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Nature Of Indian Federalism: Challenges And Perspectives

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Abstract: Indian Federalism is a topic that is both highly relevant and enduringly interesting to India. It plans to examine how the Central-State and inter-State relations have evolved over the years that the Indian Constitution has been in effect, as well as where they stand today. The fact that the Indian Republic has encountered numerous issues since its founding hardly needs to be emphasized.

Index terms: Federalism, Indian Constitution, Indian Parliament.

INTRODUCTION:

Federalism has been conceptualized as an “organizational mechanism.”¹ It is a mechanism for the constitutional demarcation of power for the purpose of maintaining unity, integrity and autonomy for the smooth administration of the government machinery. The idea of federalism can be viewed as a form of organization in which power is dispersed as a means of safeguard of individual and the local liberties both at the Union and the State level. It also maintains ‘integrity and substantial autonomy’ by constituting powers and responsibilities between the centre and the states.²

The term "Federal" derives from the Latin word "Foedus" which means agreement. Federalism is a form of government where sovereignty is constitutionally distributed among different levels of government. According to classical definition of federalism, A.V. Dicey noted that “Federalism means the distribution of the force of the state among a number of coordinating bodies each originating and controlled by the constitution.”³ The principal objectives of the federalism are not only to uphold ‘self-rule’ and ‘share rule’ nowhere is just to maintain a kind of status-quo. Typically, political federalism originates in social, cultural and regional contexts, where the people desire unification as well as autonomy, such that the constitution seeks to ensure self-rule in the regions and shared rule in the federation.⁴

The ideas and institutions related to federal, political organisation of government is generally traced back to ancient Indian, Greek and Israelite antiquities. The history of modern federalism began with the foundation of the United States of America in 1787, then it was established by Switzerland in 1848, Canada in 1867, Australia in 1901 and by India in 1950. Since then, the federal form of government had a phenomenal popularity worldwide both at national as well as supranational levels. The essence of federal nature in India can be traced back to the feudal times of ancient and medieval period and the country was never governed by a single authority.⁵ The distinctive feature of the Indian Political System throughout our history has been the unrelenting effort made to construct a permanent political order in a diversified social fabric of a nation. The Government of India Act, 1919, also known as the Montague-Chelmsford Reforms, achieves the federal goal by dividing the subjects, or powers, between the national and provincial governments: Provincial subjects were further separated into Transferred subjects for example public health and local self-government and Reserved subjects such as law and order, police, land revenue, etc, which were governed by the respective provincial governments. The Government of India Act, 1935, which established an All-India Federation made up of eleven British provinces and the princely states, was made possible thanks to this dyarchy. Provisions for provincial autonomy and the dyarchy were dropped in favour of responsible government, and elections for these provincial governments were held in 1937, which led to

the establishment of congress governments in six provinces. The majority of the provisions in the Act of 1935 were later used as the basis for the Constitution of independent India. Following the declaration of India's partition on June 3, 1947, both the Union Constitution Committee which was led by Jawaharlal Nehru, and the Provincial Constitution Committee which was led by Sardar Vallabhbhai Patel, advocated for a strong central government with residual powers in a federal set-up.

Regarding the idea of unity under federalism, Dr. Ambedkar noted: "The Drafting committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the states to join the federation, and that the federation not being the result of an agreement, no state has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under single imperium derived from a single source."⁶

Many members of the Constituent Assembly vociferously attacked the centre-oriented federalism which was adopted. H. V. Kamath characterized it as "a centralized federation with a facade for parliamentary democracy," and Damodar Swarup called it "a unitary Constitution in the name of a federation." K. Hanumanthiah, who represented the Princely State of Mysore, remarked "Here is a constitution which we say is a federal constitution but which in essence is almost a unitary Constitution" That was not the intention with which we started constitution-making.⁷

The discussions of the Constituent Assembly provided a federal model having a strong, Unitary, Parliamentary Central government. To protect the diverse identity of nation like India framers of Indian constitution wisely choose this to accumulate diversity within unity. The peculiar needs of India led to the creation of a new type of federal system. As expressed by Dr. B.R Ambedkar, "it is unitary in extraordinary circumstances such as war and other calamities and federal under normal circumstances."⁸

The Constitution of India which finally emerged is not Federal in its classic sense but it contains all the important federal features. The constitution of India has not described India as a federation. However, Article 1 of Indian constitution describes "India that is Bharat, shall be a Union of States." This means India is a union comprising of various states which are an integral part of it. Here, the states cannot break away from the union. They do not have the power to secede from the union. In a true federation, the constituting units or the states have the freedom to come out of the union.

