

FEDERALISM IN INDIA: EVOLVING DYNAMICS AND ONGOING TRANSFORMATIONS

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Introduction

Federalism in India has garnered significant attention, particularly in its role within the country's political landscape. Recent shifts in the relationship between the nation-state and the cases brought before the Supreme Court highlight the continuous transformation of Indian federalism. It is clear that the current form of Indian federalism is transitory, reflecting the dynamism of our society. The ongoing engagements between the central government and the states undeniably contribute to the evolving trends in Indian federalism.

Historical Foundations of Indian Federalism

The concept of federalism, as a means of incorporating the conflicting elements in the Indian polity, was initially explored in the 1930s. During the Round Table Conference (1930-1932), convened by the British government to deliberate on India's future constitution, delegates favoured the idea of an All India federation. This vision materialized in the Government of India Act 1935. Federalism was extensively debated in the Constituent Assembly, evident in the discussions held during its sessions. When drafting the constitution of India, the makers of the constitution embraced the doctrine of federalism, adopting the Government of India Act 1935 as a guiding model.

Shifting Views on Federalism Post-Partition

However, the aftermath of partition, marked

by bloodshed and emotional trauma, prompted a reconsideration of federalist perspectives. The socio political development compelled the makers of the Indian constitution to modify the doctrine of federalism to suit the needs of an emerging new India. Therefore, the framers of the constitution diverged from conventional federalism and embraced a practical and realistic approach to the concept.

While the term "federalism" is not expressly used or defined in the Indian constitution, the principles of federal governance are manifested in the envisioned relations between the Centre and the States. The concept of federalism in the Indian constitution is effectively illustrated in various rulings of the Supreme Court when interpreting constitutional provisions.

Constitutional Illustration of Federalism

The most predominant characteristic of Indian federalism lies in the concentration of power at the Union level. An examination of the 7th Schedule of our constitution distinctly reveals a significant bias in favour of the central government.

Several articles in the Indian Constitution, including Article 249, Article 254, Article 257, and Article 356, unequivocally highlight the presence of a strong central authority

Article 249 outlines Parliament's authority to enact legislation concerning matters in the State list, specifically in the context of national interest.

Article 254 states that in cases of inconsistency between laws enacted by Parliament and those by State legislatures, the laws made by Parliament take precedence.

FEDERALISM IN INDIA: EVOLVING DYNAMICS AND ONGOING TRANSFORMATIONS

Article 257 shows the Union's control over states in specific situations, allowing the President of India to issue directives to a state in the interest of the sovereignty and integrity of the nation.

Article 356 addresses the provision in cases of the failure of constitutional machinery in states.

Supreme Court Interpretations on Federalism

Despite constitutional provisions that seemingly favour the central government, the prevailing belief among the people of our nation is that we operate under a system of cooperative federalism. This conviction is deeply rooted in the citizenry, with various Supreme Court judgments highlighting this aspect. For instance, in the case of (*State of Rajasthan vs Union of India & Ors 1977 3 SCC 592*), the Supreme Court delved into the concept of federalism in India. The Court emphasized that the satisfaction under Article 356 is subjective and cannot be evaluated using objective or judicially discoverable standards.

Contrastingly, in (*Kuldip Nayar vs Union of India 2077 7 SCC*), the Supreme Court observed that India does not conform to the traditional sense of a federal state. Meanwhile, in (*S.R.Bommai & Ors vs Union of India & Ors 1994 3 SCC*), a majority of nine judges held that the exercise of power under Article 356(1) is subject to judicial review. The Court also addressed the justiciability of the President's order under Article 356, asserting that administrative law principles might not entirely apply when considering the exercise of a constitutional power.

In (*State of West Bengal vs Keshoram Industries Ltd & Ors MANU/SC/0038/2004*), the constitutional bench acknowledged India's federal structure. However, it emphasized that our constitution exhibits a federal structure where the centre holds more power compared to the states. The Indian Constitution is fundamentally federal, featuring a clear distribution of powers, inter-governmental relations through regular meetings, financial cooperation, and the establishment of a dual polity with an independent judiciary to resolve disputes between states and the centre.

Political Landscape Shift

Following the second UPA government, there was a significant shift in India's political landscape. The Congress party, which had long been in power, began losing influence both in the parliament and various state assemblies. A new political paradigm emerged, with the BJP gaining dominance at the central level, while regional parties secured power in several states.

