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**Evolution of Indian Federalism after Independence**

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Federalism is a political concept describing the practice whereby a group of members are bound together by agreement or covenant with a governing representative head. It refers to a system of government in which sovereignty is constitutionally shared between a central governing authority and constituent political units (such as states or provinces). India is a federal union of states comprising twenty-nine states and seven union territories. The states and union territories are further subdivided into districts and further into smaller administrative divisions. The Constitution of India distributes the sovereign powers exercisable with respect to the territory of any State between the Union and that State. Article 73 provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. Article 162 provides that the executive power of a State shall extend to the matters with respect to which the Legislature of a State has power to make laws. The Supreme Court has reiterated this position when it ruled in the *Ramanaiah case* that the executive power of the Union or of the State broadly speaking is coextensive and coterminous with its respective legislative power. Federalism in India has come up age reflecting greater degree of maturity, adjustment and sustenance. Coalition politics, emergence of powerful regional parties, court judgments on federal disputes and globalization process have accelerated the pace of decentralization and greater degree of Federalism. The states' demand for partnership in Federal Policy making processes and steps in making global contracts in regard to foreign investment is a remarkable change. The emergence of Federal agencies and mechanism has added strength to Federal framework. In this paper attempt is made to analyze and describe constitutional provisions of Indian federalism, agencies and mechanism for federal coordination, functioning of federalism, role of governor, coalition era and Indian federalism.

**Keywords: Federalism, Constitution, unitary, centre-state relation, fiscal policy.**

**The Federal Features of Indian constitution**

(a) The Constitution of India makes the provision for the organization of two types of governments-the Union Government and the State Governments. The governments at; both levels are organized on the basis of Parliamentary System as per the provisions of the Constitution.

(b) The Seventh Schedule of the Constitution makes provision for the division of powers between the Union and the States. It contains three lists:

1. The Union List which has 97 subjects of national importance and the Union Parliament has the power to enact laws with respect to these subjects; 2. The State List, which contains 66 subjects of local importance and the State Legislatures have the power to enact laws with respect to these subjects; 3. The Concurrent List, which contains 47 subjects and both the Parliament and State Legislatures can legislate on them. The idea of Concurrent List is inspired by the Constitution of Australia.

(2) As per the requirement of federal system, the Indian Constitution is a written document. It is a rigid Constitution as far as the amendment of federal provisions is concerned. Thus, the following provisions,

affecting the interests of states, can be amended only if not less than half of the state legislatures have approved the same.

Article 54 and 55 related to the manner of election of the President;

2. Articles 73 and 162 dealing with the extent of the executive power of the Union and States;
3. Article 124, Chapter IV of Part V and Chapter V to Part VI related to the Supreme Court and High Courts
4. Chapter I of Part XI, dealing with the distribution of legislative powers between the Union and States
5. Any of the Lists in the 7th Schedule
6. Articles 80-81 and 4th Schedule related to the representation of States in Parliament
7. Article 368, related to the Amendment of the Constitution. In order to amend the above provisions the Constitution Amendment Bill has to be approved by not less than half of the state legislatures before it is presented to the President for his consent.

(a) The Indian Constitution makes provision for an independent and Federal judiciary. The Supreme Court of India acts as a federal court. It has the power to decide the disputes arising either between the Union and the States or between the two or more States under its Original Jurisdiction as mentioned in Article 131 of the Constitution. The Constitution makes various provisions to ensure the independence of judiciary from the Executive and the Legislature both.

