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Study of Federalism

PRITIKA TIWARI¹

ABSTRACT

The constitution establishes dual polity which consists of union and state and power is divided between these two units. The constitution of other country is either unitary or federal however different political scientist have different views about the Indian federation as some say it quasi-federal and other say it is cooperative federalism. Quasi federalism is when the government have both unitary and federal power and cooperative federalism is when the state and centre government work parallel to each other. This research paper will focus on the view of K.M Munshi, K.C Where and Grandville Austin about the Federation of India.

I. INTRODUCTION

Federalism is a form of government in which the division of power is between more than two units. These units are centre, state, panchayat and municipalities. Part XI of the Indian constitution talks about the distribution of power between legislation, administration and executive. Federalism is the basic feature of the Indian constitution, although it is nowhere defined in the Indian constitution that India is a federation. However, Article 1 of ICA describes India as a 'union of state' and not as a 'Federation of state'

India is an example of 'holding together federation' in which a large country is decided to divide its power between union and state and when few contiguous provincial units voluntarily come together to form a strong union it is called 'Coming together federation'. The USA is a classic example of the federation is formed.

In the 7th schedule, the power is divided between Union list, State list and concurrent list, all list have their different power stated in them. Article 248 also states that whichever subject matter will not fall under this three list and it is required to make a law on that so the residuary power lies with the union. The Indian constitution is strongly biased towards the centre.

Political scientist, Philip Manwood, has argued that in a culturally diverse, developing country like India, the federation is chosen not merely for administrative requirement but for the very survival of the nation. The Framers of India constitution refrained from creating a fully

¹ Author is a student at GLA University, Mathura, U.P., India.

federalised political system as India has a diverse region. At the time of the constituent assembly the first PM of India, Jawahar Lal Nehru said that there should be a strong centre, because of the vast diversity based on religion, language, caste and ethnicity and all the assembly member were in support of a strong union. Different political scientists have describes India's federation differently. K.C Where calls Indian a quasi- federation, Morris-Jones calls Indian setup a Bargaining federation and Grandville Austin calls India Cooperative federalism.

(A) Research Methodology

The researcher follows the doctrinal methodology for the research paper.

(B) Statement of Problem

The federal system of India has been topic of debate between different political scientist as some say it is federal and other say it is unitary. But the constitution of India quotes it differently as it declares that India is neither federal nor unitary but it comprises both unitary and federal feature.

(C) Research Question

1. Whether the Indian constitution purely comprises of federal features?
2. Whether the constitution of India underlines a quasi-federal system?
3. Whether G. Austin remark on Indian political layout as 'cooperative federal' is true?

(D) Literature Review

1. Capitalization

Political scientists have classified governments into unitary and federal based on the nature of relations between the national government and the regional governments if at all they exist, derive their authority from the national government. There is no written division of powers between the union government and state government.

The Indian federal system is based on the 'Canadian model' differs fundamentally from the 'American model' in so far as it establishes a very strong centre. The Indian federation resembles the Candian federation because the centre has more power than the state.

K.C Where and K.M Munshi describes the constitution of India as 'quasi-federal in nature and not strictly federal. In the words of D.D. Basu, the constitution of India is neither purely federal nor unitary, but it is a combination of both.

2. Indian federalism

- A federal system is one in which powers are divided between the national government and regional governments by the constitution itself and both operate in their respective jurisdictions independently. In the federal model, the national government is known as the federal government or central government or union government and the regional government is known as the state government or provincial government. In a unitary government, the power lies with the centre only there is no distribution of power.

- In the dual form of government, there is the centre and state government and the power is divided between them both. India is an example of a dual government. But the residuary power lies in the hands of the centre.

- The constitution provides for single citizenship like the united kingdom and unlike the united states, America that provides for dual citizenship gives the constitution a unitary facet where all citizens are united under one identity as an Indian. Article 9 of the Indian constitution act says that a person who voluntarily acquires citizenship of any other country is no longer an Indian citizen.

- There is the distribution of power between centre and state. which is divided by the 7th schedule. Under article 246 of the Indian constitution, three lists are state list, union list and concurrent list. The union and state both can make laws in the concurrent list but in case of any dispute between these two the laws of the centre will prevail.

- The American federation is described as the indestructible union of indestructible state and the Indian federation is defined as the indestructible union of destructible state. The states of India have less power than the centre. as Article 3 deals with internal re-adjustment. This Article empowers the parliament to form a new state or change the boundaries of any state or change the state's name by simple majority.

- There will always be the supremacy of the constitution because the federal system derives its existence from the constitution. It specifies the structure, organization, power and functions of both the centre and the state governments and prescribes the limits within which they must operate. Article 13(2) provided that the state shall not make any law that takes away any of the rights guaranteed under part III of the Indian Constitution and to the extent of such contravention, the law is considered void.

- In a federation, the state has the right to frame its constitution which will be separated from the centre. But in Indian, there is such power understates both centre and state have only one constitution, but there was one exception that is Jammu and Kashmir who was an integral part of India and had its constitution.

- The constitution should be rigid and permanent. A lousy set of the document cannot be said to a federal constitution. Under article 368 the parliament has the power to amend the constitution but it requires a special majority and consent of half of the state legislatures for parliament to amend federal features.

- The constitution is not only a written document but also the lengthiest constitution in the world. Originally, it contained a preamble, 395 Article (divided into 22 parts) and 8 schedules. At present (2021) it consists of a preamble, about 448 Articles 25 parts and 12 schedules. It specifies the structure, organization, powers and functions of both centre and state and their limits to operate their powers.

