

## **CHANGING CHARACTER OF FEDERALISM IN INDIA**

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### **ABSTRACT**

Federalism, in its most basic form, is the division of legislative and executive power between the federal government and state and local governments, allowing each government to operate independently within its own area. The necessity of federalism in a country like India is critical since different people from various backgrounds and cultures coexist. It is neither conceivable nor desirable for a single government to develop laws for the entire country in the interests of people of many cultures, languages, and backgrounds. As a result, the Central government may create laws for the entire and any part of India's territory, while state governments may make and enforce laws based on the social, economic, and political conditions of people living in various places. Federalism in the contemporary era is a notion of compromise between two opposing forces: the expansion of common interests and the necessity for local autonomy. The notion of federalism as well as the shifting features of federalism in India will be examined in this article. This paper will also emphasize the need of cooperative and collaborative federalism in accomplishing constitutional aims.

**Keywords:** *Federalism, Independent, Necessarily*

### **1. INTRODUCTION**

Federalism Means Sharing Constitutional and Political Power, i.e., the ability to govern at two levels, while local governments may exist inside a state. Every federal system necessitates a separation of powers between the federal and state governments, with each being autonomous in its own area and not submissive to the other. Power has been divided between the centre and the States to avoid anarchy and conflict between the two contending jurisdictions, and division of power is one of the most significant features of federal constitutions. In the VII Schedule of the

Constitution, India's constitution lists several pieces of legislation in three lists: Union List, Concurrent List, and State List. The three legislative lists listed the authorities conferred on the Parliament, the state legislature, and both at the same time. If an issue is not covered by one of the three Lists, it is considered a residuary power of the Parliament. In a federal organization, the independent judiciary serves as the last interpreter of the Constitution and upholds constitutional ideals.

Federalism is a complicated governmental process that allows a country to have both a central and state government at the same time. The constitution is the source of power for both governments. The powers are divided between the Centre and State governments in a federal constitution, and the Central Government may make laws for the entire country, while the respective state governments may make laws for the entire state, allowing each government to be legally independent within its own sphere. Each government has its own set of powers and exercises them independently of other governments; as a result, neither is submissive to the other, yet both work together. In the world, the federal form of governance is more frequent than the confederal system. This system is built on a compromise between regional variety and national unity, as well as the necessity for an effective central power and checks and balances on that power. With regard to the pre-existing condition of the component units, a federal union can be formed in one of two ways: I by a voluntary agreement between members of sovereign and independent states for the administration of certain matters of general concern, as in the case of the United States of America or Australia; or (ii) by transforming the provinces of a unitary state into a federal Union, as in the case of Canada or India. In the past, political organizations were unitary rather than federal. However, economic, political, and social circumstances compelled unitary governments to form alliances with other states in order to tackle common problems.

The United States (US) constitution established a "federation" for the first time in 1787, and the concept of a federal state took shape. The United States is regarded as the model of federalism, as well as the family of federal constitutions' oldest and most recognized member. Prior to 1787, the United States was known as the "Confederacy," and with the passage of the United States Constitution in 1787, it became the "Federation." The power of the general government is stated

in the American constitution, while the remainder is left to regional governments. Many other countries followed America's lead and adopted the federal model, with some tweaks to suit their own needs. The word "federation" comes from the Latin word "foedus," which meaning "treaty or agreement" (or referring to an alliance of individuals or groups to promote specific and common interests). Federal states are those that have developed as a result of a treaty or agreement. It is a system in which sovereignty is shared between the core and the periphery.

Federalism can be characterized as 'Centripetal' or 'Centrifugal' in terms of power division. However, there is no accord or treaty that has resulted in Indian federalism. Federalism isn't defined as such, and it's true that there's some ambiguity and confusion about what it means. However, here are some definitions of federalism: Livingstone claims that:

The essence of federalism can be found not in the nuances of legal and constitutional nomenclature, but in the factors – economic, social, political, and cultural – that have compelled the outward forms of federalism... The essence of federalism is found in the society itself, not in the institutional or constitutional structure. The federal government is a tool for articulating and protecting the society's federal traits.

Federalism is defined as a:

"mode of political organization that links various states or other polities into an overall political system in such a way that each can maintain its own essential political integrity," according to the Encyclopedia Britannica. Federal systems do this by demanding that basic policies be developed and implemented through some type of discussion, so that all members can participate in making and carrying out choices. The political concepts that underpin federal systems highlight the importance of negotiating and negotiated cooperation among several power centres, as well as the benefits of dispersed power centres in protecting individual and local liberty.

As a result, federalism is more than just a question of the relationship between the federal government and the states; it is also a mechanism for ensuring the state's participation in the decision-making process. The presence of the Union and the states, as well as the written constitution's division of powers between them, is the essence of federalism. The federal

government and state governments share overall governmental power on an agreed-upon manner without jeopardizing their essential political integrity.