#### **Unitary Features of Indian Federation**

- The Indian federation is an example of 'Indestructible Union with Destructible states.' It means that the Union shall remain intact but the physical existence of states or units can be modified. Accordingly, Article 3 provides that the Parliament may by law form the new states by separating or uniting the territory of existing states, increase or diminish the area of any state, and alter the name and boundary of any state. On the other hand, the American federalism is characterized as 'Indestructible Union of Indestructible States'.
  - Unlike the American federation, the Indian Constitution provides for a single citizenship. It means that, in India, every person is a citizen of India and they are not entitled for citizenship of any state. The Union Parliament is empowered to enact laws with respect to all matters related to citizenship.
  - The Governor of a state, who is the executive head of the state, is appointed by the President and holds office during the pleasure of the President. It should be noted that the Governor is not a nominal head of state, but holds significant powers with respect to the affairs of the state. In fact, the Governor functions as the representative of the Union Government in the state and he/she is not responsible to any authority within the state.
  - The provision for single citizenship in India is also considered is the unitary feature of Indian Federalism. In India, every person is a citizen of India.
  - Unlike the US Federation, states in India do not have their separate Constitutions. India has a single Constitution, which makes provision with respect to both the Union and the States. Also, with the exception of some federal provisions, the states in India do not have any power with respect to the amendment of the Constitution, which is the sole prerogative of the Union Parliament.
  - Generally, in federalism, the states or units have equal representation in the second House of Parliament. But, in India, the states do not have equal representation in the Council of States. The representation of states depends on their population; the number of seats allocated to different states is mentioned in the Fourth Schedule of the Constitution. The state of Uttar Pradesh has 31 seats, whereas many states like Nagaland, Manipur, Tripura etc. have only one seat in the Council of States
- There are certain provisions that affect its federal character.

1. Appointment of the Governor of a State: Art 155 and 156 provide that the Governor, who is the constitutional head of a State, is to be appointed by the President and stays only until the pleasure of the President. Further, that the Governor can send the laws made by the state for assent from the President, who can veto the law. It should be noted that Governor is only a ceremonial head and he works on the advice of council of ministers. In past 50 yrs, there has been only one case (re Kerala Education Bill), where amendments to a state law were asked by the center too after the opinion of the Supreme Court. Thus, it does not tarnish the federal character and states are quite free from outside control

2. Power of the parliament to make laws on subjects in the State list.

Under art 249, center is empowered to make laws on subjects in the state list. On the face of it, it looks a direct assault on the power of the states. However, this power is not unlimited. It is exercised only on the matters of national importance and that too if the Raja Sabah agrees with 2/3 majority. It should be noted that Raja Sabah is nothing but the representative of the states. So an approval by Raja Sabah means that States themselves are giving the power to the center to make lawn that subject.

3. Power to form new states and to change existing boundaries.

Under Art 3, center can change the boundaries of existing states and can carve out new states. This should be seen in the perspective of the historical situation at the time of independence. At that time there were no independent states. There were only provinces that were formed by the British based on administrative convenience. At that time States were artificially created and a provision to alter the boundaries and to create new states was kept so that appropriate changes could be made as per requirement. It should be noted that British India did not have states similar to the States in the USA.

4. Emergency Provisions: Center has the power to take complete control of the State in the following 3 situations: 1. An act of foreign aggression or internal armed rebellion (Art 352) 2. Failure of constitutional machinery in a state (art 356) 3. Financial Emergency (art 360)

### **Agencies and mechanism for federal coordination**

#### **Rajamannar Commission**

In 1969, the Government. of Tamil Nadu, dissatisfied with the constitution, appointed a Rajamannar Committee, "to examine the entire question regarding the relationship btw the centre & the states in federal set up, with reference to the provisions of the constitution of India & to suggest suitable amendments to the constitution so as to secure to the states the utmost autonomy"

The committee in its report issued in 1971 criticized certain aspects of the Indian-constitution because they were not reconcilable. The Committee accepted the position that the power vested in the centre "does not reduce the states of the state to that of administrative-units in a unitary government as in the days of the British role.

The committee suggested some modifications in the constitutional-provisions relating to the distribution of legislative & taxing powers emergency etc.

The proposals made by Rajamannar Committee suffer from an extreme over-statement of the case for the state-autonomy.

These proposals did not evoke much public-enthusiasm & were endorsed neither by any state-government nor by any All India political party & the report became a dead-letter.