The present political landscape in India unmistakably indicates the rise of a formidable central government and comparatively diminished influence of state governments. This phenomenon is not unprecedented; historically, whenever a single political party commands a substantial majority at the centre, such a trend tends to manifest. At the core of the matter lies the question- does this align with our constitution, and is it in the best interest of the Indian public, who bestowed sovereign power upon the party leading the nation?

Fiscal Crisis and COVID-19

Certain issues, particularly those related to financial matters and the implementation of Goods and Services Taxes (GST), along with its impact on state revenues and the role of governors, clearly illustrate the evolving trends in India's cooperative federalism. The question at hand is whether these trends align with the spirit of our constitution.

Any argument in favour of combating federalism should be rooted in our constitution. The Indian constitution embraces the federal principle, delineating sovereign functions between two entities—the Union and the States. Unless the constitution explicitly allows, neither entity can encroach on the operational domain of the other. The framers of our constitution envisioned strict adherence to the federal principle for the future stability of this vast country. As rightly emphasized by the Supreme Court in (*State of West Bengal vs Keshoram Industries Ltd & Ors MANU/SC/0038/2004*), the Court has the constitutional power and the corresponding duty to prevent encroachment by either the Union or State overtly or covertly, ensuring a balanced federation.

The onset of COVID-19 and the subsequent

FEDERALISM IN INDIA: EVOLVING DYNAMICS AND ONGOING TRANSFORMATIONS

lockdown created a severe financial crisis for state governments. Populist schemes, such as farm loan waivers and free ration provisions by state governments, increased their financial burden. The Centre contributed to this fiscal stress by delaying GST compensation cess and reducing the divisible pool amount through cesses and surcharges.

Evolution of Cooperative Federalism

In a vast and diverse country like India, it is highly likely that states may be governed by different political parties, contributing to potential political disparities between the Union and the States. The critical question arises: does this political diversity impact the financial provisions to the states? Regrettably, what transpired was not a consistent and uniform distribution of finances. The enactment of the Goods and Services Tax (GST) Law on March 29, 2017, through the One Hundred and First Amendment to the Constitution of India, significantly influenced the relations between the central and state governments. This amendment, introducing GST, marked a pivotal moment in the evolution of cooperative federalism, a concept enshrined in the Indian constitution. GST came into force on July 1, 2017.

The Standing Committee report on Goods and Services Tax (GST) assured the safeguarding of states' financial autonomy. To ensure this protection, the committee sought guidance from the Attorney General. The guidance asserted that ultimate legislative power lies with both the parliament and the state legislature, emphasizing a commitment to cooperative federalism.

Deviation from Stated Objectives: Analyzing the Mohit Minerals Case

The (Mohit Mineral vs Union of India 2022 SCC OnLine SC 657) serves as a striking illustration of the central government's departure from the intended objectives and principles of the Goods and Services Tax (GST). This legal dispute centered around the imposition of a reverse charge on ocean freight within a Cost-Insurance-Freight (CIF) contract, revealing

significant discrepancies in the interpretation of GST norms.

In the intricate landscape of the CIF Contract, involving agreements between the foreign exporter, Indian importer, and the shipping line, the central issue emerged during the levy of Integrated Goods and Service Tax (IGST) for the delivery of goods and shipping services. The crux of the matter lies in the Centre's insistence on separate IGST payments for shipping services, treating them as discrete elements rather than acknowledging their composite nature within the GST framework (para 1-2).

This departure from the fundamental goals of GST, aimed at establishing a uniform taxation system and preventing cascading taxes, is evident. In a CIF contract, goods and shipping services are inherently intertwined, constituting a composite supply. The central government's demand for separate GST on shipping services contradicts the foundational principles of GST and raises questions about the consistency of its application.

The legal saga unfolded with the Gujarat High Court (HC) rejecting the reverse charge, leading to an appeal to the Supreme Court (SC) (para 9). Instead of conceding potential policy flaws, the Centre introduced two contentious arguments. Firstly, it justified levying IGST on foreign shipping lines as a means to support Indian shipping lines. Secondly, a perplexing contention emerged concerning the nature of the GST Council, introduced at the Supreme Court stage and irrelevant to the determination of the reverse charge's validity. This argument posited the GST Council, a sui generis body, as a convergence point transforming recommendations into legislation (para 10).

