

Federalism in India: An Overview of Creation, Provisions and Features

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ABSTRACT

Federalism refers to a system of government in which power is divided between a central authority and various constituent units, such as states or provinces. The paper refers to the existence and desirability of competition among governments and jurisdictions in a federal political system. India is often called a quasi-federal republic as it has synthesized the characteristics of both federal and unitary systems. The paper focuses on the creation of Indian Federation and features of India's federalism.

Keywords: federalism, state, centre, constitution, India, government, division, power and provisions

INTRODUCTION

India is a big country characterized by cultural region is and geographical diversity. Such a diverse and vast country administered and ruled from a single centre. Historically, though India was not a federal state, its various regions enjoyed adequate autonomy from central rule. Keeping in view these factors in mind, the Constitution makers of India opted for the federal form of government. Though, the Government of India Act, 1935 envisaged a federal set-up for India, federal provisions of the Act were not enforced. Thus, India became a federal polity when the Constitution of India came into force on January 25, 1950.

Federalism as a form of government was, for the first time, put into practice in the United States way back in 1789. It was a result of the prevailing situation that time in the United States of America. Subsequently, it was followed in other countries of the world as a political choice. As the practice of federalism became prevalent in many parts of the world, its theoretical aspects were elaborated by scholars. J. W. Garner defines Federal Government as "contradistinguished from a Unitary government, a system in which the totality of government power is divided and distributed by the national Constitution or the organic law of Parliament creating it, between a central government and the governments of individual states or other territorial divisions which the federation is composed of" (J. W. Garner)

Another noted scholar K. C. Wheare defines it as "the method of dividing powers so that the general and regional governments are each within a sphere coordinate and independent" (K. C. Wheare) On the basis of the above definitions we can infer certain features of federalism, which are given below: Federalism assumes two sets of governments, one at the centre and the other at the provincial level. 'Federalism is at the midpoint of variations on the pathway (or spectrum) of regional-integration or regional-separation. It is bordered on the increasing-separation side by confederalism, and on the increasing-integration side by devolution within a unitary state' (Diamond, Martin 1961: 21)

The most important feature of federalism is the division of powers between the central and state governments by the scheme of the Constitution itself. Both governments are independent and autonomous in their sphere of powers.

(3) The division of powers between the two postulates a written Constitution. In federalism the Constitution is also rigid as the federal provisions of the Constitution cannot be changed without the consent of both the centre and the states.

(4) Federalism also requires the provision for an independent federal judiciary as the division of powers involves the possibility of disputes arising between the centre and the states or between the units of federation itself.

(5) Some scholars consider dual citizenship also as the feature of federal government. Under the scheme of dual citizenship every person enjoys two citizenships; one that of the entire nation and another that of the state where such person resides.

The Creation of Indian Federation:

Basically, there are two ways of creating a federal set-up. The first is on the basis of a federal alliance made by some independent federating units or sovereign states, which create the Central or Federal government and transfer certain powers of national importance to that government. The remaining powers are retained by the federating units. This division

of powers based on the federal alliance becomes a part of the Constitution or the fundamental law of land. The federal Constitution cannot be altered without the consent of both the governments. The federating units have their separate constitutions to manage their internal affairs. Theoretically the federating units have the right to secede from the federation, but, in practice, it may not be possible to do so. The American federation has been established in this way on the basis of a federal alliance, concluded in the Philadelphia Convention, 1789. "In a narrow sense, federalism refers to the mode in which the body politic of a state is organized internally—and this is the meaning most often used in modern times. Political scientists, however, use the term federalism in a much broader sense, preferring instead to a "multi-layer or pluralistic concept of social and political life"(Bulmer, Elliot 2017:12)

The second way to create a federation is by establishing some provincial governments by dividing a single sovereign country and conferring certain powers to those provincial governments through the provisions of the Constitution. The remaining powers are retained by the Central or Union government. "The contemporary concept of federalism came about with the creation of an entirely new system of government that provided for democratic representation at two governing levels simultaneously, which was implemented in the US Constitution" (Law, John 2012)

