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“Tussle For Res Publica” Recent Trends in Indian Federalism: Federation Sui generis

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ABSTRACT

This Article examines the recent trends in Indian Federalism. The Government of India Act 1935 introduced Federalism in India. The feature of Federalism is that of the large country population area and Cultural diversity. Federalism in India is a debatable issue until now. A Federal theorist, K.C. Wheare, has argued that the nature of the Indian Constitution is Quasi-federal due to the Dominance of Union power over the State. Since the Indian Federation consists of both Federal and Unitary features, it can also be phrased as “Federation Sui generis” which means “federation of its kind”. The federal system has been transformed nowadays. The Centre though dominant, the States are also learning from each other and developing. The core objectives of Indian federalism are unity in diversity, devolution in authority, and decentralization in administration. Through federalism, the State pursues the goal of common welfare amid wide diversity in socio-cultural, economic spheres. Some recent trends, such as GST, show more development of Federalism in India. The state leaders, on account of re-election, are now performing their duties with the full motive of developing India. Social media is in top condition, which voices out the state activities loud.

Keywords: Federalism, Cultural diversity, Federation Sui generis, Unitary, Government.

I. INTRODUCTION

India is a diverse country with different religions, cultures, and languages. Federalism in India is a system of governance where the powers and responsibilities are divided between the central government and the state governments. In recent years, there have been several trends in federalism in India; some of them are cooperative federalism, devolution of powers, fiscal federalism, Regionalism, and center-state relationships. Overall, federalism in India is evolving, with greater emphasis being placed on cooperation and collaboration between the central government and the state governments, as well as greater devolution of powers to the state governments.

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(A) Literature Review

In this article, I have discussed various overviews on recent trends of Indian Federalism. The history of Federalism helps in the knowledge of its root cause and its upcoming developments. Comparison of the nature of Indian constitution at the time of independence and now helps us to understand how the scenario has been changed according to the modern society needs. Various recent cases have been discussed in this article. The challenges that make India a semi-federal or Quasi-federal or Federation sui generis are also mentioned clearly.

II. INDIAN FEDERALISM-HISTORY

The foundation of the present federal system in India lies in the Simon Report of May 1930, which supported the idea of a federal government in India. This gave an idea of federalism, which was first introduced through the Government of India Act, 1935. After the adoption of the constitution on 26th Jan 1950, the Parliamentary form of government was followed in India. The Constitution of India divides the powers between the central government and the state governments into three lists: Union List, State List, and Concurrent List. The Union List includes subjects on which the central government has exclusive jurisdiction, such as defense, foreign affairs, and currency. The State List includes subjects on which the state governments have exclusive jurisdiction, such as health, education, and agriculture. The Concurrent List includes subjects on which both the central government and the state governments have jurisdiction, such as marriage and divorce, forests, and economic and social planning. The Constitution also provides for a system of checks and balances between the central government and the state governments. The central government can override the decisions of the state governments in certain situations, such as when there is a breakdown of law and order or in times of emergency. The state governments, on the other hand, have the power to challenge the decisions of the central government in the courts.

(A) Nature of Indian federalism

Analysing the nature of the Indian federation made me think in two different manners. I have grouped them into federal features and unitary features.

a. Federal Features

- Written constitution
- Dual policy
- Bicameralism
- Division of powers

- Supremacy of the constitution
- Rigid constitution
- Independent Judiciary

b. Unitary Features

- Strong centre
- Single Constitutions
- States not indestructible
- Emergency provisions
- Single citizenship
- All India services
- Appointment of governor
- Integrated election machinery
- No equality of state representation
- Integrated Audit Machinery
- Veto Over State Bills

Consider the following cases, which show the judicial character of the federalism of India.

*State of West Bengal v. Union of India*²-“The Constitution of India is not truly Federal. The basis of the distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue, especially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union.”

*State of Rajasthan v. Union of India*³-“In a sense, the Indian Union is federal. However, the extent of federalism in it is largely watered-down by the needs of progress and development of the country, which has to be nationally integrated, politically and economically coordinated, and socially, intellectually, and spiritually uplifted. With such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government.

² *State of West Bengal v. Union of India*, 1963 AIR 1241.

³ *State of Rajasthan v. Union of India*, 1977 AIR 1361

State of Karnataka v. Union of India⁴-“The Indian Constitution is not federal in character but has been characterized as quasi-federal. Even though the executive and legislative functions of the Centre and States have been defined and distributed, there runs through it all a thread or rein in the hands of the Centre in both the fields. “

Kesavananda Bharati v. State of Kerala of the judges, in this case, held federalism to be a part of the basic structure of the constitution, which means it cannot be tampered with.

