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FEDERALISM & JUDICIAL TREND TOWARDS FEDERALISM IN INDIA

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ABSTRACT

Federalism, essentially, denotes the division of legislative and executive powers between the central and regional governments, allowing each to operate independently within its own domain. In a diverse country like India, federalism holds immense significance due to the coexistence of people from varied backgrounds and cultures. It's neither feasible nor advisable for a single government to legislate for the entire nation, considering the diverse cultural, linguistic, and social contexts. Therefore, the central government formulates laws applicable across the country, while state governments enact and enforce laws tailored to the specific socio-economic and political conditions of their respective regions. In contemporary times, federalism serves as a means of reconciling the growing scope of common interests with the necessity for local autonomy. This paper aims to explore the concept of federalism and its evolving nature in India, emphasizing the importance of cooperative and collaborative federalism in achieving constitutional objectives.

Keywords: Federalism, Legislative, Executive, Constitution etc.

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INTRODUCTION

Federalism involves the sharing of constituent and political authority, allowing governance at multiple levels, including the possibility of local governments within states. In every federal system, there exists a division of powers between the Union and State Governments, with both operating independently within their respective domains without subordination to each other. This division of power is crucial to prevent chaos and conflicts arising from competing jurisdictions. The constitution of India delineates various legislative subjects into three lists: the Union List, Concurrent List, and State List, as outlined in the VII Schedule of the Constitution¹. These lists specify the powers granted to the Parliament, state legislatures, and both concurrently. Additionally, any matter not covered by these lists is considered a residuary power of the Parliament². In a federal structure, the independent judiciary serves a vital role as the ultimate interpreter of the Constitution, ensuring the preservation of constitutional values.

CONCEPT OF FEDERALISM

Federalism is a sophisticated system of governance in a country where both central and state governments coexist, deriving their authority from the constitution. Within a federal constitution, powers are distributed between the central and state governments³. The central government is empowered to legislate for the entire country, while state governments have jurisdiction over their respective states. Each government operates independently within its designated sphere, exercising its powers without being subject to control by other governments. This arrangement fosters legal independence for each entity, with neither being subordinate to the other but rather operating in a coordinated manner⁴.

Federal systems are more prevalent globally than confederal systems, representing a compromise between the need for central authority and the necessity for checks or limitations on that power. A federal union can be formed through voluntary agreements between sovereign states, as seen in the United States of America and Australia, or by transforming provinces of a unitary state into a federal union, as occurred in Canada and India⁵.

Historically, political organizations tended to be unitary rather than federal. However, economic, political, and social circumstances compelled unitary states to form associations with other states

¹ M.P. Singh, V.N. Shukla's Constitution of India 794 (EBC, 2017).

² *Id.*

³ Durga Das Basu, Comparative Federalism 5-6 (Wadhwa, Nagpur, 2008).

⁴ K.C. Wheare, Modern Constitutions 19 (Oxford University Press, London, 1975).

⁵ *Supra note 3* at 81.

to address common issues. The concept of federalism took shape definitively with the establishment of the United States' federation through its constitution in 1787. The US serves as a model of federalism, with its constitution dividing powers between the central and regional governments⁶.

The term “federation” originates from the Latin word “Foedus,” meaning treaties or agreements, referring to a system where sovereignty is divided between a central authority and peripheral states. Federalism can be classified based on the division of powers as “Centripetal⁷” or “Centrifugal⁸.” However, Indian federalism differs in that it is not the result of any formal agreement or treaty. The concept of federalism lacks a precise definition, leading to occasional vagueness and confusion regarding its interpretation. But following are the clear explanation of federalism given by:

According to Livingstone:⁹

“The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces, economic, social, political, cultural – that have made the outward forms of federalism necessary. The essence of federalism lies not in the institutional or constitutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected.”

According to Prof. Wheare:¹⁰

“...the systems of Government embody predominantly on division of powers between Centre and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so is that Government federal?”

According to Dicey:¹¹

“Federalism means the distribution of force of the state among a number of coordinate bodies each originating in and controlled by the constitution.”

⁶ Andrew Heywood, Politics 167 (Palgrave Macmillan, New York, 2007).