## **2. FEDERALISM AND INDIAN CONSTITUTION**

Even though the process of decentralization and devolution of power had begun since the earlier Government of India Act, 1919, the Government of India Act, 1935 envisaged the federal scheme and for the first time introduced the federal concept in India and made legal use of the name 'Federation.' There is no treaty or agreement amongst the component units/states that led to the Indian federal structure. In India, the unitary system of government was transformed into a federal one by the constitution, which delegated some authorities and responsibilities to the states. The Indian constitution's founders wanted to create a federal structure in India because of the country's large size and social diversity. Fissiparous tendencies are hazardous to a nation's unity, and legitimate complaints of the states should be handled within the framework of the Federal Constitution to counteract fissiparous tendencies. "The Constituent Assembly had numerous models to choose from while drafting the Constitution, but it rightly chose the Government of India Act, 1935 as the foundation for the new constitution."

It was on December 9, 1946, that the Constituent Assembly convened its first meeting, during which the framers adopted the term "federal" in their speeches, that the Indian Constitution was drafted in accordance with the Cabinet Mission Plan. There was widespread agreement among members of the Constituent Assembly that a unitary government was not only undesirable, but also impractical in light of the external conditions, the breadth of the territory, and the heterogeneous elements that made up the country. Because of this, India was going to have a federal structure. A further announcement was made in order to bring the Indian States under the federal scheme, stating explicitly that the Union would be granted only the three powers of defence; foreign affairs; and communications, which had been conceded by the Cabinet Mission Plan, and that the states of the federation would be autonomous units with all ancillary powers.

The Mountbatten Plan, unveiled on June 3, 1947, called for the partition of the country and the establishment of a separate Constituent Assembly for the planned state of Pakistan, among other

things. Following the announcement of the decision to split the country, the Union constitution Committee convened on June 5, 1947, and determined that the constitution of India should be federal with a strong central government. It was also decided that there should be three legislative lists, with the remainder remaining enumerated, and that the union, rather than the states, should receive the majority of the votes. This decision was ratified by the Constituent Assembly and executed by the Union Powers Committee. It is not mentioned in any article of the Indian constitution that the words "federation" or "federal" are used or implied. The word 'union' was employed by the framers. "India, that is Bharat, shall be a Union of States," according to Article 1(1) of the constitution. B.R. Ambedkar, Chairman of the Drafting Committee, explained the significance of the use of the word "Union" instead of the word "Federation" in the Constitution of India when he moved the Draft constitution for consideration by the Constituent Assembly on November 4, 1948: "The Union Constitution Committee used the word "federation," but the Drafting Committee of the Constituent Assembly replaced it with the word "Union."

The fact that South Africa, which is a unitary state, is referred to as a union is correct. However, Canada, which is a Federation, is frequently referred to as a Union. As a result, the description of India as a Union, despite the fact that its constitution is federal, does not contradict common use.

However, it is vital to note that the use of the word "Union" was done on purpose. My understanding is that the word "Union" was utilized in the Canadian constitution for some reason. But I can tell you why the Drafting Committee chose to use it in this particular instance. As a result, the Drafting Committee intended to make it crystal clear that, while India would be a federal republic, it would be so only as a result of an agreement by the states to join a federation; and, as a result of this agreement, no state would be permitted to resign from the federation.

Because it is indestructible, the federation is referred to as a Union. However, despite the fact that the nation and its people may be divided into several States for administrative convenience, the country is one integrated whole, and its people are a single people living under a single imperium that derives its power from a single source. It was necessary for the Americans to fight a civil war in order to show that the States did not have the power to secede and that their

federation was unbreakable. The Drafting Committee believed that it was preferable to be explicit from the outset rather than to leave it opens to guesswork or disagreement later on.

The use of the term 'Union of Sates' rather than the term 'Federal of Federation' denotes the constitution of India as having a distinct and distinctive character and nature. Due to historical, cultural, social, and political experiences, the term "federal" was avoided whenever possible.

Essentially, the Indian Constitution is federal in nature, and it is characterized by the traditional characteristics of federalism: constitutional primacy, power sharing between the Union and state governments, existence of an independent judiciary, and a rigid procedure for amending the constitution. The Indian Constitution is based on the Federal Constitution of the United States. With it, the Union and the states are established as two political entities with clearly defined spheres of jurisdiction, which are to be exercised in the areas that have been given to them.

There is an independent judiciary to decide on disputes between the Union and the States, or between one state and another in the United States. Decentralization of administration is one of federalism's main goals, and power is divided between the Centre and the states. However, the 73rd and 74th constitutional amendments added a new level of government, namely Panchayats and Municipalities. This might be considered a third level of government. As a result, India has three tiers of government, which is a distinct form of federalism not seen in other countries. As a result, we may conclude that Indian federalism is unique in character and offers a potential solution to a variety of issues. It has been customized to the country's specific requirements.

