

DYNAMICS OF FEDERALISM

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ABSTRACT

Federalism center around the legislative, financial and administrative relations between the Centre government and the regional governments. It aims to draw a balance between the forces of centralization and forces of dispersion of such powers. Under the federal structure, powers are divided between the two levels of government; the union and the state. The union exercises jurisdiction over entire nation while, the state having jurisdiction within defined regional boundaries. However, this pattern of relation is not static and is constantly evolving in nature.

This paper examines the concept of federalism and the changing dimensions of federalism in India, Unites States and Canada. It is witnessed that powers cannot be kept in water-tight compartments; there need to be co-operative federalism in order to maintain balance and to achieve constitutional goals.

INTRODUCTION

Federalism is an important feature of Indian constitution considering the vast population, cultural and linguistic diversity, and other varied factors. Under such circumstances, a single authority cannot be imagined to run the whole nation nor will it cover the diverse interest of the citizens. Power and authority need to be distributed for proper implementation of rules and regulations and general administration. India followed unitary system of government till 1935. The federal system was introduced through the Government of India Act, 1935 and legal use of the term

“Federation” was made. But the terms “federalism” or “federal” cannot be seen in any of the provisions of the Indian constitution. The constituent assembly used the term ‘union’ instead of ‘federal’ because it wanted to make it clear that the federation is not the result of any agreement between union and states and that it is union because it is indestructible. We do not require such a constitution which allows states to cede from union. Our constitution does not provide states the autonomy to exit the union. Under Article 1(1) of the constitution of India states: “India, that is Bharat, shall be a Union of States”.

Indian constitution is basically federal in structure and unitary in spirit. It is marked by characteristics like duality of government, supremacy of constitution, distribution of powers, independence of judiciary and rigid procedure for amendment. Federalism revolves around the legislative, financial and administrative relations between the central government and the states governments. It aims to draw a balance between the forces of centralization and forces of dispersion of such powers. Under the federal structure, powers are divided between the two levels of government; the union and the state. The union exercises jurisdiction over entire nation while, the state having jurisdiction within defined regional boundaries.

According to Dicey, “Federalism means the distribution of force of the state among a number of co-ordinate bodies each originating in and controlled by the constitution.” According to Where, in practice the Constitution of India is quasi-federal in nature and not strictly federal. Sir Ivor Jennings was of the view that India has a federation with a strong centralizing policy.

According to D.D. Basu, “The Constitution of India is neither purely federal nor unitary, but is a combination of both. It is a union or a composite of a novel type”.

The framers of the Indian constitution have constituted certain unique provisions to avoid the difficulties faced by other federal nations. It is neither fully federal nor fully

unitary. Following are the features of the Indian constitution which tend to justify its quasi federal essence.

FEDERAL FEATURES -

- A written constitution is major aspect of federal system. UK has unwritten constitution and therefore is not a federal state. USA has a written constitution and is a federal state. India derived its feature of written constitution from USA. A written constitution establishes rigidity, defines structure and powers of union and states. Centre and states derives their power from the constitution. Article 246 of the constitution read with schedule VII lists matter to be decided by parliament and respective state legislatures.
- Independency of judiciary which has been borrowed from the American constitution is yet another feature of federalism. Earlier in the case *State of West Bengal v. Union of India*¹⁰⁹, the court did not consider the federal structure. It was said that: "...A truly federal form of Government envisages a compact or agreement between independent and sovereign units to surrender partially their authority in their common interest and vesting it in a Union and retaining the residue of the authority in the constituent units. Ordinarily each constituent unit has its separate constitution by which it is governed in all matters except those surrendered to the Union, and the constitution of the Union primarily operates upon the administration of the units. Our constitution was not the result of any such compact or agreement: Units constituting a unitary State which were non-sovereign were transformed by abdication of power into a Union." But Justice Subba Rao in his dissenting opinion held that Indian constitution is a federal Constitution. Later in *Keshavanada Bharti v. State of Kerala*¹¹⁰, the federal character of the constitution was recognized as a basic feature of our constitution. Thus, independence of judiciary is an important feature of Indian federalism.

Judiciary acts a guardian and interpreter of constitutional structure and upholds constitutional values.

