



## Political Dimension of Indian Federal System: An Evaluation



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### Abstract

Indian federalism is a blend of formation of federations of both the existing modes of federations. The prevailing situations at the juncture in the country forced the Constituent Assembly to make India a federation with the strong central government. The constitution makes adequate provisions for a true federation to meet out all the exigencies. In practice, it reflects both federal and unitary governments' features as per the demand of the situations and has experienced, the bitter taste of emergency and coalition government. The decisions of the Hon'ble Supreme Court also contributed to clearing the grey areas. Undoubtedly, the constitution is a fundamental document to provide the guidelines and limits to government. Its success and applicability ultimately depend upon the mental make-up, honesty, and commitment of the persons at the helm of the affairs. The present write-up comprises of salient features of Indian federation, its historical profile, and the concluding remarks.

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### 1. Introduction

India is a large country with wide socio-cultural, regional, linguistic, and geographical diversities. Such a diverse and vast country cannot be administered and ruled from a single Centre, hence opted for the federal system. Federalism is a remarkable vehicle for accommodating and managing diversities, multiplicities, and pluralities. It refers to a political system wherein the Central government and constituent States jointly share the powers of government within their respective areas distributed under the supreme authority of the Constitution. It is a pragmatic political organization aimed at maintaining a compromise between the states, which wish to come together under the authority of Union and at the same time retain their autonomy, diversity, and identity<sup>1</sup>. It is the most natural form of

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governance in pluralistic setting. Therefore, founding fathers of Indian Constitution who were deeply concerned about ensuring the unity and integrity of country made no exception. The existence of numerous groups, with diverse legitimate interests within the political system, left no alternative for them, but to opt of federal setup<sup>2</sup>. The Constitution explicitly incorporated a federal structure, with States as subnational entities having reasonable autonomy.

A federation can be formed in two ways, that is, bottom-up or centrifugal wherein peripheral units integrate to form a whole (like the USA) with virtually sovereign provincial units ceding power to form Union, another one is top-down or centripetal with a strong unitary structure carving out federated units by granting them autonomy to promote their regional interest and better management. From within the above two models of the federation, we adopted the later one with strong Centre because of the contextual circumstances of the 1940s and eventual partition of India-Pakistan led to deep-seated apprehension regarding the future existence of Indian Republic. As the Indian federalism is in operation since the last 5 and a half decades, hence a modest attempt has been made in the present write up to assess its basic features and nature from political aspects. How and to what extent the party system and mandates for general elections have affected the functioning and practical aspect of Indian federalism. Besides, the challenges and suitable suggestions have been given in this paper.

## 2. Materials and Methods

The present study is historical and analytical in nature based on the primary and secondary data collected from various sources particularly the constitution of India and commentaries on it by the dozens on the topic. Besides, the continuous observation and understanding of the authors regarding the functioning of the Indian federal system is another major source of information on the present paper.

### *Features of Indian Federalism*

A federation establishes such a governmental machinery where two different types of governments- central and provincial levels not only exist but also work in harmony and independently largely. Indian federalism is unique having features of both the centripetal and centrifugal systems and a blend of the two prevailing systems. Indian federal system has the following features:

- 1) **Written Constitution** - The most important feature of a federation is that its Constitution should be written one so that both the Union government as well as the State can refer to that as and when needed. The Constitution of India is a written document comprising of 395 articles, 24 parts, and 12 schedules. It is the most elaborated Constitution in the world. It establishes the supremacy of the Constitution and both the Union and the States derive powers from the Constitution as to be independent in their spheres of governance.
- 2) **Rigid Constitution** - The procedure of amending the Constitution in a federal system is normally rigid. Indian Constitution provides that some amendments (Art. 368) require a special majority. Such amendment has to be passed by a majority of total members of each house of the Parliament as well as by a two-thirds majority of members present and voting therein. However, in addition to this process, some amendments must be approved by at least 50% of the states. After this procedure, the amendment is signed by the Head of the State i.e. the President. Since changes related with federal aspects take place by special majority and ratification by half of the States, Indian Constitution has been rightly called a rigid Constitution.
- 3) **Division of Powers** - In our Constitution, there is a clear division of powers so that the States and the Centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of the other. Our Constitution enumerates three lists viz. the Union, the State, and the Concurrent List. The Union List consists of 100 subjects (originally 97) of national importance such as Defense, Railways, Post and Telegraph etc. The State List consists of 61 subjects (originally 66) of local interest such as Public Health, Police etc. The Concurrent List has 52 subjects (originally 47) important to both the Union and the State such as Electricity, Trade Union, Economic and Social Planning etc. The residuary powers to legislate on subjects not mentioned in any of the three lists are given to the Centre.
- 4) **Bicameralism** - The Constitution provides for bicameral legislature at the Union level consisting of an Upper House (Rajya Sabha) and Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian federation, while Lok Sabha represents the will of the people of India as a whole. However, Unlike the USA,

