

EXPLORING THE INDIAN FEDERALISM: A STRUCTURALIST AND FUNCTIONALIST PERSPECTIVE

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SALIENT FEATURES OF INDIAN FEDERALISM

Indian constitution provides for a 'union model of federalism' which characteristically combines the centre-periphery and non-centralised matrix model of power sharing arrangements. Being a dynamic document of nation and state building, it critically blends or negotiates otherwise opposite tendencies like unionism and regionalism, autonomy and integration, symmetry and asymmetry, centralisation and decentralisation. As a matter of fact, one can find traces of the features of dual federalism, cooperative – collaborative federalism, and interdependent and organic federalism.ⁱ It is therefore distribution of power does not follow any specific mode of interpretation; it all depends on how we assign value to each feature of Indian federalism. For some scholars Indian federalism is a classical example of unitary polity with federal features. This does not hold any substantive ground if one evaluates the working of Indian federalism in last six decades. It is true that many jurisdictions have been assigned to federal government but that does not deter Indian polity to be characterised as one of the models of federalism. It has been categorically stated by B.R. Ambedkar in the Constituent Assembly on 25th November 1949 that

The basic principle of federalism is that the legislative and executive authority is partitioned between the centre and the states not by any law to be made by the centre but by

the constitution itself. This is what constitution does. The states under our constitution are in no way dependent upon the centre for their legislative and executive authority. The centre and the states are coequal in this matter. It is difficult to see how such a constitution can be called centralism. It may be that the constitution assigns to the centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal constitution. It may be that the residuary powers are given to centre and not to the states. But these features do not form the essence of federalism. The chief mark of federalism... lies in the partition of the legislative and executive authority between the centre and units by the constitution. This is the principle embodied in our constitution. There can be no mistake about it. It is; therefore, wrong to say that states have been placed under the centre. Centre cannot by its own will alter the boundary of that partition. Nor can the judiciary. For as has been well said: "Courts may modify, they cannot replace. They can revise earlier interpretation as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another."ⁱⁱ

From the constitutional recognition of sovereignty of jurisdiction, Ambedkar also provides rational for having a strong centre.

For it is only the centre which can work for a common end and for the general interests of the country as a whole herein lies the justification for giving to the centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the constituent states by these emergency powers? No more than this – that in an emergency they should take into consideration alongside their own local interests, the opinion and interests of the nation as a whole.ⁱⁱⁱ

Ambedkar further maintains that besides coordinating with centre, states also have

Plenary authority to make any law for the peace, order and good government of that province. Now, when once the constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a federal constitution.^{iv}

Need for a strong centre was further emphasised by Balkrishan Sharma during the debate in the report on the Union Powers Committee on 21st August 1947, when he argues that strong centre is needed because centre should be in a position to think and plan for the well being of the country. It means that centre should have power not only to coordinate the activities of provinces in time of need but also to have capacity to direct provinces for the economic development of the country. For him strong centre also assures the better administration of provinces by

providing them ‘necessary assistance in time of need’. Strong centre, he holds, is good for industrial and economic development of the country, besides protecting national sovereignty.^v “Centre is not strong by virtue of its power but it is strong because of its large numbers of responsibilities it carries towards federal units”.^{vi} However members like T.T. Krishnamachari were reluctant to assign too much of developmental responsibilities to the centre. It is expected to coordinate the activity of the state and not to rule them. Strong centre vitiates federal spirit.

Division of authorities at the time of framing of the constitution was mainly guided by then prevailing political, communal and economic conditions in the country. An overloaded centre was need of the hour, and strong centre was considered as best guarantee of national progress and security. For founding fathers, federalism was means to an end--, i.e. building India as strong unified and developed nation. For them federalism did not mean equal division of powers between centre and state, but recognition of the principle of sovereignty of jurisdiction. It is in this background that in the subsequent section key elements of Indian federalism has been briefly but analytically described.

Article 1 of the Indian Constitution describes India as “Union of States”, meaning an indestructible organic nation with adjustable internal boundaries. It is the organicness of Indian Union that no provision for dual citizenship has been made. People as citizen enjoy equality of status and opportunities. Yet constitution validly accommodates the principles of pluralism. As constitution is not the result of a covenant therefore dual judiciary has also been avoided. Further common administrative system is adopted to provide uniform administration all over India. In this regard two points are worth mentioning; first states do not have any say in regulation of All India Services, and second Council of States (Rajya Sabha) is empowered to create any new All India Services (Article 312).