S.R. Bommai v. Union of India- In this case, 4 different opinions were given by judges. Because of no mention of the words like ‘federal’ Justice Ahmadi declared it to be a quasi-federal constitution. Justice Sawant & Kuldip Singh stated that Federalism is an essential feature of the constitution. Justice Ramaswamy declared India to be an “Organic Federation” designed to suit the needs of the parliament. Justice Jeevan Reddy and Justice Agarwal stated that Federalism in the constitution has a different meaning in the context.

Under Article 3 of the Indian Constitution, the union of India may, by law, form a new state, divide a state into two, unite two or more states, and rename the existing states. Parliament may enact any law for a state on national interest under Art 249.

III. FEDERALISM THEN AND NOW IN INDIA

Federalism in India has evolved, with significant changes in the relationship between the central government and the states. Here are some key differences between federalism in India then (at the time of independence) and now. At the time of independence, the Indian Constitution provided for a clear division of powers between the central government and the states. However, over time, the central government has taken on more powers, particularly in areas such as finance, foreign policy, and national security. In the early years of Indian federalism, the states enjoyed a high degree of autonomy in areas such as education, healthcare, and law and order. However, over time, the central government has taken a more interventionist approach, particularly in areas of national importance. At the time of independence, the system of fiscal transfers between the central government and the states was largely based on the principles of revenue-sharing and grants-in-aid. However, over time, the system has evolved to include additional sources of revenue for the states, such as the Goods and Services Tax (GST). While cooperation between the central government and the states was a key feature of Indian federalism from the beginning, the concept of "cooperative federalism" has gained prominence in recent years, with a greater emphasis on working together to achieve common goals.

⁴ State of Karnataka v. Union of India, 1978 AIR 68.

IV. ISSUES THAT CHALLENGE THE FEDERAL STRUCTURE OF INDIA

Indian Federalism is different from the kind of Federalism followed in the Countries like USA. What makes India different from other Federal countries? India is a “Federation Sui generis” which means that “Federation of its kind”. I have explained in detail about the challenges faced by the Federal structure of India.

Regionalism is termed as love for one’s area, though successful federal rule in India for several years after independence still raises its head in different parts of the country. The southern part of the country feels proud of their side and the northern part of the country on their side. There lies the imbalance between each state. Especially after the formation of Telangana in 2014, Recent demands like the four-fold division of Uttar Pradesh and the creation of Gorkhland from West Bengal are instances of aggressive regionalism that pose a threat to the federal structure of India. West Bengal threatened India’s Teesta river waters treaty with Bangladesh because of its possible potential costs for West Bengal. Article 200 (reservation of State Bills by the Governor for consideration of the President), emergency provisions under Articles 352, 356, and 360 and compulsory compliance by the States with the executive power of the Centre under Article 256 and 257 amount to centralisation of power which has been the major concern among the states. Centralization is such a threat to Indian federalism. Asymmetrical sharing of revenue and resource crunch at the periphery results in uneven development across the country. The current Goods and Services Tax measure is feared by many states to be against fiscal federalism in India. In India, the power of constitutional amendment lies with the Centre under Article 368 and other provisions. Although ratification of half of the states is sought for in some limited areas, the states in the Indian Union have virtually no power in this critical area of governance. The abuse of power under Article 356 by the Central Government is replete in the political history of the country. NITI Aayog, on 1 January 2015, under the chairmanship of the Prime Minister of India have replaced the planning commission (1950). Issues of Religion and language conflicts are also challenging Federalism. Due to economic incompatibilities, if too much attention is paid to economic development, the equalization of all units cannot be attained. The Tamil Nadu government moves SC against NEET, saying it violates federalism⁵ is an example of a nation facing challenges on federalism.

⁵ Tamil Nadu govt moves SC against NEET, says it violates federalism, <https://www.thenewsminute.com/article/tamil-nadu-govt-moves-sc-against-neet-says-it-violates-federalism-173479>

V. RECENT TRENDS IN INDIAN FEDERALISM

(A) Cooperative Federalism:

In India, cooperative federalism has been a key feature of the country's federal system since independence. However, it has gained greater prominence in recent years, with a greater emphasis on working together to achieve common goals. The GST Council is a body that includes representatives from both the central government and the states and is responsible for making decisions related to the GST. The council operates on the principle of cooperative federalism, with decisions made through consensus. Centrally Sponsored Schemes (CSS) and National Disaster Management Authority (NDMA), National Highways are also examples of cooperative Federalism. “PMSSY building block at Kozhikode medical college an example of cooperative federalism”, says Chief Minister Pinarayi Vijayan⁶. The “COVID-19 period added strength to our spirit of cooperative federalism, “says PM Modi⁷.

