

An Analysis of Nature of Indian Federal System

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I. INTRODUCTION

The Constitution of India provides for a federal system with certain non-federal features to maintain the unity of the country and to ensure the economic development of whole of the country. The Constitution of India describes India as a Union of States, because the formation of the federation is not a result of an agreement between Union and States, and the States have no right of separation from the Union. As Article 1 provides, "India, that is Bharat, shall be a Union of States".¹ The Indian federal system is a unique system in its origin, structure and functioning. We can describe the unique features of Indian federal system as follows.

First, the Constitution of India has been framed by the members of the Constituent Assembly, which were representing the people of India. They also adopted the Constitution on the behalf of the 'people of India'. Thus, the Union of India cannot be said to be the result of any compact or agreement between autonomous States.

Second, the Constitution of India lays down the constitution for the States as well, and, no State, except for Jammu & Kashmir, has a right to determine its own Constitution.

Third, the States have no sovereign entities and they have no right to separation from the Union of India. However, the Union's Parliament is competent to form new States, in changing their names or boundaries. Thus, the Union of India is not destructible but the States are destructible Article - 4 (2). The Constitution does not require that consent of the Legislature of the State concerned is necessary for enabling Parliament to make such laws; only the President has to 'ascertain' the views of the Legislature of the affected States to recommend a Bill for this purpose to Parliament. Even this obligation is not mandatory insofar as the Legislature expresses its views if at all.

Fourth, the residuary powers are assigned to the Union's Parliament by the Constitution. Article- 248. The distribution of powers under schedule VII of the constitution is in favour of the Union Government. The Union List consists of 99 items; it is not only the longest, but also covers all the important items. The State List consists of 61 items of local importance, while the Concurrent List consists of 52 items of common interest.

Fifth, the Union's Parliament is given power to legislate the subjects of the State List under certain circumstances: concerning national interests, on the demand of two or more state assemblies, on implementing the international treaty or agreement, and when emergency is imposed under Articles 352 and 356.

Sixth, there is provision in the constitution for the exercise of control by the Union both over the administration and legislation of the States. Legislation by a State shall be subject to disallowance by the President, when reserved by the Governor for his consideration (Article 201). The Governor of a State is appointed by the President of, the Union and holds office 'during the pleasure' of the President, (Articles 155-156.)

Seventh, in the matter of amendment of the Constitution, the part assigned to the State is minor, as compared with that of the Union. Except in a few specified matters affecting the federal structure, the States need not even be consulted in the matter of amendment of the bulk of the Constitution, which may be effected by a Bill in the Union's Parliament, passed by a special majority.

Eighth, there is no theory of 'equality of State rights' underlying the federal scheme in the Constitution, since it is not the result of any agreement between the States. Under the Constitution, there is no equality of representation of the States in the Council of States.

Ninth, the Indian Constitution does not introduce any double citizenship, but only one citizenship, viz., - the citizenship of India, and birth or residence in particular State does not confer any separate status as a citizen of that State.

Tenth, the Constitution provides for the creation of All-India Services, and they are common to the Union and the States (Article 312). A member of an All-India Service can be dismissed or removed only by the Union Government even while serving under a State.

Eleventh, the Supreme Court stands at the apex of integrated system of judiciary. It will administer both the Union and State laws as they are applicable to the cases coming up for adjudication. There is also uniformity in fundamental laws, civil and criminal, throughout the country.

Twelfth, the Chief Election Commissioner and other Election Commissioners are appointed by the President (Article-324). The Commission conducts supervision and control of the elections not only to Parliament, but also the State Legislatures.

Thirteenth, The machinery for Accounts and Audit (Article-148) is also integrated. The Indian Audit and Accounts Service is a Central Service; they audit and control the accounts of the Union Government and the State Governments.

Fourteenth, the Constitution of India empowers the Union to entrust its executive functions to a State, by its consent, and a State to entrust its executive functions to the Union, similarly.

Fifteenth, when a Proclamation of Emergency under Articles 352, 356 and 360 is made, the Union gets power to give directions to the States on all matters, and the Union's Parliament is empowered to legislate on State List.

Sixteenth, the Union Government is competent to issue directions to the State Governments to ensure due compliance with the legislative and administrative action of the Union Government (Article 256-257), and to supersede a State Government which refuses to comply with such directions (Article 365).²

Seventeenth, the provision for giving grants-in-aid and loans from the Union Government to the State Governments provides the opportunity to Union to influence the States.

Eighteenth, the Constitution vests powers in the Union Government and its agencies to resolve conflicts that arise between the Union and the States, e.g., the Finance Commission (Article 280), the Inter-State Council (Article 263), etc.³

There are two aspects relating to Indian federal theory and practice:

A. Legal Aspect of Indian Federal System

The legal and constitutional experts have two opinions about the nature of the Constitution of India. The first opinion is that the Constitution of India is a federal Constitution. But the second opinion puts forth that the Constitution of India is a unitary Constitution.