- Dr B.R Ambedkar says that in Indian there is a division of power between state and centre that's why he calls the federal system of India unique. But it becomes unitary when there is an emergency because the only centre rule will prevail all over India. During the time of emergency, all the rights of an Indian citizen are taken away including Article 20 and 21. There are three types of emergency provision nation emergency Article 352, state emergency Article 356 and financial Emergency Article 360. During these three emergencies, India will become unitary. Part 18 of the Indian constitution contains emergency provisions.

- The constitution establishes the independence of the judiciary headed by the supreme court for two purposes one is to protect the supremacy of the constitution by exercising the power of judicial review, and the second is to settle the disputes between the centre and state or state. Under article 131 of the Indian constitution, the supreme court has original jurisdiction to decide upon a matter of dispute between the state or union and state.

- The constitution contains various measures like the security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government. Article 124(2) the judges are appointed by the president in consultation with the judicial authority. Every judge is guaranteed the security of tenure.

- The constitution of India provides a bicameral legislature that consists of the lower and upper house. The Rajya sabha represents states of the Indian federation while Lok sabha represents the people of Indian as a whole. According to article 79 (part v- the union) of the constitution of India, the parliament of India consists of the president of India and the two houses of parliament known as the council of state (Rajya sabha) and the house of the people known as (Lok sabha).

II. CRITICAL EVALUATION OF INDIAN FEDERAL SYSTEM

The constitution of India is neither completely federal nor unitary it is a combination of both.

K.C. Where said that India has both unitary and federal feature of government that why it's an example of quasi-federal government.

In-State of West Bengal v Union of India 1963, it was said that the constitution of India is not truly federal and states are not sovereign. Although Indian have a federal feature too in which there is the distribution of power between both centre and state. but it was stated that in the time of dispute between state and centre, centre rules will prevail.

In-State of Karnataka v. Union of India, the Indian constitution is said to be quasi-federal and not a true federal.

(A) Cooperative Federalism

Cooperative federalism is also known as marble cake federalism. It is a concept of federalism in which national state and local government interact cooperatively and collectively to solve common problems, rather than making policies separately but more or less equally or clashing over a policy in a system dominated by the national government. The centre and state are in horizontal relation to each other. They solve a problem collectively rather than making policy. It is an alternative to dual federalism. Dual federalism regards the two levels of government. As two water-tight compartment completely independent of others. Whereas cooperative federalism is based upon interlocking /interdependence. In India, if the state government are dependent on the centre of finance, the centre is dependent on the state government for implementation of its policies because it doesn't have such huge administrative machinery.

Grandville Austin calls Indian federation cooperative federalism

The 73rd and 74th constitutional amendment introduce the Panchayati raj and municipality system to strengthen the roots of cooperative federalism in India. Cooperative federalism is a part of the basic structure of the Indian constitution and cannot be amended by the Indian parliament.

Niti Aayog, which replaced the planning commission has the mandate of promoting cooperative federalism among the centre and the state. also, there exist other mechanisms which indicate the presence of cooperative federalism in the country. As it will help the state government by providing technical and other support. It will act as a research organization researching on behalf of union and states, it will also provide solutions to both union and state government regarding financial disputes. Recently Niti Ayog has recommended reducing the number of the centralized sponsored scheme which again is a bone of contention between both centre and states. It has such a reducing number of centrally sponsored schemes which again

is a bone of contention between federal and states.

Niti Ayog decision is taken through consensus so that the union government does not dominate the states. For all these reasons we say it has a special role to ensure cooperative federalism in India.

Article 26 which relates to the inter-state council establishment by the president promotes cooperation among the centre and the states. The national development council, the national integral council also promotes the spirit of cooperative federalism among the Indian states.

Cooperative federalism can be increased and noted among-

1. Centre and state
2. Among the states.

Ease of doing business, which was recently constructed in the case of Indian society, tries to promote healthy business and cooperation among the states. It was developed by the Department of industrial policy and promotion in association with the world bank. The taxation powers separately divided among the centre and states allows them to take the revenues which fall in their jurisdiction.

Article 275 of the constitution promotes the grant-in-aid on the advice of the finance commission to the needy states. Thus, the financial devolution between the centre and state promote the spirit of federalism among the centre and state. the recent devolution of 42% of revenues from the centre and state, on the recommendation of 14th finance commission.

Gandhi's conception of federalism relates to the decentralization of functions, functionaries and others amongst themselves thus, the views autonomy at the ground level.

Nehru, on the other hand, viewed centralization as the key to promote federalism and unity among the key stakeholders. Thus, for the nations building process. The relates to the autonomous and centralized tendencies.

The cultural program of 'EK BHARAT SHRESTHA BHARAT' tries to promote regional integration, the cooperative nature between the states, on the other hand, there are tendencies of cooperative federalism among the states.

The frequent use of article 356 by the centre upon the states makes the state vulnerable at the hands of the centre. Thus, promoting the unitary tendencies which then again proves the establishes new equilibrium in the society.

III. CONCLUSION AND SUGGESTIONS

K.C. Where has rightly summed up the above situation by 'quasi-federal term. The Indian constitution, according to him, has unitary features with subsidiary federal tendencies rather than a federal tendency with a subsidiary unitary feature. However, Ambedkar strongly opposed the above view by saying that both the union and states have an independent existence and derives their power from the constitution.

When we analyse the situation in India, it needs the rightful blend of competitive and cooperative federalism to overcome the secessionist tendencies seen at present. Thus, India can set itself as the epitome of success. When all regional concerns are adequately met.

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