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## UNDERSTANDING THE CONCEPT OF FEDERALISM IN INDIA AND THE AUTONOMY OF A STATE

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### Abstract

Federalism is the separation of powers between the union government and the state government, i.e. delegation of authorities to different sectors. The concept of federalism in the Indian constitution is taken from the constitution of Canada. India cannot be considered as a federal state completely as it has features of both unitary form of government and a federal form of government.

In the Indian constitution, we can see the features of a union government as well as that of unitary form of government. For example, Bicameral legislation, where there are two houses, the Rajya Sabha and the Lok Sabha. Rajya Sabha represents the state and Lok Sabha represents the people in the country. Also features like Supremacy of judiciary, Separation of powers between the governments at different levels, written constitution and its supremacy indicates that India is a federal country. But there are features like single citizenship, central government control over the state government's powers, emergency proclamations etc showcase that India is not a federal country. Therefore, it is known as quasi-federal form of government.

As per Schedule VII of the Indian constitution, we can clearly see the separation of powers between the union government and state government under different lists mentioned, like, Union List, State List, and Concurrent List.<sup>2</sup> Where the union government (Parliament) has the power to legislate on the subject matters mentioned in the union list, the state government has the power to legislate on the entries mentioned in the state list and the both union government and the state government

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<sup>2</sup> M.P. Singh, V.N. Shukla's Constitution of India 794 (EBC, 2017).

have the power to legislate on the subject matters of the concurrent list, although the laws legislated by the union will prevail over state government laws.

So, the debate is still on to understand the concept of the Indian Federation and through this paper, I will try to think through the notion of the Indian Federation.

## **Understanding The Concept of Federalism in India and The Autonomy of a State**

### **British Legacy**

The British government structured government in India as per their benefit and interest. Thereby constituting various services, public institutions and structures in India. Britishers followed the concept of the police state in India where the main function was the maintenance of law and order and the collection of revenue from different people.<sup>3</sup> However, after independence, India followed the concept of a police state under the control of a strong bureaucratic administration.

Jawaharlal Nehru introduced the objective resolution in the year 1946 in the constituent assembly.<sup>4</sup> The objective resolution was accepted by the Indian political system because the resolution stated that the main objective of this resolution was to:

- Constitute India into an independent democratic, secular, republic state.
- The provinces or the other parts of India can be part of this union collectively forming a union of states and
- Lastly, all institutions will have their powers under the Indian Constitution.

### **Indian Constitution: Federal or Unitary?**

As per the objective resolution, the framers of the Indian constitution agreed on the federal form of government to be followed in India. Under a federal form of government, the powers are divided between the central authority and various regional authorities or constituent units of the country. Under the Federation, the

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<sup>3</sup> History.com, Editors; "Federalist Papers"; <https://www.history.com/topics/early-us/federalist-papers>; July 3, 2019.

<sup>4</sup> XI, Constituent Assembly Debates, 657-58.

central government is responsible for making laws on the whole country which are of common natural interest. On the other hand, the regional government or the state government are responsible for making laws for the provinces and looking after the day-to-day administration. Here both level of government enjoys their powers independently.

Contrary to the federation form of government there is a unitary form of government. Under the unity form of government, there is one level of government or units which are subordinate to the central government. Here the central government is responsible for making laws for the provisional and the local government.

After the independence through the Indian constitution, the framers declared that India was a union of states. They never used the word Federation but India follows the principle of Federation in different ways such as there are different levels of government present in India. For example, at the central level, we have the central government. Every state has their own state government. Also, there are local governments which include panchayats in the rural area and municipalities at the urban level. Each set of government has their own separate jurisdiction provided under the Indian Constitution.

### **Separation of Power**

Knowing the historical background of forming a federation form of government results in the separation of power between the central government and state government.

As per schedule seven of the Indian constitution, the powers are divided under three lists that is union list which includes the subject matters relating to national importance, such as defence, banking, communication, currency, foreign affairs etc. In the state list the subject matter of the state or local importance or include such as commerce, agriculture, trade etc. Then finally we have a concurrent list where both the union government and the state government can make laws.