states are not given equal representation in Rajya Sabha in India. Indian states are given representation in it on basis of their population. That is why states like UP, Bihar (before bifurcation), Maharashtra, West Bengal are given more seats than GOA, Mizoram, Manipur etc.

- 5) Independence of the Judiciary - Another very important feature of a federation is an independent judiciary to interpret the Constitution and to maintain its sanctity. The Supreme Court of India has the original jurisdiction (Art. 131) to settle disputes between the Union and the States or between the states. It is the last interpreter of the constitution and can see the validity of legislation passed by the Parliament and the State Legislature or the actions of union & state governments. It can declare a law or an executive order as unconstitutional hence null and void if it contravenes any provision of the Constitution under the power of judicial review.

### *Is India a Quasi-Federation?*

Federalism in India has evolved to suit Indian context, which is typical in nature, hence it is a blend of both unitary as well as federal features. While the basic federal features are inherent in the Constitution, the rest of the features has been suitably modified to suit the Indian requirements. i.e. traumatic partition, centrifugal tendencies, pluralistic society, illiteracy and ignorance, chronic poverty and unemployment etc.. Many of the features were toned down to give fundamental importance for the preservation of unity and integrity of the country. Hence, Constitution of India deviated from a traditional federal systems like USA, Switzerland, and Australia and incorporated a large number of unitary provisions, which makes the Centre have greater power than States, tilting the balance of power in favors of Centre on the pattern of the Canadian constitution.

Article 1 of the Constitution reads India, i.e. Bharat shall be the Union of States, and the term federation is not used at all. It implies that Union has not been brought into existence due to an agreement between the States rather to a large extent it implies that States have been created by the Constitution. The States do not have the right to secede from the Union. Clarifying the term used before the Constituent Assembly, Dr. B R Ambedkar pointed out that Indian Union is neither a result of any contract between the union and indestructible states nor the states have any right to secede. Moreover, the Union has the right to create new States by altering, adding or reducing territorial boundaries of the states. In this sense, India is rightly described as 'an indestructible Union of destructible States'.

The Centre appoints the Governor of the States and may take over the administration of the State on the recommendations of the Governor or otherwise. In other words, s/he is the agent of the Centre in the States. The working of Indian federal system clearly reveals that the Governor has acted more as Centre's representative than as the Head of the State. This office has been very much misused by Central Governments to serve their stakes. The Governors themselves toed to the wishes of political masters at the Centre causing abysmal fall of their constitutional authority. This enables the Union Government to exercise control over the state administration. Moreover, the Governor con forwards any bill passed by the state legislature to the consent of President, which abrogates state autonomy.

The equality of units (states) in a federation is best guaranteed by their equal representation in the Upper House of the federal legislature (Parliament). However, this is not applicable in case of Indian States. They have unequal representation in the Rajya Sabha. In a true federation such as that of United States of America every state irrespective of their size in terms of area or population, it sends two representatives in the Upper House i.e. Senate. In case of disturbances in any state or part thereof, the Union Government is empowered to depute Central Forces in the State or to the disturbed part of the State.

In addition, all important appointments such as those of the Chief Election Commissioner, the Finance Commission, the Comptroller and Auditor General, Judges in the Supreme Court and High Courts etc. are made by the Union Government. Besides, there is single citizenship. There is no provision for separate Constitutions for the States. The States cannot propose amendments to the Constitution and such amendments can only be made by the Union Parliament. In order to ensure uniformity and to maintain minimum common administrative standards without impairing the federal system, All India Services such as IAS and IPS have been created which are kept under the ultimate control of the Union. The federal principle envisages a dual system of courts, but in India, there is unified judiciary with the Supreme Court at the apex and the gross use of SLPs under Article 136 has just ruled out the requirement of NOC from High Court for Appeals against its decisions.