- Rigid procedure of amendment. Rigidity does not mean that there is no scope of amendment. It means that whenever amendment is brought, must be by following procedures prescribed under the constitution. USA constitution is a good example of such rigidity; no amendment can be brought unless ratified by $\frac{3}{4}$ of the individual states. It helps in maintain the federal structure of the constitution.
- Constitution of India is the supreme law of land. Any actions or steps against the constitutional laws are declared inoperative and void in nature. A federal state derives its existence from the constitution itself. Every authority is subordinate to the constitution whether it is legislature, executive or judiciary. Article 13(2) states that "the state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

UNITARY FEATURES -

- India provides single citizenship. This concept was taken from the UK which is a unitary state having a constitutional monarchy. Single citizenship implies that all the citizens of India owe allegiance to the Union. The Indian constitution does not distinguish between the residents of two or more states.
- Strong union headed federalism has been taken from Canadian constitution. Canada follows centrifugal form of federalism where union has been power than the states. Likewise, in India there are many provisions under the constitution which explicitly states the supremacy of union. For instance, in case of any discrepancies between the union and the state, the rule of union shall prevail. Under Article 245 "if there is any repugnancy between law made by the Parliament and the law made by the legislature of State on the subject of Concurrent list, the law made by Parliament will occupy the field". In matters

¹⁰⁹ AIR 1963 SC 1241.

¹¹⁰ AIR 1973 SC 1461.

of finance also more powers are vested with the union in our constitution.

- The residuary powers reside with the union. The matters listed in union list are to be dealt by the union. For example, matters of maintenance, armed forces, central policy, patent, copyright, minting of coin, money, etc. The matters listed in state list are dealt with the state such as of local government matters, maintenance of school, internal aid and those matters listed in concurrent list are to deal jointly by the union and the states. However, there are some matters left which are not mentioned under any list. Centre is authorized to rule on these residuary matters.

It is eminent that there are both federal and unitary features present in the Indian constitution. Thus, it is said to be quasi federal in nature. Dr. Ambedkar correctly stated that, "Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances". Indian federalism does not divide powers into watertight compartments. There need to be co-operation and co-ordination among various bodies for the better administration of the country.

Based on the inter-relation between the union and the states, the concept of federalism is divided into two major aspects i.e., cooperative federalism and competitive federalism.

COOPERATIVE FEDERALISM –

Under the cooperative federalism the Centre and the state's share a horizontal relationship in which they "cooperate" with each other in the interest of the nation and its citizens. The constitution of India has enumerated three different lists, namely the union list, the state list and the concurrent list under schedule VII. The respective list specifies matters to be dealt by the parliament, the state legislatures and by both of them jointly. Thus, union and the states are constitutional mandated to work in cooperation. However, if any matter is not covered under any of the above three list then it came under the residuary power of parliament. Cooperative federalism ensures efficiency and flexibility to our

federalism. The 73rd and the 74th constitution amendment whereby, a third tier to the government was introduced is a great example of such flexibility.

Cooperative federalism further ensures states' participation in national policies. It is through the states that the policies are implemented across the nation. State governments are authorized by the central government for promotion of its plans and policies and it is the union's responsibility to consider states demand and interests. Schemes and laws implemented must be in favor of states. The recent instance of repeal of three farm laws by the central government due to strong protest against it; is a clear manifestation of cooperation and understanding between the union and the states.

COMPETITIVE FEDERALISM –

Competitive federalism is a novel concept developed post the economic reforms of the 1990s. Under the competitive federalism the central and state governments share vertical relationship, whereas the relationship between states governments is horizontal in nature. The spirit of competitive federalism lies in the urge of individual states to do better than other states as well as the union. The states compete with each other and with the union for the individual economic growth and development.

In a free-market economy, governments' endowments, available resource base, and comparative advantages all inspire a competitive spirit. States compete with one another for funds and investment, resulting in increased administrative efficiency and development initiatives. Investors want to invest in more developed countries. The federal government allocates funds to states in accordance with how prior allocations were handled. A healthy competition attempts to improve the physical and social infrastructure of the state. Under this competitive federalism governments have overlapping responsibilities as they compete both with union and other states. It makes government more accountable and efficient in its working.

Steps towards Cooperative and Competitive Federalism –

The introduction of NITI Aayog in place of the planning commission was a significant step by the government to promote competitive “cooperative federalism”; to redefine the union-state relationship. It enhanced the states’ share in the central tax from that of 32% to 42%. States were given more autonomy to plan their policies and expenditure. It puts the burden of implementation of schemes and projects on chief ministers, to make look state attractive to investors – form of competitive federalism.

Investors pay due consideration to the states’ development and infrastructure, its environment, availability of labors, easy of doing business and other factors before investing their funds in a particular state. Therefore, many states have developed and are developing various projects and schemes; cleanliness drives to improve their state rankings and attract investors.