The Indian federation is created on this manner as the provincial governments or federating units in India did not enjoy a sovereign or independent status before becoming a part of the federation. Even the Indian Constitution makers deliberately used the word 'Union' in place of 'Federation'. Article-1 of the Constitution declares India to be a 'Union of States'. Dr. B. R. Ambedkar, the Chairman of Drafting Committee, explained in the Constituent Assembly that the use of the term 'Union' indicates two things. First, the Indian federation is not the result of an agreement by the units. Second, the component units have no freedom to secede from the federation. However merely the use of the term Union does not indicate any particular type of federation. In order to understand the nature of Indian of freedom to secede from the federation. However merely the use of the term Union does not indicate any particular type of federation. In order to understand the nature of Indian federation, the federal provisions of the constitution have to be elaborated and analyzed. Immanuel Kant noted that "the problem of setting up a state can be solved even by a nation of devils"(Reiss, H.S. 2013)

The Federal Features of Indian constitution-The Constitution of India displays the following federal features:

(a) The Constitution of India makes the provision for the organization of two types of governments-the Union Government and the State Governments. The governments at both levels are organized on the basis of Parliamentary System as per the provisions of the Constitution.

(b) The Seventh Schedule of the Constitution makes provision for the division of powers between the Union and the States. It contains three lists:

The Union List which has 97 subjects of national importance and the Union Parliament has the power to enact laws with respect to the jects; 2. The state List contains 60 subjects of local importance and the State Legislatures have the power to enact laws with respect to these subjects; 3. The Concurrent List which contains 47 subjects and both the Parliament and State Legislatures can legislate on them. The idea of Concurrent List is inspired by the Constitution of Australia

(c) As per the requirement of federal system, the Indian Constitution is a written document. It is a rigid Constitution as far as the amendment of federal provisions is concerned. Thus, the following provisions, affecting the interests of states, can be amended only if not less than half of the state legislatures have approved the same: 1. Article 54 and 55 related to the manner of election of the President; 2. Articles 73 and 162 dealing with the extent of the executive power of the Union and States; 3. Article 124 Chapter IV of Part V and Chapter V to Part VI related to the Supreme Court and High Court's 4. Chapter 1 of Part XI, dealing with the distribution of legislative powers between the Union and States: 5. any of the Lists in the 7th Schedule 6. Articles 80-81 and 4th Schedule related to the representation of States in Parliament, and 7. Article 368, related to the Amendment of the Constitution. In order to amend the above provisions the Constitution Amendment Bill has to be approved by not less than half of the state legislatures before it is presented to the President to amend the above provisions the Constitution Amendment Bill has to be approved by not less than half of the state legislatures before it is presented to the President for his consent.

d) The Indian Constitution makes provision for an independent and Federal judiciary. The Supreme Court of India acts as a federal court. It has the power to decide the disputes arising either between the Union and the States or between the two or more States under its Original Jurisdiction as mentioned in Article 131 of the Constitution. The Constitution makes various provisions to ensure the independence of judiciary from the Executive and the Legislature both.

Unitary Features of Indian Federation-The unitary features of federation are so striking that a noted scholar Ivor Jennings, has termed it as a 'federation with strong centralizing tendencies. The unitary features of Indian federation are given ha below:

(a) The Indian federation is an example of 'Indestructible Union with Destructible states.' It means that the Union shall remain intact but the physical existence of states or units can be modified. Accordingly, Article 3 provides that the Parliament may by law from the new states by separating or uniting the territory of existing states, increase or diminish the area of any state, and alter the name and boundary of any state. On the other hand, the American federalism is characterized as 'indestructible Union of Indestructible States.'

(b) Unlike the American federation, the Indian Constitution provides for a single citizenship. It means that, in India, every person is a citizen of India and they are not entitled for citizenship of any state. The Union Parliament is empowered to enact laws with respect to all matters related to citizenship with respect to all matters related to citizenship.

(c) The Governor of a state, who is the executive head of the state, is appointed by the President and holds office during the pleasure of the President. It should be noted that the Governor is not a nominal head of state, but holds significant powers with respect to the affairs of the state. In fact, the Governor functions as the representative of the Union Government in the state and he is not responsible to any authority within the state.

(d) The provision for single citizenship in India is also considered as the unitary feature of Indian Federalism. In India, every person is a citizen of India.

(e) Generally, in federalism, the states or units have equal representation in the second House of Parliament. But, in India, the states do not have equal representation in the Council of States. The representation their population the number of seats allocated to different states depends on their different states is mentioned in the Fourth Schedule of the Constitution. The state of Uttar Pradesh has 31 seats, whereas many states like Naga-land, Manipur, Tripura etc. have only one seat in the Council of States.