In financial matters too, the States depend upon the Union to a great extent. The States do not possess adequate financial resources to meet their requirements. No State is financially self-sufficient as each one is dependent on Centre for financial grants, which cut at the very roots of State autonomy. Even the critics have called Indian states

as glorified municipalities due to their poor financial positions. The functioning of Finance Commission and Planning Commission has further eroded the autonomy of States because, in the name of real and supposed needs of planned development, it has expanded the authority of Union Government often in total disregard of federal intentions of Constitution<sup>3</sup>. The Constitution of India establishes a strong Centre by assigning all important subjects to Centre as per Union List along with residuary power to legislate. Moreover, during emergencies – national (Art. 352), state (Art. 356) and financial (Art. 360), the Central Government becomes all powerful and the states go into the total control of Centre. It converts the federal structure into unitary one.

It is clear that there is a tilt in favor of Centre which has promoted the Constitutional expert and scholar K.C. Wherein to term the Indian Republic as a 'quasi-federal'. He remarked that "Indian Union is a unitary state with federal features rather than a federal state with subsidiary unitary features<sup>4</sup>". Whereas Morris Jones described it as 'cooperative federalism' and also as bargaining federalism<sup>5</sup>. Ivor Jennings described it as "Federation with a strong centralizing tendency<sup>6</sup>". However, Granville Austin aptly summarized and analyzed by saying that though the Constitution has created a strong Central Government, it has not made the State Government weak and has not reduced them to the level of administrative agencies for execution of policies of Central Government. He described the Indian federation as "A new kind of federation to meet India's peculiar needs<sup>7</sup>" D D Basu called it both federal and unitary as per requirements and situations.

### 3. Results and Discussions

Indian federalism has gone through various phases in the last 6 and a half decades. The detail is as under:

- 1) *Phase I (1947-1967)*- Concentration of powers in hands of Central government did not create serious conflicts in early years of functioning because of single-party rule both at the Centre as well as most of the States, that is, the Indian National Congress (with few exceptions, like Kerala and West Bengal). Many potential Inter-State or Centre-State conflicts were resolved within the party. In spite of centralization and unitary bias of the Constitution, States were largely optimistic and hopeful about economic progress of the country. Political leadership at the apex level was democratic in nature and was able to articulate the collective needs and aspirations of the people. Institutions like Planning Commission which demonstrated a centralizing trend were started. But this period was not solely dominated by the trend of centralization. One of the major democratic movements in the post-independence period, the movement for the formation of linguistic states took place in the fifties which resulted in the formation of linguistic States in 1956. This laid the basis for the assertion by States for greater powers. So Union government followed it up with the institution of National Development Council (NDC) to ensure that formal and participation of State Government happens in the national planning process. All in all, this phase was largely homogeneous and relatively conflict-free.
- 2) *Phase II (1967-1975)* - By the mid-sixties, centralized planning had started to show structural and operational flaws. State governments were becoming increasingly restless about the pace of economic progress and social development. The year 1967, was a watershed moment when single party rule came to an end. The Congress party for the first time lost in nine states and non-Congress (SVD) state governments came into being including Left-oriented United Government in West Bengal and Kerala. A regional elite which emerged in the States were no longer willing to accept the overall domination of the Centre and demanded key concessions to State governments and restructuring of Centre-State relations. At the apex level, there was a change in political leadership and the then Prime Minister Smt. Indira Gandhi started making attempts and initiated reforms which were seen as efforts to consolidate Central domination over the State. Article 356 was now increasingly used for political score-settling and toppling rival state governments. The unitary tendencies were reinforced with the institution of Governor now becoming more of an agent of Centre. The post of Governor became largely politicized. There partisan and selfish acts have reduced the Indian federalism into a mockery of State autonomy. This phase was largely characterized by the combative relationship between Centre and State.
- 3) *Phase III (1975-1977)* - The previous phase ultimately culminated in the declaration of emergency due to internal disturbance. The country got transformed into a unitary set up and into a near authoritarian regime. The 42<sup>nd</sup> Constitutional Amendment of 1976 was enacted which resulted in fundamental changes in most of the parts of the constitution. The Centre sought to transfer subjects from State list into Concurrent list whenever an opportunity presented itself. Some of these actions and omissions reached zenith during an internal emergency.