Within the union model we find, two types of centralisation, classified by A.K.Singh as, (i) centralisation to maintain constitutional order, and

to protect unity and integrity of India and its parts; and (ii) centralisation for securing the larger national public interests. Centralisation under first heading can be divided into two categories namely (I) *circumstantial centralisation* and (II) *consensual centralisation*.^{vii} Further the circumstantial centralisation can be applied in different situations such as (a) protection of federal units from external aggression, internal disturbance and any type of armed rebellion against the state; (b) for the breakdown of constitutional order resulting from hung assembly or instability of government due to frequent defections rendering state government dysfunctional; and (c) to maintain the sound financial order in India. The centralisation provides Union with extraordinary power to legislate on the matters of state list. Further, "the executive power of the union shall extend to the giving of direction to any state as to the manner in which the executive power thereof is to be exercised."^{viii} The union, in order to give effect to the objects of proclamation, can initiate such provision for "suspending in whole or in part the operation of any provisions of this constitution relating to any body or authority in the state" (Article 356(c)). Union may also give direction to states to apply such directions issued by it such as reserving all money bills for the Presidential consideration.

Second category i.e. *consensual centralisation* has been provided under Article 252 which reads "if it appears to the legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States... should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards." The Wild Life (protection) Act 1972, and The Water (Prevention and Control of Pollution) Act, 1974 has been enacted by the centre on the basis of consent of the states.

Centralisation for serving and securing national interests and public welfare has been provided under Article 249 which says that "if the Council of States has declared by resolution supported by not less than two – thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matters enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force".

Within the union model, distributions of competences have been made territorially and functionally. We find both symmetrical and asymmetrical distribution of powers. In different field, we also find 'differential loading'. Seventh Schedule distributes subjects for legislation by different orders of government. List I provides 97 subjects over which union has exclusive legislative competencies. It includes subjects such as defence, foreign affairs, citizenship, currency, national communication including national highways, waterways, banking, weights and measurement etc along with 13 exclusive items of revenue raising and resource generation. State list i.e. List II enumerates 66 subjects mainly of local importance such as police and public order, public health and sanitation, local communication, agriculture, fisheries and water department, etc. In this list, minor tax source of the states have also been identified. Third list, known as concurrent list, in which union and state share competences includes subjects like civil and criminal procedures including marriage, divorce, wills, succession etc., forest and protection of wild life, economic and social planning and education etc. However in case of overlapping of jurisdiction on concurrent matters union law generally prevails over the state laws.

Constitution also provides that executive powers of the union and states are co-extensive with their legislature competence. However states executive competence is subject to the 'doctrine of territorial nexus'. Further in the context of executive powers, as D.D. Basu observes, "It is in the concurrent sphere

where some novelty has been introduced. As regards matters included in the Concurrent Legislative List, the executive function shall *ordinarily* remain with the states, but subject to the provisions of the Constitution or of any law of Parliament conferring such function expressly upon the Union.”^{ix}

However states may invite central action if they do not abide by its direction in its executive sphere. Union can give direction to states for maintaining uniformity of laws, national security and protection of the minorities, and other disadvantaged groups. Range of union’s directive may include (i) exercise of states power in such manner as not to interfere with executive power of the Union; (ii) to ensure construction and maintenance of means of communication for national and military purpose; (iii) to ensure protection of railways within state; (iv) directive to ensure instruction in mother tongue; (v) to ensure the development of Hindi language in the state; and (vi) directing states to function in accordance with the provisions of the constitution.

The union-state administrative relations are based on the principle of division, coordination and cooperation in the areas of policy formulation and planning. Union retains administrative powers on certain issues and delegates rest to the states. However this provision does not create subordination of states rather it is an example of

cooperative and complementary federalism. In this context, it needs to be maintained that “in actual practice the states exercise a large measure of executive authority even within the administrative field of the Union government”.^x

The 73rd and 74th constitutional amendments have added third tier to Indian federalism. As a matter of fact, these amendments mark the beginning of decentralised governance within the overall framework of union model. It strives to create a three tier structure at local level, Zila Parishad at district level, Panchayat Samiti at block level and Gram Panchayat at village level. There is provision for ‘District Planning Committee’ (Article 243 ZD) to prepare a development plan for the whole district. Gram Sabha has been constituted to strengthen the roots of Indian democracy. It brings into action elements of direct democracy within Indian federalism. Panchayats have evolved as a means of economic development, social justice and social change. The three-tiered structure of federal governance still lacks proper institutional and constitutional coordination. For funds it has to mainly depend on central grant and for delegation of power and authorities on the state government. We find also incidence of centre bypassing state, which states see as encroachment on this constitutional competence.

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ⁱ Ajay Kumar Singh. *Union Model of Indian Federalism*. Delhi, Manak Publication, 2009, p.8.

ⁱⁱ *Constitutional Assembly Debate. Book No. 4, Vol IX*, Lok Sabha Secretariat, , 13 August 1949, p. 133.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v *Constitutional Assembly Debate. Book No 1, Vol V*, p. 74.

^{vi} Ibid.

^{vii} Ajay Kumar Singh. *Union Model of Indian Federalism*, pp.13-17.

^{viii} P.M.Bakshi. *The Constitution of India*. New Delhi, Universal Law Publication, 2007, p. 291.

^{ix} D.D. Basu. *Introduction to the Constitution of India*. Nagpur, Wadhwa Publication, 2004, p. 322.

^x M.C. Jain Kagzi. *The Constitution of India, Vol.1: The Union and the States*. New Delhi, India Law House, 2001, p. 397.