In its ruling, the Supreme Court emphatically rejected the reverse charge, underscoring that the Centre cannot exploit arguments of convenience to bypass the composite supply clause. The judgment emphasized the interdependent nature of democracy and federalism, highlighting the principles of cooperative federalism. Recognizing the unequal powers granted to the Centre and states, the Court affirmed the right of states, even those comparatively weaker, to employ various forms of contestation within the constitutional framework to safeguard their rights.

FEDERALISM IN INDIA: EVOLVING DYNAMICS AND ONGOING TRANSFORMATIONS

The Mohit Minerals case, therefore, serves not only as a legal precedent but also as a critical reminder of the importance of upholding the core principles of GST and maintaining the delicate balance between the Centre and states in a federal structure.

Understanding Constitutional Rationale through Constituent Assembly Debates

Delving into the Constituent Assembly debates sheds light on the Supreme Court's judgment. T.T. Krishnamachari asserted in these debates that our constitution empowers units substantially in both legislative and executive spheres. Dr B.R. Ambedkar clarified the basic principle of federalism: legislative and executive authority partitioned between the centre and states, not by a centre-made law, but by the constitution itself. This marks federalism's core – coequal sharing of legislative and executive powers between the centre and units.

However, in reality, states lack funds, compelling them to seek survival assistance from the centre, contradicting constitutional ideals. To counter, the centre portrays fiscal struggles, emphasizing unitary elements. This trend, relying on Articles 1 and 3 of the Indian Constitution, portrays India as a union of states, emphasizing non-negotiable unity. Article 3 provides the Union power to alter state boundaries.

Erosion in Centre-State Relations

The erosion in centre-state relations demands serious consideration by policymakers and the Indian public. Tensions arising from controversial moves like GST and the Citizenship Amendment Act (CAA) signify an infringement on state autonomy, fostering resentment among state governments. Federalism, foundational to our constitution, is vital for a democratic and pluralistic society like India.

Governors' roles, particularly in delaying bills, add complexities to the federal concept. While the governor's formal powers, as exemplified in the (Shamsher Singh & Ors vs State of Punjab 1974 AIR2192), are constitutionally defined, their

discretionary powers have sparked debates. Conflicts, as seen in the S (S.R.Chaudhari vs State of Punjab 2001 7 SCC 126) and (Naham Rabia And Etc vs Deputy Speaker & Ors 2017 13 SCC 332), highlight the need for governors to act impartially within constitutional frameworks.

Governors' discretionary powers, exemplified in the Arunachal Pradesh case, have been subject to criticism. The Supreme Court, in landmark judgments, emphasized the need for governors to act impartially and within constitutional bounds. Instances of biased actions and recommendations for state assembly dissolution underscore the delicate balance required in governorship. The judiciary, exemplified in the Bommai case, plays a crucial role in upholding federalism. While acknowledging the Union's power, the judgment reinforced that the centre cannot arbitrarily interfere with state powers. This precedent has significantly reduced the imposition of president's rule, promoting cooperative federalism.

While considering the revocation of special status of J&K one of the questions 9 that was raised was that whether Article 370 could have been abrogated when that state was under presidents rule sine 2018. The Supreme court while relying on the Bommai judgement held that the president's action of revoking the special status of J&K was constitutionally valid.

Recommendations for Harmonious Relations

Commissions like the Administrative Reforms Commission and the Sarkaria Commission proposed solutions for harmonious centre-state relations. Recommendations included forming inter-governmental councils and using Article 356 sparingly. However, despite these efforts, conflicts persist, particularly when the ruling party at the centre holds a brutal majority. A continuous dialogue and commitment to constitutional principles are imperative for fostering a balanced federal structure in India.

FEDERALISM IN INDIA: EVOLVING DYNAMICS AND ONGOING TRANSFORMATIONS

India's Shift from Cooperative to Combative Federalism

The prevailing trajectory in India reflects a shift from cooperative federalism to combative federalism. This term denotes a situation marked by conflict or tension between different levels of government within a federal system. In federal structures, power is distributed between a central government and state governments. Combative federalism emerges when disagreements arise, leading to conflicts over powers, responsibilities, or policies.