- 4) *Phase IV (1977-1989)* - With the change of leadership in the post-emergency period there was also changed in the party and many of the measures taken during emergency phase were revised by the 44<sup>th</sup> Constitutional Amendment Act, 1978. However, the experiment was short-lived and after a break, the single-party rule was restored. From 1985 onwards, the then PM initiated a new trend by talking of decentralization. He started holding direct conferences with District Magistrates / Collectors which was not well received by the States which treated this as an unwarranted interference in their domains. In addition, Panchayati Raj was talked about which was perceived by the State government as an attempt to bypass federal character and create a strong local government. In the latter part of this phase, parties with regional agendas (e.g. Assam, Andhra Pradesh, and Punjab) came to power in some states. They started demanding greater autonomy to the states and were against the use of Article 356 and politicization of Governor's post. The Centre responded by appointing Sarkaria Commission which was to go into the entire gamut of the Centre-State relationship and give its recommendations.
- 5) *Phase V (1990-1995)* – Since the 1990s India appears to have become more federalized than before. The political contestation between the forces of centralization and federalism did not result into the clear-cut victory of either side. While there has not been a substantial change in the unitary features of Constitution and financial system, the political parties have evolved on federal lines. The end of one party (Congress) domination by late eighties created an atmosphere to check the rampant centralization. After a brief period of instability, a coalition government came to power at Central level. Regional parties had played an important role both in the formation as well as in the sustenance of Central government. For the first time in 1989, a National Front coalition government headed by Mr. V.P. Singh, which had major regional parties like TDP, DMK, and AGP, took office at Centre. This government took certain steps to strengthen federal principles by setting up an Inter-State Council (ISC) and by promising to rejuvenate NDC to make it an effective forum for Centre and State to discuss policy issues. In the early nineties, with coming up of Minority Government, New Economic Policy was brought out, which made fundamental changes in the economy and heralded the beginning of Liberalization, Privatization, and Globalization (LPG) phenomenon. However, the States were hardly kept in the policy loop since much of the reforms were macro-oriented and did not involve the active participation of State governments. This phase was also momentous. The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments which introduced 11<sup>th</sup> and 121<sup>st</sup> schedules in the constitution for Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) respectively established the third tier of federalism in the country. This phase saw the beginning of bargaining nature of Indian federalism. The decision of Hon'ble Supreme Court in *S. R. Bommai vs Union of India* case (1993) proved a milestone in center-states relations particularly regarding the imposition of Article 356. The court ruled that the powers of the President regarding the imposition of Article 356 (dissolving the State Assembly) are under the judicial review and the Assembly will be kept into suspended animation for a period of two months until it is ratified by the Parliament, failing which the Assembly will be restored. Moreover, the court can seek the material facts behind imposing such proclamation rather going into the controversies of the material. If the court strikes down the proclamation then it has the power to restore the dismissed state government to office [JT (1994) 2SC 213].<sup>8</sup> this decision has made difficult to impose President's rule in rival states and equally difficult to sustain it, hence its misuse for political gains is minimized.
- 6) *Phase VI (1995 onwards)* - Coalition government seems to have become the norm at the Central level and national politics seems to have become sum total of State / Regional politics. Formation of United Front Government and in all subsequent Governments- 1998, 1999, 2004 and 2009 endorses the coalition regime. Strong regional parties asserted themselves and obtained not just representation but also key portfolios at Union level. This phase was also marred by rising regional inequalities (Bharat Vs India) due to LPG and Centre had to respond by initiating regional development programmes to ensure balanced regional development. In 2014, the NDA led by Sh. Narendra Modi again formed a coalition government in which coalition partners are in a weak position as compared to the BJP. Moreover, direct conflicts have been noticed between the union government and the states particularly the PM and the State stalwarts. Even some CMs skipped from the meeting of PM and the Congress Party advised its CMs not to attend the meetings of Prime Minister (Narendra Modi) as the latter is letting them down. Moreover, Sh. Modi has not the stature of a national leader as he never remained a union minister or leader of opposition in Parliament; hence his acceptability as a PM was not easily digested by the opposition particularly by the Congress Party.