The First Opinion - Indian System is a Federal System

The first opinion is that the Indian system is a federal system. 'The constitutional experts Charles H. Alexandrowicz, R.L. Watts, and Rasheeduddin Khan had supported this opinion. Charles H. Alexandrowicz describes that "India is undoubtedly a federation in which the attributes of sovereignty are shared between the Centre and States".⁴

R.L. Watts observed that in practice the Indian system has the federal character. The actual working of the Indian federal system since 1950 has reflected the simultaneous development of strong centralizing and decentralizing tendencies. The predominance of the centrally dominated Congress Party in both central and state politics, the dedication to economic and social planning under center's direction, the administrative hegemony of the Indian Administrative Service, the willingness of the Union government on a number of occasions to invoke its emergency powers, and the emphasis upon national defense in the face of external threats from Pakistan and China, have fortified the authority of the Union government. On the contrary, at the same time there have also been evidences of powerful centrifugal tendencies. The Union government has to depend upon the states for much of its administration and in the implementation of economic policies and programmes. There has been a pressure on the Union for a nation-wide reorganization of states' boundaries, and for postponing the imposition of a single common national language. Moreover, the role of state governments in decision making has increased and they play important role in carving out the central leadership. The general effect of the interaction of the two conflicting and highly dynamic forces for integration and regionalism since 1950 has thus been to intensify in practice the federal character of politics in India.⁵

Rasheeduddin Khan observed about the Indian system that India is not a nation, in the conventional sense of the term. India is a Federal -Nation, a political federation of the Union type, that is, a system in which the structural-functional balance is in favour of the Centre. This federation has been superimposed by the Constitution over a classic socio-cultural federalism whose survival and continuity in the duration of time, continental dimension, social complexity, and cultural diversities make it the world's oldest, largest, and most persistent plural society.⁶

The Supreme Court also expressed its view in the S.R. Bommai Case (1994) that the federalism is a basic feature of the Constitution of India. B.P. Jeevan Reddy and S.c. Agrawal, JJ., held that "The federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle-the outcome of our own historical process and a recognition of the ground realities."⁷

The experts describe the federal features of the Constitution of India as follows:

First, the Constitution of India sets up a dual polity with the Union Government at the Centre and the State governments at the periphery. Each government is endowed with sovereign powers to be exercised in the

field assigned to them respectively by the Constitution. Thus, Indian federal system is territorial federal system. Moreover, the state governments have no right for separation from the federation in any circumstances.

Second, the Constitution of India is a written document. The Constitution provides the distribution of powers between the Union and the State governments. The Union and State governments cannot intervene in each other's jurisdiction.

Third, the Constitution of India is a rigid Constitution. The Union Parliament cannot amend the basic provisions of the Constitution by amendment process arbitrarily. The Parliament can amend the basic provisions of the Constitution with the positive approval of more than one half State Legislative Assemblies.

Fourth, the Schedule VII of the Constitution provides for distribution of the powers between union and state governments. The Union Government can legislate in respect of 99 subjects, the States in respect of 61 subjects, with a concurrent jurisdiction in respect of 52 other subjects. However, the residuary powers are given to the Union Government and not to the state.

Fifth, the Supreme Court is a guardian of the Constitution and has supreme power of interpretation of the Constitution. It has also the judicial review power. This is the highest Court of appeal in the Union-State jurisdictional conflicts.⁸

It is obvious from the above arguments that the Constitution of India fulfils all requirements of federal Constitution. In fact, the Constitution of India is a federal Constitution with a strong Centre.

The Second Opinion - Indian System is not a Federal System

The second opinion is that the Indian system is a non-federal system. The constitutional experts K.C. Wheare, Ivor Jennings and K. Santhanam had supported this opinion.

K.C. Wheare described the Indian system as a quasi-federal. The Constitution of India has federal features though it does not give rise to a federal Union. There is, however, a division of legislative powers between the Union's Parliament and the State Legislative Assemblies. This division of powers can only be changed by the consensus between the Union's Parliament and more than one-half of the State Assemblies. On the contrary, the powers granted in the Union List and in the Concurrent List cover almost all subjects of importance and leaving out for the States things of subordinate concern. The Union's Parliament can create new states; it can increase or cut short the area of any existing state, and can change the boundaries or name thereof. Thus, the very existence of the states depends on the Union's Parliament. There are also emergency provisions which enable Union government and its parliament to convert the union of India into a unitary state, if it considers the situation warrants it. If the Constitutional machinery fails in a State, then the President of India is empowered to direct that State government, in effect, to be taken over by the executive and parliament of the Union. And there are other similar powers of intervention and directions in the Constitution which reduce the independence of the States. It can only be concluded that the Constitution of India is quasi-federal. It is to be noted that the powers of reorganization and intervention possessed by the Union have been exercised. In practice For example, the States' boundaries were reorganised primarily on linguistic lines in 1956; a new State of Andhra Pradesh was created in 1953; the Union has usually dismissed the elected governments of various States, e.g., Assam (1958), Kerala (1959), when China invaded India in 1962 a Proclamation of Emergency was issued by the President and approved by the Parliament of Union. It seems reasonable to conclude that in practice the government, like the Constitution of India is quasi-federal, not strictly federal.⁹