This conflict can manifest in various forms, including legal battles, political disputes, or clashes in policy. It often revolves around determining the appropriate distribution of power between the central and regional governments and their respective involvement in governance areas. Combative federalism is characterized by active resistance or opposition from regional or state governments against central policies, creating a confrontational dynamic.

States in India consistently grapple with financial constraints. Recently, the central government increased state borrowing limits but imposed conditions, violating Article 293 of the constitution. Such administrative control is unwarranted, considering the vast responsibilities and limited financial resources of state governments.

Proposed amendments to the I.A.S (Cadre) Rules signal an attempt by the central government to exert more control over the deputation of I.A.S officials. By relieving officers without state consent, these changes undermine state autonomy, making states more dependent on the central government. This move challenges the foundational principles of federalism.

Recent judicial responses, such as the Supreme Court's message in the Union-Delhi government case, emphasize the importance of not wresting control from state governments. However, the central government's reaction, like the (Government of National Capital Territory of Delhi vs Union of India Civil Appeal No 1239 /2023) Ordinance, reveals a combative trend. The ordinance, challenged and replaced by an Act of Parliament, granted more

power to the Lieutenant Governor, perpetuating the conflict.

Federalism and the Constitution: A Balancing Act

As the centre grows more powerful, adopting a tough stance with states, the Madras High Court's observations in *M. Karunanidhi v Union of India* become relevant. The constitution establishes a government for the entire country, defining powers and relations between the centre and states. The present approach, relying on a unified but cooperative structure, conflicts with states' demands for more financial freedom and less unnecessary intervention.

Recent Supreme Court verdicts reinforce the importance of the Governor's role and the need for adherence to constitutional integrity. The Court's emphasis on the Governor's obligation to communicate and not indefinitely withhold assent to bills underscores the role of Governors in safeguarding federalism.

Presently, the central government's approach hinges on a particular dimension. While states are expected to maintain their existing status, their requests and struggles do not revolve around secession from the Union. Instead, they seek increased autonomy in financial matters and the freedom to administer their affairs without undue interference from Governors who, at times, neglect constitutional principles.

The trend of dismissing governments, which began with the ousting of the first communist government led by EMS Namboodiripad in Kerala in 1959, persists. Governors continue to function more as agents of the central government, prioritizing loyalty over upholding constitutional integrity, exemplified by instances such as Mr. Surjit Singh Barnala's actions as the governor of Tamil Nadu in 1990-91.

In a recent ruling addressing the concerns raised by the governments of (The State of Punjab vs Principal Secretary to the Governor of Punjab And Another WP (C) No 1244/2023), (The State of Kerala And Another vs Hon'ble Governor for State of Kerala

FEDERALISM IN INDIA: EVOLVING DYNAMICS AND ONGOING TRANSFORMATIONS

And Ors WP(C) No 1264/2023) and Tamil Nadu, the Supreme Court emphasized that Governors cannot indefinitely withhold bills to obstruct the legislative process. The Court stressed the pivotal role of the Governor as a symbolic head of state in safeguarding federalism, a fundamental aspect of the Constitution. It warned against the unchecked exercise of discretion, which could undermine the functioning of democratically elected state governments.

Regarding the powers outlined in Article 200, the three-judge bench, led by the Chief Justice of India, clarified that while the Governor can withhold assent, they must promptly communicate a message to the state legislature, necessitating a reconsideration of the bill. The bench highlighted the advisory role of the Governor, allowing recommendations for amendments but ultimately leaving the decision to the legislature.

In conclusion, the coexistence of states with a robust Union government is imperative for India. Fostering a harmonious relationship between the center and state governments is crucial. The Union government should ensure financial stability for states, while Governors must align with the spirit of the constitution, functioning as facilitators in an efficient federal setup.

Towards Harmonious Relations: The Way Forward

In conclusion, India must balance a strong Union government with harmonious relations between the centre and states. Adequate financial stability for states, respectful adherence to the constitution's spirit by Governors, and a commitment to an efficient federal setup are essential for the coexistence of a strong Union and empowered state governments. Combative federalism, while reflecting current challenges, should prompt a re-evaluation of power dynamics for a more balanced and cooperative future.