(f) In the legislative sphere, the following provisions of the Constitution enhance the powers of the Union vis-a-vis the states:

i) As provided in Article 248, the residuary powers are vested in the Union Parliament. Thus, the Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. It should be noted that, in the US, the residuary powers are vested with the States.

ii) According to Article 249: if the council supported by not less than two-third members present and voting that it is necessary in the national interest that Parliament should make enumerated in the State List, the laws with respect to any matter Parliament shall be competent to enact laws with respect to such matters.

(iii) During the operation of proclamation of Emergency, as provided in Article 250, the Parliament has the power to make laws with respect to any matter included in the State List.

(iv) Both the Parliament and the Legislatures of States have power to enact laws on the Subjects of Concurrent List. However, as mentioned in Article 251, if there is any inconsistency between laws enacted by the two, the law made by the Parliament shall prevail.

(v) As provided in Article 252 the Parliament gets the power to make laws on a subject of State List as and when request is made for the same by two or more States.

(vi) Under the provisions of Article 253 of the Constitution, the Parliament has been given power to laws on the subjects of State List for the purpose of giving effect to an international agreement or treaty.

vii) As provided in the Constitution, the Governor is empowered to reserve the bills passed by the State Legislatures for the consent of the President. If a bill is so reserved, it cannot become law without the consent of the President. The power to reserve a bill for the consent of the President is a discretionary power of the Governor. However, it is mandatory for the Governor to reserve those bills passed by a State Legislature which affect the powers of High Court.

The foregoing provisions demonstrate that there are various occasions when the Union Parliament can make laws on the subjects included in State List, but there is no occasion when included in the Union List. This proves that, in legislative field, the powers of the Union Government are more pronounced.

(g) In the Administrative field also, the Union Government enjoys more powers in comparison to States.

Article 256 of the Constitution provides that the executive power of every state shall be so exercised as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that State. The executive power of the Union shall extend to giving of such directions to a state as may appear necessary to the Government of India for that purpose.

Similarly, the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, which may also issue direction to states in this respect. It should be noted that it is mandatory for states to obey the directions issued by the Union. If any state fails to carry out these directions, the President may conclude that the administration of the state is not being carried according to the provisions of the Constitution; which may even lead to the imposition of the President Rule in that state.

Again, the Union Government also exercises administrative control over states through the provision of Services constituted under Article 312 of the Constitution. At present, there are three All India Services-Indian Administrative Service; Indian Police Service; and Indian Forest Service. The members of these Services are recruited by the Union Public Service Commission and their service conditions are determined by the Union Government. The members of these services are appointed to the important administrative positions in the states, but their ultimate control lies with the Union Government.

(i) It is clear from the above discussion that, during normal times, there are many occasions when the Union can exercise control over the states. However during the operation of emergency of any type, the control of the Union over states is further strengthened. Thus, during the operation of National Emergency under Article 352, the Union Government is empowered to issue directions to states as to the manner in which the executive power of the states is to be exercised. Also, the Parliament gets the power to make laws on any matter conferring powers and imposing duties upon the officers and authorizing of the Union notwithstanding the conferring powers and imposing vs on any matter duties upon the officers and authorities of the Union, notwithstanding the fact that such matter is not included in the Union List. "Embracing the principle of free and voluntary association as the basis of a federal society, constituent entities of an anarchist federation are ideally autonomous and self-determining, collaborating equally, freely and mutually within the federation through the values of solidarity and autonomy"(Whitman, W. J. 2023)

Again, during the President's Rule imposed under Article 356, the administration of state comes under the direct control of the Governor, who acts as a representative of the Union Government. Thus, the affairs of the state are run by the Governor as per the direction of the Union Government. Since the Legislative Assembly of the state is either suspended or dissolved, the legislative functions of the state are performed by the Parliament. Similarly, during the enforcement of Financial Emergency under Article 360, the executive authority of the Union extends to the giving of directions to any state to observe such canons of financial propriety as the President may deem necessary and adequate for the purpose. Such directions may also include a provision for the reduction of salaries of the state government employees or requiring the Money Bills or other Bills passed by the state Legislature to be reserved for the consideration of the President.

CONCLUSION

Evolution of India's federalism since Independence. Federalism involves the distribution of powers and responsibilities between the central government and state governments. Each government operates independently in its own domain. Federalism refers to a vertical division of power in a political system. The main objectives of Indian federalism are unity in diversity, devolution in authority, and decentralization in administration. Federalism is a governance model where the central and state governments work together to formulate and implement policies.

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