**Sarkaria-Commission**

In 1983, in response to an insistent demand to review the Central-State relations, the central government appointed the Sarkaria Commission under the chairmanship of Justice R.S. Sarkaria, a retired Judge of a Supreme Court. The limitations on the commissions-term of inquiry was that, in making its recommendations, the commission was expected to ensure that they were within the constitutional-provisions which safeguard the independence, unit & integrity of the country. The commission presented its report in 1988.

It has rejected the demand for curtaining the powers of the centre saying that a strong centre is necessary to preserve the unity & integrity of the country. The commission's view is that there is no need for drastic changes in the existing-provisions of the constitution.

It its view the fundamental-provisions of the constitution have done reasonably well &with stood the stresses & strains of heterogeneous society in throes of change.

**Recommendations of Panchhi commission**

There should be an amendment in Articles 355 and 356 to enable the Centre to bring specific trouble-torn areas under its rule for a limited period.

I. The commission has proposed "localizing emergency provisions" under Articles 355 and 356, contending that localized areas-either a district or parts of a district - be brought under Governor's rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.

II. The commission however supports their right to give sanction for the prosecution of ministers against the advice of the state government.

III. To make an amendment in the Communal Violence Bill to allow deployment of Central forces without the state's consent for a short period. It has proposed that state consent should not become a hurdle in deployment of central forces in a communal conflagration. However, such deployment should only be for a week and post-facto consent should be taken from the state.

IV. Among the significant suggestions made by the Commission is, laying down of clear guidelines for the appointment of chief ministers. Upholding the view that a pre-poll alliance should be treated as one political party, it lays down the order of precedence that ought to be followed by the governor in case of a hung house:

**(a)** Call the group with the largest pre-poll alliance commanding the largest number;

**(b)** The single largest party with support of others;

**(c)** The post-electoral coalition with all parties joining the government; and last

**(d)** The post electoral alliance with some parties joining the government and remaining including Independents supporting from outside.

V. The panel also feels that governors should have the right to sanction prosecution of a minister against the advice of the council of ministers. However, it wants the convention of making them chancellors of universities done away with.

VI. As for qualifications for a governor, the Punchhi commission suggests that the nominee not have participated in active politics at even local level for at least a couple of years before his appointment. It also agrees with the Sarkaria recommendation that a governor be an eminent person and not belongs to the state where he is to be posted.

VII. The commission also criticizes arbitrary dismissal of governors, saying, "The practice of treating governors as political football must stop".

VIII. There should be critical changes in the role of the governor - including fixed five-year tenure as well as their removal only through impeachment by the state Assembly. It has also recommended that the state chief minister have a say in the appointment of governor.

IX. Underlining that removal of a governor be for a reason related to his discharge of functions, it has proposed provisions for impeachment by the state legislature along the same lines as that of President by Parliament. This, significantly, goes against the doctrine of pleasure upheld by the recent Supreme Court judgment.

X. Endorsing an NCRWC recommendation, it says appointment of governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and chief minister of the concerned state. The Vice-President can also be involved in the process.

XI. Unlike the Sarkaria report, the Punchhi report is categorical that a governor be given fixed five-year tenure. The Punchhi Commission report also recommends that a constitutional amendment be brought about to limit the scope of discretionary powers of the governor under Article 163 (2). Governors should not sit on decisions and must decide matters within a four-month period.

XII. The creation of an overriding structure to maintain internal security along the lines of the US Homeland Security department, giving more teeth to the National Integration Council.

XIII. For the National Integration Council (NIC), the commission has proposed that it should meet at least once a year. In case of any communal incident, it has said that a delegation of five members of the Council, who would be eminent persons, should visit the affected area within two days National debate and submit a fact-finding report.

XIV. The commission, however, rejects a suggestion from some stakeholders as well as the Liberhan Commission that the NIC be accorded constitutional status.

XV. The commission has also studied new set-ups like the National Investigation Agency, and recommended procedures to ensure smooth co-operation of the states in terror investigations entrusted to NIA. One can say that the extreme politicization of the post of Governor must be decried and certain specific norms for the appointment and removal have to be evolved.