(B) Devolution of Powers:

Devolution of powers refers to the transfer of powers and responsibilities from the central government to the state or local governments. It is a process by which the central government delegates certain powers and responsibilities to the lower levels of government, thereby promoting decentralization and greater local control(Village Panchayat). There has been a trend towards increased financial devolution in India, with more financial resources being transferred to the state governments. For example, the 14th Finance Commission recommended an increase in the share of tax revenue transferred to the states from 32% to 42%, which has provided greater fiscal autonomy to the states. There has been a trend toward the devolution of regulatory powers in India, with the central government transferring regulatory powers to state governments in areas such as education, healthcare, and agriculture. This has allowed for greater flexibility and customization of policies and programs at the state level.

(C) Fiscal Federalism

Fiscal federalism refers to the system of financial relations between the central government and the state governments in a federal system. In recent years, there have been several developments in fiscal federalism in India. The FRBM(Fiscal Responsibility and Budget Management) Act was introduced in 2003 to promote fiscal discipline and reduce the fiscal deficit. The act sets

⁶ PMSSY building block at Kozhikode medical college an example of cooperative federalism, says CM, <https://www.thehindu.com/news/national/kerala/pmssy-building-block-an-example-of-cooperative-federalism-says-cm/article66581350.ece>

⁷ COVID-19 period added strength to our spirit of cooperative federalism PM Modi, <https://www.dnaindia.com/india/video-covid-19-period-added-strength-to-our-spirit-of-cooperative-federalism-pm-modi-2873920>

targets for fiscal deficits at the central and state government levels and has helped to promote greater fiscal responsibility among the state governments. The NITI Aayog (National Institution for Transforming India) was established in 2015 as a think-tank to provide strategic and technical advice to the central and state governments on policy issues. Now, it is no more a one-way process (i.e., Centre to State). In the case of Goods and Services Tax (GST) compensation, some states, particularly those with a lower tax base, experienced revenue losses after the implementation of the GST in 2017. To address this issue, the central government agreed to compensate the states for any revenue losses due to the implementation of the GST. However, there have been disputes over the amount of compensation owed to the states, and several states have filed cases in the Supreme Court of India seeking a resolution to the issue.

In the Kerala flood relief case(2018), the southern state of Kerala was hit by severe floods, causing widespread damage and loss of life. The state government requested financial assistance from the central government to support relief and reconstruction efforts. The central government provided some assistance, but the state government argued that it was insufficient and that more funds were needed to support the recovery effort. The case highlighted the challenges of coordinating relief efforts between the central and state governments and the need for greater flexibility in the fiscal federalism system to address such emergencies. In the “Finance Commission recommendations case,” the recommendations of the Finance Commission, which determines the distribution of financial resources between the central and state governments, have been the subject of some controversy in recent years. Some states have argued that the distribution formula is not equitable and that it does not take into account their specific needs and circumstances. As a result, there have been calls for greater consultation and dialogue between the central and state governments to ensure that the Finance Commission's recommendations are fair and transparent.

(D) Measures taken to eliminate regionalism

Some of the measures are doing away with regional imbalance, giving top priority to the economic development of deprived zones, by restructuring the society, developed means of Transport and Communication etc. In 2019, the Indian government granted Union Territory status to Ladakh, a region with a distinct cultural and geographical identity located in the northernmost part of India. The move was seen as a way of promoting regional autonomy and recognition and addressing long-standing demands from the people of Ladakh for greater representation and self-governance.

VI. CONCLUSION

In conclusion, recent trends in federalism in India reflect a complex interplay of political, economic, and social factors, with ongoing debates and tensions around the appropriate balance between centralization and decentralization. Manufacturing and Regulation of Medicine till now was under the control of state. Now, there is a proposal to enact a new law to bring manufacturing and the Regulation of Medicine under Central Government. While there have been political tensions and disagreements between the central government and state governments, there are promising developments toward greater fiscal autonomy, cooperative federalism, and regional autonomy and growth. So, till now, pure Federalism in India has a challenge.

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