The new developing cooperative federalism concerns with the environment i.e., “Green Federalism”. Green federalism concerns with achieving sustainable development goals with greater coordination and cooperation between the union and the states. The subject “Environment” is mainly regulated by union and the states have restricted autonomy. The National Environment Policy 2006, made significant remark on the issue of decentralization. “Decentralization involves ceding or transfer of power from a Central authority to state or local authorities, in order to empower public authorities having jurisdiction at the spatial level at which particular environmental issues are salient, to address these issues.” Certain environmental legislations were also passed which delegates powers to states, for example- The Biological Diversity Act, under it states are granted powers with respect to approval of genetic resources for use.

The *Supreme Court in Govt. (NCT of Delhi) v. Union of India*¹¹¹ observed: “constitutional statesmanship between the two levels of governance, the Centre and the Union Territory,

ought to ensure that practical issues are resolved with a sense of political maturity and administrative experience.” This decision has a significant impact on the relationship between the federal government and the states, emphasizing on the importance of cooperation and collaboration between the two governments in order to achieve the constitutional goals enshrined in the Constitution's preamble. The people should not suffer as a result of the conflict between the two governments, namely the federal and state governments.

DYNAMICS OF AMERICAN FEDERALISM –

The concept of federation was established in the United States with the introduction of the constitution in 1787. Prior to that U.S.A was a confederation. The constitution divided power between the federal and the states. But similar to the Indian constitution, the word ‘Federal’ could not be found in the American constitution. It engulfs the principle of federalism within it like a written constitution, division of powers; representation to the states in the federal, separate constitution for the states, dual citizenship with the federal government having a supervisory power over the states. It was remarked by chief justice Chase in the case of *Texas v. White* (1869), that: “the Constitution, in all its provisions, looks to be an indestructible union composed of indestructible States”.

U.S.A has the oldest system of federalism and is ideal in way that it is progressive in nature. It has undergone through various phases from dual polity to co-operative federalism and creative federalism according to the changing time and needs. The phase of cooperative federalism began to witness more around 1930s when there was increase in cooperative activities to meet the challenges of Great Depression. A large number of grants were issued to states. Federal government encouraged more and more involvement of state and local governments by taking up new responsibilities. There was an increase in power sharing between the governmental levels. This phenomenon of increase in cooperation between states and federal governments was observed by some as “the

¹¹¹ (2018) 8 SCC 501.

nationalization of federalism” or “decent burial of federalism.” But it was clarified that cooperative federalism is not a threat to the federal structure rather it has enlarged the states’ social usefulness to a great extent.

Cooperative federalism was further enlarged into creative federalism. The major objective of the creative federalism was to aid the States and the local governments. It led to emergence of many welfare-grant programmes for development of states and the cities and promotion of inter-governmental cooperation.

DYNAMICS OF CANADIAN FEDERALISM -

The Canadian Constitution Act of 1867 outlined the division of powers between the central and the regional authorities. It mentions that the federal government has authorized power to disqualify the provincial statutes. It was viewed as “the national government is granted the power ‘to make Laws for the Peace, Order, and good Government of Canada’ (the so-called POGG power)”¹¹².

Though, significant powers were bestowed upon the federal but the judicial committee of Privy Council played an important role in providing the provinces equal powers through judicial interpretation and constitutional amendments. Around 1960s there was increase in provincial powers; the Quebec government emerged as a strong opponent of centralization. They argue that powers of federal and provinces are required to be aligned with a view of common goal. This would result into a more stabilized economy and legitimate political system. Grants were replaced by subsidiaries to the provinces. Meetings were held more frequent between the federal and provincial ministers and came to be known as “executive federalism”.

The advocacy of provincial rights paved the path for evolution in the federal structure. Further with the partition of the constitution, the Charter of Rights and Freedoms was enacted to grant equal rights and powers between the federal

and provinces. The provision was amended that to, “the general amending rule requires that any amendment proposed by Parliament be ratified by ‘at least two-thirds of the provinces that have, in the aggregate at least fifty percent of the population of all the provinces’”. These all lead to inter-governmental negotiation, wherein both the federal and provinces were considered as equal bodies.

CONCLUSION

Thus, it can be concluded that federalism is a key to regulate powers between the union and the states effectively. And that the dynamics of federalism keeps on changing according to the political, economic and societal interest of the nation. We witnessed the changing aspects of federalism in India, United States and Canada with time and situation and the common feature which can be examined is the demand of co-operative federalism between the central and the state governments. Though, the union has been allocated with wide authority as compared to the states in certain matters but it does not weaken the federal structure. There need to be co-operation and collaboration between regional and state governments to ensure the nation’s prosperity.

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