⁷ Centripetal federalism means the power has been divided between centre and state and residue power remain with centre. The division of power between centre and state has been done keeping in view the historical, geographical, political and cultural facts, so that the good of common welfare can be achieved through federalism in social-cultural economic spheres.

⁸ In centrifugal federalism, residue power lies with state along with division of power.

⁹ 4 Livingstone “A Note on the Nature of Federalism” 67 Political Science Quarterly 83-84 (1952), available at: <http://www.hcourt.gov.au/assets/publications/speeches/currentjustices/frenchcj/frenchcj03june09.pdf> (last visited on 13th march 2024)

¹⁰ K.C. Wheare, Federal Government 33 (Oxford University Press, London, 1963).

¹¹ *Supra note 3* at 8.

Federalism means:¹²

A proper respect for state functions, recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance 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.

Hence, federalism extends beyond merely delineating relations between the Center and the States; it serves as a mechanism to facilitate the active involvement of states in decision-making. Central to federalism is the coexistence of the Union and individual states, with powers allocated between them through a written constitution. Both the Central and state governments collectively wield governmental authority as per mutually agreed terms, preserving their respective political identities without compromising their fundamental integrity.

FEDERALISM AND INDIAN CONSTITUTION

Until 1935, India operated under a unitary system of governance. The Government of India Act, 1935 introduced the federal concept for the first time, explicitly using the term 'Federation'¹³ though the process of decentralization and devolution of power had commenced earlier with the Government of India Act, 1919¹⁴. Unlike some other nations, India's transition to a federal system wasn't a result of any treaty or agreement among its constituent units/states. Instead, it involved transforming the unitary government into a federal one by granting specific powers and responsibilities to the states under the constitution. The framers of the Indian constitution sought to establish a federal system due to the country's social diversities and vast size¹⁵. They recognized that tendencies towards disunity could be detrimental, and to counteract such tendencies, the legitimate grievances of states needed to be addressed within the framework of the Federal Constitution. During the drafting of the Indian constitution, the Constituent Assembly had various models to consider, but it wisely chose the Government of India Act, 1935¹⁶ as the foundation upon which to build the new constitution.

¹² *Younger v. Harris*, 401 U.S. 37 (1971), available at: https://www.rippublication.com/gjps/gjpsv1n1_02.pdf (last visited on 13th march 2024).

¹³ Available at: www.lawyersclubindia.com (last visited on 13 march 2024)

¹⁴ The Government of India Act, 1919 introduced the diarchy or dual government. See, M.P. Singh, *Outlines of Indian Legal and Constitutional History* 169 (Wadhwa and Co, Nagpur, 2003).

¹⁵ Pratiyogita Darpan, *Indian Polity*, 76 (2003). For solution of constitutional problem of multi-racial, multi-lingual and multi-communal country like India with a vast area and a huge population, federalism was only natural choice. Also see, M.V. Pylee, *Constitutional Government in India* 29 (S. Chand & Company, New Delhi, 2011).

¹⁶ Broadly modelled on the pattern of The British North America Act, Canada constitution Act, 1867.

The Indian Constitution was drafted by the Constituent Assembly following the Cabinet Mission Plan, with its inaugural meeting taking place on December 9, 1946. During their deliberations, the framers of the constitution frequently referred to the concept of federalism. Given the country's vastness and diverse population, it was widely acknowledged within the Constituent Assembly that a unitary system would be impractical and undesirable. Consequently, the decision was made to adopt a federal constitution for India¹⁷.

To integrate the Indian States into this federal framework, it was declared that the Union would possess only the powers of defense, foreign affairs, and communications, as outlined by the Cabinet Mission Plan. The states within the federation would be autonomous entities, retaining all residuary powers¹⁸.

Following the announcement of the Mountbatten Plan on June 3, 1947, which proposed the partition of the country and the establishment of a separate Constituent Assembly for Pakistan¹⁹, discussions ensued regarding the structure of India's constitution. In response to the partition decision, the Union Constitution Committee convened on June 5, 1947, determining that India's constitution would be federal in nature with a strong central authority²⁰.