The main feature of federalism is *Bi-Cameral* Legislature which is the definition of federalism in which there are at least two levels of governance in the country. There can even be more than two levels of governance but the entire power is not concentrated with one government. *Written Constitution* is another essential feature of the federal system of government which is guaranteed by the constitution. It means that the constitution of that country where is the federal system of government existed listed down all powers and duties in the written form of all levels of government. Without a written constitution there is not a federal system of government, in the absence of a written constitution, there is the possibility of conflicts and misunderstandings arises in the Centre and the State and would cross the boundary of each other. It is also stated that there are *two or more levels* of government with separate jurisdictions and duties. There may be a possibility to arise a conflict between the two governments. In a federal state, it is the duty of the courts to interfere in such a situation to resolve this conflict and provide a resolution. In case of a federal countries there should be a system of *Revenue-Sharing* between the Centre and the State.

Indian constitutional structure includes all the above mentions elements of federalism like including the existence of a written constitution, the supremacy of the constitution, the dual nature of governments, the division of powers between the Central and State governments, and most importantly the power of the courts to determine how the constitution should be interpreted.

However, the Indian constitution also has some elements that could be interpreted as deviating from its federal character.

Challenges to Indian Federalism:

To protect the unity and integrity of the nation in federal system, the Union is made indestructible. It is not applicable to states as states can be separated or merged but in federal democracies, it is only possible with the consent of the states. But in India, the power of making or remaking States lies with the Parliament.⁹ Under article 2 and 3 of the Constitution to bring about changes in the areas, boundaries, and names of states. Ascertaining the views of the concerned states by the President is not mandatory because he is competent to fix a time limit within which states must express their opinion. For example, in recent time the decision to divide Andhra Pradesh (A new state is made Telangana, 2014) raises important questions about federalism and the nation's future. The another example set by the union government to

spoil the sanctity of the spirit of federalism is the abrogation of article 370 which has been a source of special power for the whole state of Jammu and Kashmir was.¹⁰ The undemocratic manner in which the J&K re-organization bill was passed in Parliament, the silencing of voices of those affected by these actions, and the unprecedented move to convert a recognized state into a Union Territory (UT) mark a rupture in India's federal trajectory. India is now firmly on the path to centralization of power and may well be inching toward transforming into a unitary rather than federal state.¹¹

Through the office of State Governor (under article 154), the Central government can control and command the state governments. The constitution of India has envisaged the role of the governor as custodian of Constitutionalism in the respective states; however, owing to the nature of appointment using nominee/selection by the union government, most of the time, the governors abide by the obligation to the ruling dispensation rather than to the constitutionalism. This has deepened the crisis between the union and state relations by corroding the principle of cooperative federalism. The increased misuse of the governor's office by the ruling governments time to time for political reasons is the most destructive pattern in our democracy. Defeated and active politicians, mostly belonging to the central ruling party, have been appointed as governors.¹² Many commissions were constituted by various governments from time to time to streamline the appointment and role of Governor, but in actual practice there has been no positive change. The removal of incumbent Governors by a newly formed Central Government has been a recurring trend in Indian polity. This trend, was started in 1977 with the rise of the Janata Party right after the emergency proclaimed by the Indira Gandhi led Congress Government, has refused to die down. It has been a trend which has been followed over the years by new governments which kick start their tenure by removing the Governors previously appointed by the previous Government. The most recent occurrence of this trend came to the fore with the removal of more than 7 incumbent Governors of various states and their replacement with former members of the BJP; each one of these taking place after the formation of the new NDA Government in May 2014. This action by the BJP has again resulted in the revival of debates questioning the constitutionality of the manner of removal of the Governors.¹³ The position of Governor has been politicized and governors have played a political role in the service of the party in power. This development reached its peak during the term of Narendra Modi, who named BJP veterans to positions of governor and was able to count on their support. In recent time for example, in the state of Goa, after the 2017 elections, the Governor, in a surprise move, called on the BJP to form a government, although the Congress Party had a larger number of representatives, though still without a majority. The Governor admitted to having taken this decision after asking the advice of a minister in the Modi government, which is not in the spirit of the Constitution, but allowed the BJP to form a coalition government. The same situation played out the same year in the state of Manipur. The role of the Governor was also controversial in the state of Delhi, which does not enjoy as much autonomy as the others and whose Chief Minister, Arvind Kejriwal, has been one of the most vehement opponents to Narendra Modi. The Lieutenant Governor has made the life of the government particularly difficult.¹⁴

