



Federalism one of the basic structure of Indian Constitution*

INTRODUCTION

Federalism constitutes a complex governmental mechanism for the governance of a country. It seeks to draw a balance between the forces working in favour of concentration of power in the Centre and those urging a dispersal of it in a number of units. A federal Constitution envisages a demarcation of governmental functions and powers between the Centre and the regions by the sanction of the Constitution, which is a written document¹.

- i. From this follows two necessary consequences²-
That the invasion by one level of government on the area assigned to the other level of the government is a breach of the Constitution.
- ii. That any breach of the Constitution is a justifiable issue to be determined by the Courts as each level of government functions within the area assigned to it by the Constitution.

Federalism originated in the experience gathered from political experiments that not merely defence but a number of other subjects, such as control of foreign affairs , inter-state and foreign commerce , export and import and like are matters of national concern which require to be dealt with by a national organization while other matters such as public order, public health, fire, water and electric supply services which are the concern of the inhabitants of a particular local area and have problems of their own connected with the exigencies of that particular locality, would be best administered if entrusted to the representatives of that area³.

1. Indian constitution and the concept of federalism-

The Indian Constitution is not only regarded as Federal or Unitary in the strict sense of the terms. It is often defined to be quasi-federal in nature also.

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¹ Shubhangi Pathak, Nature of the Indian Constitution: judicial exposition, available at <http://www.legalservicesindia.com/articles>, accessed on 1 December 2015.

² *Ibid.*

³ Prof. B. M Gandhi , *Dr Durga Das Basu Comparative Federalism* , at 3 (2008).

Throughout the Constitution, emphasis is laid on the fact that India is a single united nation⁴.

India is described as a Union of States and is constituted into a sovereign, secular, socialist, democratic republic. The Principle of organization upon which the 'federal principle' is based is that the field of government is divided between a general authority and regional authorities, which are not subordinate to one and another. The Government of Indian Act 1935 favoured a federal form of government, despite the fact that the federal provisions of the act never come in to force⁵.

The independence Act 1947 added further impetus towards the move for a federal system of government. Thus, when the constituent Assembly framed the federal constitution, it decided to take the government of Indian Act 1935 as the model. As opposed to this is the opinion of some scholars who regard the Indian Constitution to be unitary in nature. It has been argued that the Indian Constitution does not satisfy certain essential tests of federalism, namely- the right of the units to make their own Constitution and provision of double citizenship⁶.

Further, in the three-fold distribution of powers, the most important subjects have been included in the Union list, which is the longest of the three lists containing 97 items. Even regarding the Concurrent list, Parliament enjoys an overriding authority over the State Legislatures. Article 253 empowers the Union Parliament to make laws implementing any treaty, agreement or convention with another country or any decision made at any international conference, association, or other body⁷.

Some of the other Constitutional provisions, which are often quoted in favour of the Unitary status of the Indian Constitution are- emergency powers of the president to declare national emergency or declaring emergency in a state in the event of failure of Constitutional machinery, the appointment of governors, unification of judiciary and the dependence of the States on the Centre for finance. The power of the Union to alter the names and territory of the states, to carry out Constitutional amendments and to affect co-ordination among the States and settle their mutual disputes is also regarded as an indicator of the unitary character of the Indian Constitution⁸.

The constitutional law consists both of legal in the strict sense and of usages, commonly called as conventions, which without being enacted are accepted as binding by all who are concerned in government. Many rules and practices are not part of the law in the sense that their violation may lead to proceeding in a court of law. Indian Constitution is said to be a federal structure only because it is said that it has clear demarcation of boundaries between

⁴ *Supra* note 1

⁵ Ranbir Singh and A Lakshminath, *Constitutional law*, at 33 (2006).

⁶ *Ibid.*

⁷ *Supra* note 1.

⁸ *Ibid.*

central & the state government similar to that of U.S. India having legislative and executive authority divided between the centre and the state⁹.

Chief essentials for a constitution to be federal are¹⁰:

1. **Dispersion of powers** between the center and the unit states forming federation among a number of co-ordinate bodies, controlled by constitution.

2. **Rigidity** – neither the center nor the state has power to amend the provision of constitution relating separation of powers.

3. **A written constitution** – A federal system postulates a written constitution which set up two governments – national and regional and demarcates the powers that may be exercised by each of them.

4. **Domination of the constitution** – neither of center or state have power to nullify the constitution

5. **An Independent body and unprejudiced authority**(eg. Judiciary) – The nature of federal state involves a division of powers center and state governments.

The judiciary interprets the federal constitution and acts as a guardian of the provision enshrined therein¹¹.

India is often also claimed to be non- federal in matter such as the Center can impinge upon the areas earmarked only for the states in some cases. Therefore, it infringes the principle of federalism as it makes the state hyponym to the center. Hence, it is also said to be in a unitary form of government too. The phenomena of such unitary form of government arises only during the period of wars or emergency period¹².

A federal constitution establishes a duple polity with Union at the center and the States at the fringe, each dowered with autonomous powers to be exercised in the field assigned to them respectively by the constitution. Both are in a way co-ordinate to powers of each other¹³.

1. Federalism as basic structure of Indian constitution.

In the *Kesavananda Bharati v. state of Kerala*(AIR 1973 SC 1461), the Supreme Court ruled that all provisions of the constitution, including Fundamental Rights can be amended. However, the Parliament cannot alter the basic structure of the constitution like secularism, democracy, federalism, separation of powers. Often called the "Basic structure doctrine", this decision is widely regarded as an important part of Indian history.

In the *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), the Supreme Court extended the doctrine's importance as superior to any parliamentary legislation. According to the verdict, no act of parliament can be considered a law if it violated the basic structure of the constitution. This landmark guarantee of Fundamental Rights was regarded as a unique example of judicial

⁹ Arnav upes, federalism in India, available at <http://www.legalservicesindia.com/article/article/federalism-in-india>, accessed on 2 December 2015.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² M.P Jain, *Indian Constitutional Law*, at 528 (2010).

¹³ *Ibid.*

independence in preserving the sanctity of Fundamental Rights. The Fundamental Rights can only be altered by a constitutional amendment; hence their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures.

The imposition of a state of emergency may lead to a temporary suspension of the rights conferred by Article 19 (including freedoms of speech, assembly and movement, etc.) to preserve national security and public order.

The Supreme Court is an independent authority to declare the Acts of the Union and States ultra-vires if either of them entrenches the defined powers of each other. Thus while in normal times our Constitution is federal, in emergency period it becomes unitary. Therefore, we can even call our Indian Constitution as semi-federal¹⁴.

Conclusion

The basic concept of division of power is same even today in every federal structure. However, the principles of strictly separating the power between the two governments are not an easy task and disputes and differences are always there. The only golden rule seems to be that in case of conflict and doubt as to the appropriate government in relation of any matter is that the benefit should be given to the Central government. However, this rule is not always justifiable especially in the case of taxation simply because the Regional or State governments also need the finance to run the administration. Nevertheless, Federalism is appropriate to large countries like India where government from one center would be complicated and difficult and could readily be out of touch with the needs and desires of widely separated areas and to countries, where particular parts are radical, linguistic and legal or other particularities which they desire to have safeguarded¹⁵.

In short, in spite of some difficulties in interpreting the legislative entries of the federal structure, federalism will stay more importantly because of the globalization of the economy and the desire to achieve the “welfare state”.

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¹⁴ *Supra* note 5.

¹⁵ *Supra* note 12.