While interpreting Article 371 of the Indian constitution, we can observe that although there is a division of power at the central level and the state level what is different in India is all the state-level governments do not have identical powers. Some states have special powers such as Assam, Nagaland, Mizoram and Arunachal Pradesh where to safeguard the cultural heritage or historical circumstances some special powers are given to these states.

When the power is given to the local government, it is known as decentralisation of power. Because India is a diverse country. Therefore the need for decentralisation of power was felt. Therefore under the Indian constitution, the powers are given to the local government which includes Panchayat and municipalities. The main aim behind the decentralisation of powers is that a large number of problems and issues can be settled at a lower level.

Now it is constitutionally mandatory to hold elections at the local level regularly. Also, there is a reservation for Scheduled Caste and Scheduled Tribes and Other Backward Classes and also for women in the election process for local government. Also, there is an independent state election commission created which holds elections for Panchayat and Municipal. But when it comes to accountability, both levels of government are responsible for answering.

Each government has their own jurisdiction or specific matters upon which they are responsible to legislate. The jurisdiction of each government is specified in the Constitution. For any changes to be made in the Constitution neither of the government can make changes individually. The consent of both levels of government is required. Where a dispute arises between the central government and the provisional government, the highest court has the power to dissolve the dispute between the government tyres. Here both the levels of government should agree to share the powers of rule-making.

## Entering into Federalism

There are two options through which a federation form of government can be formed. Firstly, different independent states come together, forming a bigger unit and increasing their security. The example of this kind of Federation includes the USA, Australia, Switzerland etc. In such a kind of federation, both the central government and the state government have equal powers. The second route through which a federation can be formed is where a large country decides on dividing powers between the central government and the state government. Spain, Belgium and India are examples of this kind of federal government.

Here the central government has a little more power, than the state government. For example in India, when there is a conflict between a rule made by a central government and a state government, the rule of the central government will prevail therefore indicating more powers of the central government over the state Government<sup>5</sup>.

When we see the case of Belgium, the powers are divided between the central government and the regional government but the regional government's powers were limited as they could be withdrawn by the central government at any given point in time. But a change happened in the year 1993 when the regional government was given the power and the same could not be taken away by the central government. Therefore we can clearly see that Belgium has shifted from the unitary form of government to a federal form of government.

### Features of federal form of government:

1. **Written constitution:** The Indian constitution is considered the lengthiest constitution. It contains 395 articles, 22 parts and eight schedules A federal form of government should have its own written constitution.

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<sup>5</sup> As quoted in, Govt. NCT of Delhi v. Union of India, (2018) 8 SCC 501 at para 92.

2. **Supremacy of Constitution:** The Constitution is considered the supreme law in India under Article 13 Clause 2, if any law infringes the fundamental rights of a citizen, such law would be declared void. This denotes the supremacy of the Indian Constitution.
3. **Supreme Judiciary:** The Supreme Court is the apex court in India and all the other courts are under the Supreme Court.
4. **Bicameral Legislation:** Parliament consists of two houses, that is the Lok Sabha and the Rajya Sabha who has the power to legislate over a particular matter. The power of legislation is given to the Lok Sabha and the Rajya Sabha. In a federal form of government, there is bicameral legislation, like in the USA, where there are House of People and a House of Lords.

Now India also has some features which are of non-federal form of government like:

1. Division of power is not equal, as stated above, the central government have power over the state government in a number of situations.
2. **Single Constitution:** In the USA, there are two different constitutions that is first been the Constitution of America and it states have their own constitution through which they run the state or regional.
3. **Flexible constitution:** Under Article 368 of the Indian Constitution, the constitution can be amended through a simple majority, special majority and ratification. The policy is that the Indian constitution is not rigid but is flexible.
4. **Single citizenship:** In a federal form of government the citizen enjoys a dual form of citizenship. But in India, we have only a single citizenship that is the citizen of India. No separate state citizenship is given to an individual.
5. **Equal representation in the Parliament:** In the Parliament of India both houses do not have an equal presentation, besides the presentation is based on the proportion of the population in a particular state.
6. **Emergency provision:** The power to impose an emergency is given to the central government. Even when a state emergency is to be imposed, permission is to be taken from the President and the President can impose emergency if he thinks fit.