### **3. CRITICAL ANALYSIS OF INDIAN FEDERALISM**

"The Indian constitution does not pass certain basic conditions of federalism, namely, the right of the units to form their own constitutions and the guarantee of dual citizenship as the American constitution does," according to critics. Even the essential characteristics of federalism, such as the separation of powers between the federal and state governments, the supremacy of the constitution, the existence of a written constitution, and, most importantly, the courts' authority as final interpreters of the Constitution, are all present in our constitutional scheme." However, the constitution contains several characteristics that can be interpreted as deviations from the

federal character, and many constitutional scholars have questioned the constitution's federal nature as a result of this deviation. Because the federal government is more powerful than the state governments, they labelled it as more unitary and less federal. The division of authority between the Centre and the states is done through three lists in Schedule VII, but all significant topics are placed in either the Union List or the Concurrent List, making the Centre stronger. The Indian constitution too has some noteworthy unitary characteristics. "The States' territories, boundaries, and names may be altered or changed by the Parliament." "The Union Parliament is empowered to make laws in relation to matters under the State List during an emergency," "the Parliament shall have the power to make laws with respect to any matter included in the State List if the Council of States declares it necessary in the national interest by a resolution of 2/3 of its members present and voting," "in case of inconsistency between the Union and State laws, the Union Law shall prevail." "It shall be lawful for the Parliament to make law on the issue in the State list if the legislatures of two or more states pass a resolution." "Parliament shall also have the authority to carry out any international accord, treaty, or convention." "If there is a conflict between a legislation passed by Parliament and a law passed by a state legislature on the subject of the concurrent list, the law passed by Parliament will take precedence." "The Governor of a State is entitled to reserve the Law enacted by the State Legislature for consideration by the President, and the President is not obligated to offer his assent to such a bill," according to the Constitution. Apart from that, "the Union's executive power must extend to giving directives to the States and empowering Union officers to carry out matters in the State List." "If the government of a state is not carried on in accordance with the provisions of the constitution, the President has power to impose President's rule in such State, either on the report of the Governor or otherwise," according to the constitution.

Fiscal federalism refers to the division of taxation and spending between the federal and state levels. Both the federal and state governments can tax. In our constitution, the centre has more taxing power and must determine the state's share of tax revenue. The states lack the financial resources of the centre. States always seek to the centre for financial help. After the GST, I believe state governments can tax consumption of goods and services (SGST) and agricultural earnings. Our country has two houses of parliament, the Lok Sabha and the Rajya Sabha (elected



by members of state legislative assemblies). The constitution's Fourth Schedule allocates seats to States and Union Territories in the Rajya Sabha. Seats are allocated based on population of each state. However, the Rajya Sabha election is just a formality because any party can nominate anyone and that person will be elected if the party has enough members. No residency in the state is required to run for office. Basically, parties used to serve their loyalists. One complaint is that the state plays no part in altering the constitution other than ratification by half of the states. The centre has the capacity to change. But I don't think it's appropriate to criticise the federal character because we have one constitution for the whole country that is both flexible and rigid. Our Constitution is considered federal despite many unitary elements because it contains practically all federal features. A Constitution does not have to fully embrace the federal principle in order to be dubbed “federal”. The federal principle predominates in the Constitution.

#### **4. CHALLENGES**

As a result, the necessity for adaptation is emphasized more often than in other areas of constitutional law. The scope of federalism in India has shifted throughout time. The federal idea could not be implemented in India until 1967 due to the dominance of one political party in both the centre and the states. The centre became the guardian of the states, and any issues between the two were easily resolved within the party. The states couldn't reject the Union since they were all dominated by one party and had to follow the party's idiom, which isn't necessary if the opposing party ruled the states. Indira Gandhi declared an internal emergency, and when elections were held, the Congress lost for the first time, and the Janata Party took control at the centre and in several states. Ministers of Congress-ruled states acknowledged the need of federalism. Even Congress regained power in 1980. Following the 1989 legislative elections, a multiparty system and coalition administrations emerged, allowing smaller and national parties to share federal authority. The Multiparty System (MPS) helps promote the concept of federalism, but it also produces tension between the centre and the state because different parties dominate at two separate levels of government. In a coalition government, several political parties share power, and each has its own party line and ideology, which can sometimes hinder



the passage of legislation or policy. The emergence of regional parties has also hampered the central government's political power.

## **5. CONCLUSION**

Based on the above, it may be stated that the Indian Constitution is a federal constitution, with the centre and states free to make legislation in their respective fields. However, the Constitution states that the Centre has supremacy in certain cases. If any government attempts to overstep the bounds of the Constitution, an independent judiciary is vital. Since the Constitution, India's federalism notion has evolved. With the shift in the political system from one-party rule to coalition government. With the rise of regional parties and precarious coalition governments, the federation must become more flexible and accommodative. The GST is an example of a major tax reform in India's fiscal history where all states have equal tax authority. Instead of fighting, the federal and state governments should cooperate and coordinate. Occasionally, the federal and state administrations clash over political ideologies. Because it is impossible for one party to rule all 28 states, and because each state's government has its own ideology that may differ from the central government's, both governments must collaborate before making any decisions. Without the cooperation of both governments, no policy or programme can be effectively implemented. In India, we must adhere to the notion of co-operative/collaborative federalism. A government must strive for the welfare of the people in order to be elected by the people. To address the common needs of the people, the Union and state governments, along with local bodies, must cooperate and collaborate.

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