Moreover, as nominees of the Center, the Governor's act as its agents to send periodic reports to the President, dismiss unwanted state governments, and reserve state bills for the consideration of the President. Under Article 200 of the Constitution, certain bills passed by state legislatures may be reserved by the governors for the consideration of the President of India. A governor's action in this regard has been held to be non-justiciable. Under Article 201, the President may give his assent to such state bills at any time, without time limit, or exercise his veto power over them. This un-federal provision has been used extensively by the Union government and thereby has undermined the legislative autonomy of the states. Earlier, under the United Progressive Alliance government (UPA), too, Governors were accused of keeping Bills passed by Opposition-ruled states pending.

The seventh schedule of the Indian constitution under article has three lists. List I refer to the subjects under the Centre or the Union, List II refers to the State list and List III refers to the Concurrent list where the states and the Centre are co-sharers of power and responsibility. The Concurrent list challenges federalism to the test by giving the federal and state governments joint control over several areas. Due to the central laws which prevail in disputes and favor the central government, this dual jurisdiction led to power imbalances and the centralization of authority. By reducing state authority and limiting their ability to customize laws to fulfill local requirements, this compromises the intended of federal structure. The Concurrent List can impede federalism by creating barriers to decentralization and state autonomy even as it strives for cooperation and uniformity.

Based on Articles 248 and 249 constitutions give further scope to the Union Parliament to establish its legislative supremacy. Under Article 248, Parliament has residual powers of legislation, and under Article 249 there is a possibility of its "big intrusion" into state legislative jurisdiction in the name of *national interest* based on a resolution passed by the Rajya Sabha (Council of States). The arguments advanced by some state governments for the abrogation of Article 249 are worthy of consideration. The article short-circuits the amending process prescribed in Article 368 and enables one house to *transfer unilaterally any subject* from the State List to the Concurrent List. Also, the two-thirds majority in the Council of States may not necessarily reflect the consent of the majority of states through their representatives.

Articles 256 and 257 place a mandatory duty on the states in regard to exercise of their executive powers. There is no precedent for these provisions in the American, Australian, Canadian, or Swiss federal systems. Article 256 states that the executive power of every state shall be exercised in such a manner as to ensure compliance with the laws made by Parliament, and if necessary, the central government can give directions to a state for this purpose. Article 257 establishes control of the central government over states in certain matters, and says that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the center's executive power and that the latter, if necessary, can give direction for this purpose.¹⁵

Further, Article 355 allows the national government the authority to become involved in state affairs in three situations: when a state government fails to continue operating in conformity with the constitution, when there is external aggression, and on the basis of internal disturbance. The Union Home Ministry states that even in the absence of a request from the relevant state government, the Centre may use its military forces *Suo-motu*. According to the Sarkaria Commission "Under Article 355, a whole range of action on the part of the Union is possible depending on the circumstances of the case, the nature, the timing and the gravity of the internal disturbance."¹⁶

Emergency powers of the President contemplated under Articles 352, 356, and 360 can transform the Indian federal system into a unitary system. While a proclamation of national emergency under Article 352 is in operation, the Union Parliament has the power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List, under the terms of Clause (1) of Article 250. Moreover, Article 353(a) empowers the Union government to give directions to any state as to the manner in which the executive power is to be exercised during the emergency period. While a proclamation of financial emergency under Article 360 is in operation, Clause (3) of this article empowers the Union government to give directions to any state to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose. It is the state emergency power or President's Rule provision of Article 356 that empowers the Union government to use it as a bludgeon to threaten or supersede unwanted state governments. Instead of keeping it as a last resort, as visualized by the constitution-makers, to be used as a salvage operation in an ailing state, the Article has been wantonly and brazenly employed for partisan purposes on most occasions. The word "otherwise" in Article 356 gives wide scope to the center to dismiss any state government even without the governor's report, this provision violate the nature of federalism. The Council of States has failed to curb the misuse of this provision as well as preserve the limited autonomy of the states within the existing framework.