XVI. The recent ruling of the Supreme Court has indicated that the sanctity of this constitutional post should be preserved. In democracy, nobody can have absolute power in the name of smooth administration and good governance. The administrative apparatus has to be in the line of the constitution, which was prepared by the people of the country and amended by the elected representative of the people of India. The 'doctrine of pleasure' has to be understood properly.

### **Recent developments in Indian-Federalism**

1. Firstly, the 73<sup>rd</sup> & 74<sup>th</sup> amendments of the Constitution in 1992 have created a third-tier of local-governments i.e. the panchayats & Municipalities of course these amendments have no impact on central state relations but they encourage federal-tendencies at the base.
2. With reference to Article 356, the Supreme Court in S.R. Bommai versus union of India emphasized the federal-character of the constitution & has imposed several procedural restraints on the exercise of power by the centre.
3. In quick succession, once in 1987 & again in 1998, the president has asked the central-Cabinet to reconsider its advice to impose. President's role under Article 356. On both occasions the cabinet dropped its recommendations. The Union-Government has become very cautious in exercising its power under Article 356. For quite some-time now the power has not at all been exercised.
4. With the installation of "Coalition-Government " at the centre since 1996 consisting of political parties ruling in different states, the central government has always to seek the cooperation of the states.

This has changed the real-politics of the country which is not moving towards a federal-government even though the constitution may not be federal.

5. A centre state commission has again been constituted in 2007 which is to look into the developments since the last commission, arising particularly in the light of globalization.

### **Co-operative –Federalism & Organic Federalism**

Where the units or states & the federation do not compete for power but co-operate through various instrumentalities to promote the common purpose is known as cooperative-federalism. The present stage in India can be described as 'Organic-Federalism, where the federations the units function as a part of one organism to achieve the common-governmental purposes. The lessons to be learnt from the recent-developments & the pressure of Circumstances that developed together with the large-scale interdependence of the states in many matters, had really indicated a case for organic-federalism. There is strong organic-Filaments-constitutional, financial & administrative, which may be relied upon to uphold the unit of India.

For example: Several industrial establishments are financed & managed by the Union Government, but are operating within the territories of the unit-states; & various nationwide agricultural-operations in the matters of improving technology, seeds etc.

The new federalist trends — centralised taxes and decentralised spending — while representing a huge improvement in an end state, pose significant transition risks.

India's fiscal framework is going through a dramatic transformation. On the revenue side, the transition to the goods and services tax (GST) offers enormous potential gains in both revenue collections and productivity. It will encourage compliance, as has been visible in the state-level value-added tax (VAT) initiatives, and it will induce businesses to locate in the most efficient geographies, with the assurance that the entire national market for their goods and services is equally accessible. A nationwide GST with a

uniform rate is actually a centralisation of the indirect tax system, because it takes away the autonomy of states to tax at rates that they determine. However, it is a positive centralisation because of the gains that it offers.

Economic challenges to cooperative federalism emerge from market reforms, the search for investments, and the World Bank structural adjustment plans adopted in selected states. Devolution of economic decision-making to the states aggravates fiscal crises by facilitating populist political strategies and accentuating uneven development. Political challenges arise from issues such as central vs. state control of police and security forces; movements for the creation of new states; and the implementation of constitutional provisions for village-level governance. Change in India's federalism has come about less through the adaptation of formal institutions than through the proliferation of state-based political parties, aggregating varied interests based on region, language, caste, class, or views on secularism. After the elections of 1999, more than 20 parties managed to provide a stable national coalition government, transforming the political process. A national multiparty coalition again formed the government following the elections of 2004.

### Conclusion

The finer federal facet has often been misinterpreted by the central operators. So the battle for federal affirmation and restoration of democratic decentralization has gained momentum over the decade. Important Commissions like Rajamannar, Sarkaria Commission and Panchhi commission have stressed on the federal soul of the Constitution

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