



## Federalism in Indian constitution

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### Abstract

Federalism constitutes a complex governmental mechanism for governance of a country. It has been evolved to bind into one political union several autonomous, distinct, separate and disparate political entities or administrative units. It seeks to draw a balance between the forces working in the favour of concentration of power in the centre and those urging a dispersal of it in a number of units. It thus seeks to reconcile unity with multiplicity, centralization with decentralization and nationalism with localism. By this paper, I have enquire the true nature of Indian constitution and relevancy of federalism in Indian.

**Keywords:** federal, government, political entities, concentration of power, reconcile, multiplicity, decentralization, nationalism, localism

### Introduction

#### Federal system

Federal system is a form of government in which the sovereign authority of political power is divided between various units viz. centre, states, municipalities etc. The federal state is a political convenience intended to reconcile national unity and integrity and power with maintenance of the state's rights.

A federal constitution establishes dual polity as it comprises two levels of government. At one level, there exists a central government having jurisdiction over the whole country and at the other level, there exist the regional governments, each of which exercises jurisdiction in one of the regions or administrative units into which the country is divided under the constitution. A citizen of a federal country thus becomes subject to the decrees of two governments-the central and the regional. The regional governments are called the state government as in the U.S.A. Australia or India or provincial government as in Canada.

The existence of coordinate authorities independent of each other is the gist of federal principle. This is the traditional or classical view of federalism. The exceptions are permissible provided the federal principle is predominantly retained in the constitution. In a unitary constitution, the power of government are centralized in one government i.e. centre.

#### Jurists view about Indian federal system

According to prof. Birch, federalism is the system of government in which there is a division of power between one general and several regional authorities, each of which in its own sphere is independent and coordinate with each other.

According to Where, the constitution of India is quasi federal and not strictly federal. Where view is that federalism involves that the general and regional governments should each, within a sphere, be coordinate and independent.

According to Jennings Indian constitution is a federation with a strong centralizing tendency. Austin describes it as a

cooperative federation. According to prof. G.P. Verma Indian constitution is federal in toto.

Prior to the formation of the Constituent Assembly, the Cabinet Plan emphasized on a Central Government with very limited powers to be con ned to foreign affairs, defense and Communication. In contrast, the Muslim League and the Indian National Congress did not agree to this. Despite of this, the first report of the Constituent Assembly envisaged a weak center upon the encouragement of Cripps and Cabinet Mission Plans. It was the passing of India Independence Act and the subsequent partition of India which made the Constituent Assembly to take up a more unitary version of federalism.

Mahatma Gandhi also favored the decentralized structure and preferred a panchayat/village based federation. On the the Mission hand, the then Prime Minister Jawaharlal Nehru and Dr. B. R. Ambedkar were in favor of a unitary system of governance while the Home Minister Sardar Vallabhai Patel also stood for the idea of federalism. All is well that ends well, and nally a healthy compromised was reached which resulted in a balance of power between the Centre and the State, and India was thus described as 'Unity of States' and this unity being indestructible. The structure prescribed for Union as well as State governments with a single citizenship policy rather than dual citizenship.

In India, there are two governments in existence, the Union Government and the State Government. The two governments do not subordinate with each other rather cooperate with each other while working independently. Though the Indian constitution has the traits of being a federal constitution, but in its strict sense, it is not. [2] The presence of features which are necessary for existence of a federation is quite a unique aspect of Indian Constitution but on the other side, there are provisions which give more power to the Union Government vis-à-vis that of State governments. Henceforth, the Indian Constitutional structure is a quasi-federal structure and it was made like this in the 1935 Act. This Act laid down the foundations of federal form of government in India. It

provided for the distribution of legislative powers between the Union and the provinces (the structure at that time). These provisions were laid down for promoting harmony and resolving differences between the provinces. The Act further maintained for a sense of cooperative relationships amongst the provinces. Getting into nuances of this Act, Sections 131, 132 and 133 laid down provisions for resolving the water related disputes. Basically, these provisions dealt with the problems relating to inter Province Rivers and river valleys. On the other hand, Section 135 of the 1935 Act laid down provisions for the creation of councils to deal with the coordination between the various provinces of the British India. The need for creating a cooperative relation between the provinces was felt even before the independence. The Indian Constitution has incorporated the principles in a detailed form which were actually laid down under the 1935 Act. A well designed, and more important, well-functioning system of federal governance, by virtue of its manifold benefits, plays a key role in promoting the stability and prosperity of nation.