Since Bommai (1994), the material on the basis of which President's Rule is recommended is open to judicial review by the Indian Supreme Court. From 1950 to 2024 President's Rule has been imposed on more than 125 occasions. Further on number of occasions, the President Rule' has been imposed in an arbitrary manner for political or personal reason. For example, in recent time, in 2016, the party advised the imposition of President's Rule on the governments of Arunachal Pradesh and Uttarakhand. In Arunachal Pradesh, factious infighting within the Congress-led government propelled the BJP-appointed governor to advance the session of the state assembly by a month, making way for a BJP-led government. The starting point that led to President's Rule in Uttarakhand was also similar. However, unlike in the case of Arunachal Pradesh, not the governor but the central government instructed the President to suspend the state government a day before the floor test was to be held. Importantly, on both occasions, the Supreme Court struck down President's Rule. In the case of Arunachal Pradesh, the Supreme Court queried the justification for bringing a planned meeting of the state assembly forward, leaving insufficient time for the Congress government to prove its majority on the floor. In the case of Uttarakhand, the Supreme Court

dismissed the authority of the central government to impose President's Rule before a floor test had taken place in the state assembly. The Supreme Court also reinstated both Congress governments. In both cases, the Supreme Court played its role as potential safeguard of federalism (or institutional veto player) and solidified the jurisprudence which it developed since its landmark Bommai judgment in 1994. In fact, not before had the Court ordered the reinstatement of one, let alone two dismissed state governments.¹⁷ Hence, Article 356 has become one of the most controversial and most criticized provision of constitutional to the provision of federal system in India.

According to Lists 1 and 2 and Chapters 1 and 2 of Part XII of the Indian Constitution, the Union government has an affluent position, whereas the states have a mendicant position. Indian Constitution provides for a significantly centralized federal structure, with the bulk of revenue-raising powers residing with the Union government. As a result, Union government transfers to the States are vital for the latter's fiscal space. The Union government's fiscal transfers to States are made through two mechanisms viz. the Finance Commission (under article 280) and a variety of Central government schemes. Finance Commission (FC): The Constitution envisages the Finance commission as the balancing wheel of fiscal federalism in India. Article 280 of the Constitution of India provides for a Finance Commission as a quasi-judicial body. It is constituted by the President of India every fifth year or at such an earlier time as he considers necessary. The Finance commission was formed to define the financial relations between the central and state government of India and the individual state governments. It makes recommendations on three areas: (i) The share of the divisible pool of the Union government's taxes that is to be devolved to the States (ii) Grants made by the Union government to the States to meet their revenue deficits (iii) Certain other grants to States and local governments.

In recent years, India has witnessed a growing discourse surrounding fiscal centralization, with concerns raised over the concentration of financial power in the hands of the central government. This trend is particularly pronounced in the context of the Goods and Services Tax (GST) regime, where states have expressed apprehensions about their diminishing fiscal autonomy. The allocation of funds and decision-making authority by the central government has come under scrutiny, leading to debates about the fairness and effectiveness of the current fiscal federalism. Critics argue that such centralization not only undermines the principles of federalism but also hampers local governance and development initiatives. Moreover, disparities in fiscal capacities among states exacerbate these concerns, as smaller or less economically developed states may find themselves disproportionately disadvantaged. As India navigates its economic and political landscape, addressing these concerns will be crucial for fostering equitable development and strengthening the fabric of federalism.

Federalism or Federal form of government is the most suitable form of government for a vast and pluralistic country like India. It tries to facilitate the socio-political cooperation between two sets of identities through various structural mechanisms of 'shared rule.'¹⁸ Indian Constitution has all the features of federal constitution in which, the centre and states are independent to make laws in their respective field assigned by the constitution. The concept of federalism in India keeps changing since the commencement of the constitution. The theory and practice of Indian federalism substantiate that the Union government functions under a prefectorial federalism that gives it a commanding position and overriding powers. The existence of states and the very survival of their elected governments is dependent upon the will of the Union government. The single Constitution for the whole country, the unilateral power of Parliament to amend it, the provision for supersession of state governments and centrally appointed state governors, the discretionary powers of governors to reserve state bills for consideration of the President and his veto power over such bills, the affluence of the Union government, the vertical planning system, and the centralized party system have been mainly responsible for the aberration, distortion, and perversion of Indian federalism. However, the supremacy of the centre has in certain situations that is also mentioned in the constitution itself. If either government tries to transgress the limits an independent judiciary plays an important role as the apex court is considered the protector and guarantor of the constitution.¹⁹

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