The Uttarakhand High Court quashed President's rule in the state imposed by Modi led the NDA government on the eruption of defection in the ruling Congress Party. The High Court ruled that the Harish Rawat's government has to face floor test on April 29, 2016. The Chief Justice-led Division Bench ruled, "The soul of the matter is whether it is open to the Central Government to get rid of State Governments, supplant or uproot democratically elected government, introduce chaos, undermine confidence of little man who stands with a white paper to cast his vote braving snow, heat, and rain... What is at stake here is not just the petitioner's government (Rawat), but democracy at large." The court further observed, "Toppling a democratically elected government breeds cynicism in the hearts of citizens who participate in the democratic system and also undermines democracy and the foundation of federalism".<sup>9</sup> Thus the High Court has for the first time revived a dismissed government in any state in the country and the experts are of the opinion that this verdict will strengthen the democracy and federalism in the country. In the past, the High Courts and the Supreme Court had struck down imposition of President's rule in the various states, but refused to restore the dismissed State Governments in view of subsequent developments such as completion of fresh elections that came in the way of any effective court order.<sup>10</sup> However, the Centre Government challenged this decision in the Hon'ble Supreme Court on the very next day of its pronouncement. The Supreme Court restored President's rule in the state till 27-04-2016 when the Centre assured that it would not try to install BJP led government in the state.<sup>11</sup> However there was a perception that Centre is suffering from 'stepmother syndrome' and only those States whose parties form part of Central Government are being benefited. The compulsion of second generation reforms has made both the Centre and the State come together so as to harness the potential of LPG and combat the crisis and challenges put forward by complexities of modern time. Today the Centre is also in a greater engaging mood with the States since it is the State government's performance which will ultimately ensure the success of policy initiatives taken by them. Also, changes in contours of law and order are forcing Center and State to find consensus-based solutions so as to take a united and an effective stand and adopt a multipronged strategy to deal with problems like poverty, illiteracy, nasalism, terrorism, communalism etc.

#### 4. Conclusion

In a federal system of government, there is a need for clear-cut division of power between the Union and the States. This also requires a written and rigid Constitution and an independent Judiciary to decide disputes between the Union and the States. Though the Indian Constitution has all such features of a federal state, it is indeed difficult to put the Indian Constitution in the category of true federations. The framers of the Constitution have incorporated certain non-federal features in it such as single citizenship, single judiciary, a strong Centre, appointment of the Governor by the President, unequal representation in the Rajya Sabha and so on. All these indicate a tilt towards strong Centre and the States have to work in close co-operation with them. The Constitution is federal in form but unitary in spirit. The Centre has been assigned a dominant role which became necessary keeping in view the dangers to the unity and integrity of the nation. Therefore, there are provisions for co-operative federalism.

The working of the Indian Constitution over the years indicates that relations between the Centre and the States have not remained very cordial. The States have started demanding more autonomy. Various commissions have been appointed by the Government of India to review the Centre-State relations. The Sarkaria and M. M. Punchi Commissions examined the problem and recommended changes in the area of federal, legislative, administrative, and financial relations. President Pranab Mukherjee while addressing the two days Conference of Governors, underscored the necessity of those occupying constitutional position to uphold the sanctity of document stating the country grew in strength on account of steadfast adherence to the principles enshrined in our constitution. This reference came to the backdrop of recent controversy over Arunachal Pradesh Governor JP Rajkothwa's action (of imposing President rule in the state despite majority) that is now being heard by the Supreme Court. The Governor he said, can play an inspirational role to ensure active cooperation in implementing successfully schemes like Make in India, Startup India, Smart city mission and Swachh Bharat Mission requiring close partnership with state governments so that goal of inclusive development can be attained. The President said that 2015 was a difficult year during which the country faced challenges from the global economic slowdown, climate changes, and internal and external security.<sup>12</sup>

In contemporary times, for all practical reasons, the concept of State has undergone a fundamental transformation. Now, we have adopted a calibrated and holistic approach. If growth has to be integrative and inclusive, both Centre and State need to establish congruency of goals and strategies. Isolated efforts however well-intentioned will be inadequate in solving the problems. Today, India is poised for takeoff with its huge social capital

and demographic dividend at their disposal. However to tap it, it requires synergy to be established between Centre, State, and Local governments by collaborative efforts and thus, there is no a fundamental dichotomy between the Centre and the States. Both can coexist with each other. The need of the hour is to have strong governance, which will ensure that policies are translated into action. Moreover, for the smooth functioning of democratic institutions healthy convention and political culture, statesmanship and vigilant citizenry are equally important and needs to practice.

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*Statement of authorship*

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