#### **Federalism: Constitutional Debate**

- Article 249 provides that the central government can make laws on the state matter where the subject matter is of national interest.

- Under Article 250, where an emergency is to be imposed only the central government has the power to do so under Article 352.
- Where two or more states agree and give powers to the central government to make power.
- Where the state government is handing over the power to the central government.

Therefore, now after seeing all the features we can say that India is not completely neither a federal government nor it is a unitary government No it is going on a trip with their food. Therefore, the Indian government is known as a quasi-federation, which has features of both the unitary form of government and the federal form of government.

Dr Subhash Kashyap stated that the preamble of the Indian Constitution is the soul of the Constitution. He said, “if the Constitution is the body then the preamble is it’s soul.”

### **India: Secular and Socialist State**

In the Western countries secularism means division between the people on the basis of relation but when we see the concept of secularism under the Indian space, it means equality to all the religions; that is to say ‘sarva dharma sambhav.’ Every individual has a right to choose their religion and practice or propagate any religion under Article 25 of the Indian Constitution. It never grants any special privileges to a particular religion, thereby creating discrimination on the basis of religion.

The word socialist means that all the individuals should have recourse to the physical resources of the country that is to say there should be equal distribution of the national resources within the country, irrespective of the fact that where they have been produced.



## **Social Justice**

The term social justice means that there should be no discrimination on the basis of religion, caste, sex, place of origin, creed etc. The same can be observed under Article 15 of the Indian constitution where any discrimination on the basis of religion, caste, creed, sex, place of birth etc is prohibited.

But there is a twist to this concept. The government have a special power whereby they can formulate laws for the protection of backward class people scheduled Tribes, scheduled castes or women.

In the British India, India was a unitary form of government. However, after the independence, India followed a federal system of government. The present federal system is based on the Government of India Act 1935 and over a period of time it has evolved that is to say a federation is not a static process but a dynamic concept, the meaning of federation expands to the growth of time.

## **Judicial Supremacy**

The Constitution has arrived at a compromise between the judicial supremacy under the American constitution and the supremacy of the Sovereignty, as per the UK, In India, we follow the rule of law, and the rule of law covers the administrative action of the judicial activities. The power of the court is not only to determine the constitutionality of the law but also to examine the procedural part. On the other hand, the court has the power to declare any law passed by the legislature as violating the provisions of the Constitution.

## **Citizenship**

In a federation form of government, the citizens are provided with dual citizenship. First being the citizen of the country. Second, be a citizen of the federal provinces or the state. For example, in the USA, a citizen has citizenship of a country that is American citizenship at the same place that individual will hold citizenship of a state.



Like the US, India does not have a system of dual citizenship or separate citizenship. A single citizenship is provided to the citizens which is the citizenship of India. Only an Indian citizen can be a president of India as per Article 66 and an Indian citizen can be a vice president of India. Similarly for being a judge of the Supreme Court, it should be a person of Indian citizenship.

### **Conclusion**

After going through the features of unitary government and federal government and applying the same in the Indian scenario we can conclude that India is a quasi-federal country having features of both the unitary form of government and federal form of government. In the case of the State of West Bengal vs. UOI<sup>6</sup>, the court held that the Indian constitution is not truly federal as the states are not sovereign. The central government have little control over the state government. Also in the case of Satpal vs. State of Punjab<sup>7</sup>, the court expressed the view that there is combination a of unitary features and federal features in the Indian constitution. The Supreme Court in the case of the State of Rajasthan vs. UOI, it characterized the constitution is more unitary than federal. Therefore, even after examining these cases, we can draw an inference that India is a quasi-federal nation.

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<sup>6</sup> 1963 AIR 1241, 1964 SCR (1) 371.

<sup>7</sup> AIR 1970 SC 655.

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