Furthermore, it was decided that legislative powers would be divided into three lists, with any residual powers not specifically enumerated being vested in the Union rather than the states. This decision was endorsed by the Constituent Assembly and implemented by the Union Powers Committee²¹. The constitution of India does not contain the terms 'federation' or 'federal'; instead, it refers to the nation as a 'Union.'²²

Article 1(1) of the constitution states that “India, that is Bharat, shall be a Union of States.”²³ Originally, the Union Constitution Committee had employed the term 'federation,' but the Drafting Committee of the Constituent Assembly opted for 'Union' instead²⁴.

¹⁷ XI, Constituent Assembly Debates, 657-58.

¹⁸ I, Constituent Assembly Debates, 57-58.

¹⁹ *Supra note* 15 at 6.

²⁰ *Supra note* 15

²¹ *Supra note* 3 at 117

²² The term 'federal' complicates the matter as it involves various facets such as political federalism, institutional federalism and fiscal federalism etc. See, <https://www.thestatesman.com/supplements/law/cbi-police-face-off-ourtryst-with-federalism-1502732236.html> (last visited on 13th march 2024)

²³ 2 Chief Justice RS French, Federalism in The Supreme Court of India and the High Court of Australia, available at: <http://www.hcourt.gov.au/assets/publications/speeches/currentjustices/frenchcj/frenchcj03june09.pdf> (last visited on 13th march 2024).

²⁴ VII, Constituent Assembly Debates, 33.

During the presentation of the Draft constitution to the Constituent Assembly on November 4, 1948, B.R. Ambedkar, Chairman of the Drafting Committee, elucidated the rationale behind using the term “Union²⁵” rather than “Federation²⁶.”

He noted that while South Africa, a unitary state, is also termed a Union, Canada, a federation, is likewise referred to as a Union. Ambedkar explained that the deliberate choice of the word “Union” aimed to emphasize that India's federation was not formed through a voluntary agreement among states, and thus, no state possessed the right to secede from it. The term “Union” underscored the idea that the federation was indivisible and its unity non-negotiable. Although the country may be divided into different administrative units for practical purposes, it remained an integral whole, with its people united under a single authority derived from a single source. This deliberate choice aimed to preempt any speculation or dispute regarding the unity and integrity of the nation.

JUDICIAL TREND TOWARD FEDERALISM

An independent judiciary is a crucial aspect of federalism, as it holds the power to interpret the constitution and ensure that governments adhere to their prescribed limits. The Supreme Court has issued numerous rulings concerning federalism; however, its stance on the matter has been somewhat variable over time.

In the case of *Automobile Transport v. State of Rajasthan*²⁷, The seven-judge bench of the Supreme Court interpreted the implications of Article 301 of the Constitution and affirmed that the Indian constitution embodies a federal structure. They emphasized that the evolution of this federal or quasi-federal system necessitated a distribution of powers, as reflected in the three legislative lists outlined in the Seventh Schedule. The Constitution explicitly states in Article 1 that India is a Union of States, and when interpreting its provisions, one must consider the fundamental framework of a federal or quasi-federal constitution. This framework acknowledges that both the Union and the states possess certain powers.

In the case of *State of West Bengal v. Union of India*²⁸, The Union Government passed the Coal Bearing Areas (Acquisition and Development) Act, 1957, acquiring certain coal mines that were vested in the state. The state government challenged this law in court, arguing that Parliament lacked the

²⁵ It may be noted that the word Union was employed by Stafford Cripps in his proposals and was also used in the Cabinet Mission Plan. The word Union is not decisive of any characteristics.

²⁶ *Supra* note 23.

²⁷ AIR 1962 SC 1406

²⁸ AIR 1963 SC 1241.

authority to enact such a law and empower the Union to acquire land already vested in a state. The state's arguments were based on the federal nature of the Indian constitution, the shared sovereignty between states and the center, and the center's alleged lack of power to acquire state properties²⁹.

However, the majority of the Supreme Court dismissed all three contentions and ruled in favor of the Union's right to acquire the coal mines in West Bengal. Chief Justice Sinha explained that in a true federal system, there exists a compact or agreement among independent and sovereign units to partially surrender their authority for the common good, vesting it in a Union while retaining residual authority in the constituent units. Typically, each constituent unit operates under its own constitution, governing all matters except those relinquished to the Union, with the Union's constitution primarily governing the administration of the units.