K. Santhanam has called the Indian system Paramount federation, in which the Union had paramount powers over the States.¹⁰ Ivor Jennings also described the Indian system as, "A federation with a strong Centralizing tendency."¹¹ These experts emphasized on the non-federal features of the Constitution of India as follows:

First, the Union Government is competent for the formation of new States, changing their names or boundaries. The Union Parliament assumes these powers under Articles 3 and 4 of the Constitution.

Second, the distribution of powers under Schedule VII of the Constitution is in favour of the Union Government. The Union List consists of 99 items, is not only longest, but also covers all the major and important items including defence, foreign affairs, currency, income tax, general excise duty, railways, airways, posts and telegraphs, broadcasting, etc. The State List consists of 61 items, e.g. public order, police, sales tax, local government, public health, agriculture etc. While the Concurrent List consists of 52 items, like education, socio-economic planning, contracts, marriage and divorce, civil procedure, labour welfare etc. The Union Parliament also has supremacy on the Concurrent List and it has made Union government more powerful. Thus, Indian federalism is horizontal with a strong unitary bias.

Third, the residuary powers under Article 248 were given to the Union's Parliament, and State legislative assemblies have no part in these powers.

Fourth, the Union's Parliament is given power to legislate the subjects of State List under certain circumstances, i.e., national interests, on the demand of two or more state assemblies, to implement the international treaty or agreement and when emergency is imposed under articles 352 and 356.

Fifth, the amendment power under Article 368 of the Constitution is given only to the Union Parliament. The role of State Legislative Assemblies is minimal in this regard. The State Legislative Assemblies cannot initiate the amendment process. Most of the provisions of the Constitution are amenable by the unilateral action of the Parliament. Under certain circumstances the President can also modify the provisions relating to distribution of powers between the Union and the States. Moreover, the Indian federal system can be easily converted into a unitary system particularly in the times of emergencies (Articles 352-360). Thus, Indian federal system exhibits its nature of flexible federal system.

Sixth, the discretionary control of grants to the states far exceeds the amounts which were transferred through divisible taxes (income tax, general excise duties) and grants-in-aid under Article 275. And the decisions of the Planning Commission have a far greater impact on what the States can do than the recommendations of the Finance Commission do. Under Article 282 the Union government allocates vast amounts of development funds to the States as part of the Indian Five Year Plans drawn up by the Planning Commission. The resources available under the plan are substantial because of the significant taxing power of the Union Government and its control over foreign aid and deficit financing.

Seventh, the Supreme Court stands at the apex of integrated system of judiciary and it has power of interpretation of all Laws and of superintending the lower courts. There is also uniformity in fundamental laws, civil and criminal.

Eighth, a single citizenship of whole of the country. There is no provision of dual citizenship - one national citizenship and one state citizenship.

Ninth, there is a single Constitution of the whole country. There is no provision for States to hold their own Constitution except for Jammu and Kashmir.

Tenth, the All-India Services and the Paramilitary forces function under the direction and control of the Union Government.

Eleventh, the Union Government can intervene in the affairs of the states by using emergency provisions under Articles 352, 356 and 360.

Twelfth, Under Articles 256, 257 and 365, the Union Government may take Union Executive powers that give direction to State governments and invoke substantial penalties for non-compliance.

Thirteenth, the State Governors are appointed by the President of India and they enjoy their office till the pleasure of the President. In practice, the Union Government uses the office of governors for their partisan interests. Usually, the Governors act as an agent of the Union Government and not as the impartial constitutional heads of the states.¹²

It is obvious that the Constitution of India is a federal Constitution with a strong Centre. Thus, in Indian federalism, in terms of the constitutional structure, there was a tilt in favour of the Centre at the cost of the states.¹³ It is a mixture of the federal and non-federal elements. It is framed to work as a federal system during normal times, but gets changed a unitary system in war, insurrection or the breakdown of constitutional machinery in the states. As Durga Das Basu pointed out, The Constitution of India is neither purely federal nor purely unitary but is a combination of both. It is a Union or composite State of a novel type.¹⁴

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