### Essential Features of Federalism

1. Duality of government and distribution of power
2. supremacy of constitution
3. A written constitution
4. Rigidity of constitution
5. Authority of courts

### Federal Characteristics of Indian Constitution

There is a dual polity i.e. centre and state government. There is a constitution which has supremacy. Our constitution is a written and rigid constitution. It can be amended only to the extent of and in accordance with the provisions contained therein, the principal provision being article 368. Further the constitution establishes an apex court in the form of the Supreme Court to maintain the authority of the courts. The constitution does incorporate the concept of federalism in various provisions. The provisions which establish the essence of federalism i.e. having states and centre with a division of functions between them with sanction of the constitution include, among others, list <sup>[2]</sup> and <sup>[3]</sup> of the seventh schedule that give plenary power to the state legislatures the authority to parliament to legislate in a field covered by the states under art.252, only with the consent of two or more states, the competence of parliament to legislate in matters pertaining to the state list only for a limited period, under art.249, in the national interest.

### Unitary Features of the Constitution

A strong centre-The Union Government becomes all powerful in certain times like Emergencies. Article 200 of the Constitution of India demands that the States must comply with the central laws. Other features include Single Constitution Single citizenship Flexibility of Constitution Integrated judiciary Appointment of the Centre All India Services Emergency provisions

### Importance of Federalism in India

Federalism is the most relevant factor of modern constitutionalism. 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 in the midst of wide diversity in socio-cultural, economic spheres.

### Judicial pronouncement

Ram jawaya kapur v state of Punjab (AIR 1955 SC 549)

In this case the apex court observed that the federal principle or doctrine of separation of powers is not incorporated in the Indian constitution in the strict and rigid form.

State of west Bengal v Union of Indian (AIR 1963 SC 1241)

In this court s.c. said that Indian constitution is not truly federal and states are not sovereign. the exercise of powers, legislative and executive, in the allotted fields is hedged in by the numerous restrictions, so that the power of the states are not co-ordinate with the union and are not in many respects independent. The political sovereignty is distributed between the union of Indian and the states with greater weightage in the favour of the union.

S.R. Bommai v union of India (AIR 1994 SC 1918) In this case several judges have characterised the Indian federalism in different way. Ahmadi j. described the Indian constitution is a mixture of the federal and unitary elements. But other judges have expressed a more balanced view SAWANT J. has observed that democracy and federalism are essential features of our constitution and part of its basic structure. Kuldip nayar v union of Indian (AIR 2006 SC 3127)

In this S.C. observed that though the federal principle is dominant in our constitution and that principle is one of its basic feature but it is also equally true that federalism leans in favour of a strong centre or unitary power.

### Conclusion

India has adopted the federal structure as the different parts of the country were at different stages of development and it would have been difficult to control from one centre and to ensure minorities their due place. Federalism is not a static but a dynamic concept. It is always in the process of evolution and constant adjustment from time to time in light of contemporary needs and the demands being made on it. The Indian federalism is unique because of its mode of formation i.e. from union to states [creation of autonomous units and then combining them into a federation], and not vice versa. The constitution of India is neither purely federal nor purely unitary, but a combination of both. It is a union composite states of a novel type. The constitution enshrines the principle that in spite of federalism, the national interest ought to be paramount. Thus the Indian constitution is mainly federal with unique safeguards for enforcing national unity and growth.

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