Contrary to this model, Chief Justice Sinha noted that India's constitution did not arise from such a compact or agreement. Instead, non-sovereign units constituting a unitary state were transformed into a Union through the abdication of power.

“States do not have the right to secede from the Union in India. That conclusion rested on the proposition that the States were created by the Union, as distinct from the position in Australia and the United States where the States were the federation's constituent elements formed out of the pre-federation colonies whose delegates drafted the constitution.”

The majority judgment in the *State of West Bengal v. Union of India* case was criticized for not recognizing the Indian Constitution as federal, as it concluded that states lacked the right to secede from the Union. This departure from the typical understanding of federalism was disappointing. However, Justice Subba Rao, in his dissenting opinion, maintained that the Indian Constitution indeed embodied federal principles. Subsequent rulings by the Supreme Court have firmly established the federal character of the Indian Constitution.

In the *Keshavananda Bharti v. State of Kerala* case³⁰, Chief Justice Sikri and other judges of the full bench affirmed federalism as a fundamental feature of the Indian Constitution. Similarly, in the *State of Rajasthan v. Union of India* case³¹, Justice Beg acknowledged that the Indian Union can be considered federal to some extent. However, he noted that the federal aspect is somewhat diluted to accommodate the imperative of national integration, political and economic

²⁹ *Ibid.*

³⁰ AIR 1973 SC 1461.

³¹ AIR 1977 SC 1361.

coordination, and overall societal advancement. In such a system, states cannot obstruct the legitimate and comprehensive development directed by the Central Government.

In the case of *Kuldip Nayar v. Union of India*³², the issue revolved around the 2003 amendment to the Representation of People Act, 1951, which removed the requirement of “domicile” in the concerned state for individuals seeking election to the Council of States. The petitioner argued that this amendment violated the principle of federalism, a fundamental aspect of the constitution.

However, the court dismissed the petitioner's argument, stating that India is a unique federal state, and it is not inherently essential for representatives to belong to the state they represent. Therefore, the decision by the Indian Parliament to eliminate the residential qualification did not contravene the basic tenet of federalism.

In the case of *State Bank of India v. Santosh Gupta*³³, the court noted that the Constitution of India draws inspiration from various global experiences. The federal structure of the constitution, particularly reflected in Part XI, is significantly influenced by the Government of India Act, 1935. It was emphasized that the state of Jammu & Kashmir is an integral part of this federal structure. However, due to historical reasons, it has been accorded special treatment within the framework of the Indian constitution.

The court's observations regarding the special status of Jammu and Kashmir have been subsequently altered by the Presidential order of 2019, thereby diluting the findings of this judgment.

CONCLUSION

The presence of non-federal elements such as single citizenship, centralization, and economic disparities among states deviates from conventional federal models. This orientation towards unionism with federal structures as secondary is evident. Despite arguments about centralization, the Indian constitution also grants significant powers to states. Many scholars describe the Indian constitution and governance system as quasi-federal because federal principles are employed to ensure effective governance of diverse federal units, considering factors such as varied, religions, cultures, languages, and ethnicities.

³² AIR 2006 SC 3127.

³³ Civil Appeal Nos. 12240-12246/2016.

The court at multiple times emphasized that while the Constitution grants more authority to the Centre compared to the states, this does not diminish the independent constitutional standing of the states. They are not subordinate entities of the Centre but possess their own constitutional significance. Within their designated domain, states hold supreme authority. The temporary suspension of their powers by the Centre during emergencies or specific circumstances does not negate the fundamental federal nature of the Constitution; such instances are exceptions rather than the norm.

The allocation of powers between states and the union in the constitution is characterized by more centralized elements, such as the provision of residual, financial, and overriding powers to the central government. This departure from the traditional federal system, as seen in the United States, has led various stakeholders including authors, the drafting committee, researchers, jurists, and the judiciary to interpret the Indian constitution as quasi-federal. Dr. B.R. Ambedkar, the architect of the Indian constitution, deemed it crucial not to establish a purely federal system due to the country's diversity. Instead, he incorporated provisions blending unitary and federal features to ensure unity and prevent the secession of federal units. In essence, the constitution's creators, including Dr. Ambedkar, aimed to imbue federalism implicitly, allowing states to function within a federal framework while also empowering the central government during threats to national unity, thus emphasizing a centralized system where necessary.