enhance the legislative and financial autonomy of States, promote cooperative and competitive federalism, and uphold the federal spirit enshrined in the Indian Constitution. One key aspect of fortifying Indian federalism involves fostering a culture of true cooperative governance.

Collaborative decision-making, resource-sharing, and policy coordination between the Centre and States can bridge the gaps and address the complexities that often arise in a diverse nation like India. Promoting this cooperative federalism not only strengthens the federal structure but also ensures that regional and national interests are effectively harmonised.

In a diverse and dynamic country like India, federalism remains a cornerstone of governance, ensuring the preservation of cultural and linguistic identities, the protection of minority rights, and the efficient delivery of services to the grassroots level. By addressing its challenges and fostering cooperation between various levels of government, India can continue to uphold the principles of federalism while striving for national unity and the betterment of its people.

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