

# FEDERALISM IN INDIA: ASYMMETRIC IN NATURE

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## **Abstract:**

In spite of the fact that "federalism" is sandwiched in comparative politics. Efforts to study about federalism constitute a part of relative legislative issues i.e. comparative politics or political establishments since federalism isn't just cross-national but a multifaceted i.e. cross-cultural research as well. While the study of federalism has in numerous regards stretched to an advanced stage today, but nevertheless there remains a disturbing absence of arrangement with regards to the exact connotation of the concept. This study analysed basically, some issues and challenges in the concept of federalism in distinctive kind as a system of government in different states and nations of the world. The main objective of this work, however, has been to bring to attention the current new trends in federalism more specifically about the asymmetric nature of the Indian federalism and discover new patterns in federalism as observed by different researchers in different fields in connection to federalism. It isn't an attempt to give a complete scientific account in any case, but this paper would be dealing with some of the issues which would be essential in order to define the real concept of federalism in India. Moreover an attempt has been made to uncover, some of the essential ambiguities in the working of the federalism governance in the present political setting. Additionally, this article to a great extent is an attempt to express our hopeful worry over the capability of the standard of cooperative federalism in Indian conditions instead of a negation of it being the most ideal elective.

## **1. INTRODUCTION:**

K.C. Where defined federalism as "*the method of dividing powers so that the general and regional governments are each within a sphere co- ordinate and independent.*"

Federalism is a type of government in which the sovereign power of political power is segregated between different units. This type of government is additionally called an "alliance" or a "federal state" in the regular speech. These units are Centre, states and Panchayats or the municipalities. The centre likewise is called union. Framed by the Constitution of 1950, Indian federalism serves the second biggest populace on the planet, containing an unparalleled collection of societies, religions, dialects, and ethnicities. The first government Act of 1950 drew its structure from the British Government of India Act, 1935, and its motivation from the unified arranged development. But there was huge distinction between controlling a province like the "gem in the crown" in a tremendous straggling domain and making an organization to unite various individuals with a dream of social equity for all.

There can be a mixture of inspirations for different units to meet up to constitute an alliance. The political and financial hypotheses of federalism attempt to comprehend the reason for the "meeting up" to frame organizations and once they are shaped, examine the conditions for "holding together". The political drive for the smaller units to combine must be found in issues of opportunity, security, political dependability and quality while keeping a different group personality. Thus, access to a bigger basic market, acquiring economies of scale in the arrangement of country level open products and accessibility of more extensive decision in the heap of services to meet different inclinations are some of the monetary explanations behind the smaller units to come together to frame an alliance. Each combining unit will attempt to deal terms profitable to it to join the federation while the federation will attempt to attract entry and control exit. In these circumstances, symmetry in intergovernmental connections may not be conceivable.

"Asymmetric federalism" is comprehended to mean federalism in view of unequal forces and connections in political, regulatory and monetary courses of action between the Units constituting a federation. Asymmetry in the policies in an alliance can be seen in both vertical (amongst Centre and states) and horizontal (among the states) notices. On the off chance that alliances are seen as 'indestructible association of indestructible states', and Centre and states are believed to exist on the premise of equality; neither has the ability to make

advances into the characterized authority and functions of the other especially. Be that as it may, such 'idealists' perspective of federalism is hardly seen in practice, if by any means, it is found practically applicable. Notwithstanding when the constitution ensures close equivalent forces to the states, in the working on federal matters, then at that time the government frameworks i.e. Centre commands in political, authoritative and monetary circles which in turn is a threat to the concept of federalism. There is extensive volume of literature on Central domination in Indian federalism and central intrusion into the States' domains in the working of the federation.

The essential features of federalism are *dual government*, *distribution of powers*, and supremacy of the constitution, the authority of courts, written Constitution, decentralization, and a *real division of power*, though the aforementioned principles are not exhaustive, they do encompass major elements of federalism. A federal constitution establishes a dual polity, comprising two levels of government—a central government having jurisdiction over the entire country in some areas, and state governments, each of which exercises jurisdiction within defined regional boundaries. A citizen in a federal country is subject to the decrees of two governments. The totality of governmental powers and functions are divided between the Centre and the states. Each level of government thus functions within its assigned field. The several governments do not, however, function in watertight compartments. They come in contact with each other at several points, and thus a host of inter-governmental relations arise in a federal country. The pattern of these relations is not static; it is dynamic and is constantly finding a new balance in response to the centripetal and centrifugal forces' operating in the country, and, that is why the subject of inter-governmental relations is of much significance to a student of any federal constitution.

The federal system in India has been designed by its founding fathers on three pillars: a strong Centre, flexible federation and cooperative federalism.

India is a holding together state as India has been defined as “India, that is Bharat, shall be a union of States,” in Article 1 (1) of Indian Constitution, Dr. B.R. Ambedkar said in the Constituent Assembly that the word ‘union’ instead of the word ‘federal’ is used for two definite advantages, viz. that Indian federation is not the result of an agreement by the units, and that the component units have no freedom to secede from it.<sup>4</sup> The fundamental features of

federal system of India are that there are two sets of government in India: the central or union government and the state government. The Central government works for the whole country and the State governments look after the States. The areas of activity of both the governments are different; there exists division of powers in India, The Seventh Schedule of the Constitution contains three lists of subjects which show how division of power is made between the state and the centre; India has its own written Constitution, every provision of the Constitution is clearly written down and has been discussed in detail. It is regarded as one of the longest constitutions of the world which has 395 Articles 22 Parts and 12 Schedules; The Constitution is regarded as supreme law of the land in India; there exist separate judiciary body as guardian of the Constitution. These are some of the features of a federal form of government in the Indian Constitution. The Constitution has also included some unitary or *non-federal features*, for example Constitution of India is not strictly rigid as it has been amended for more than 100 times in 68 years, there exists *single citizenship*, unified judiciary, *unequal representation of states in Rajyasabha*, *existence of emergency provision*, and the existence of a State or a federating unit depends upon the authority of the Centre as the boundary of a State can be changed by created out of the existing States.

## 2. Challenges of Federal System

Federalism is one of the most important factors of modern constitutionalism. It is established all over the world perhaps, as the only form of political organization suited to communities with diversified pattern of objectives, interests and traditions, who seek to join together in the pursuit of common objectives and interests and the cultivation of common tradition. The basic objective of federalism is unity in diversity, devolution in authority and decentralization in administration. The basic condition of federalism is plurality, its fundamental tendency is harmonization and its regulative principle is solidarity. According to Daniel J.Elazara," Federal system provides a platform so as to allow each to maintain its fundamental political integrity".

As we have already noted, federalism stands on the principle of 'unity in diversity'. The cases of the United States, Switzerland, Canada and India illustrate that in each one of them there are prevailing diversities that are sought to be preserved. Though the people have diverse religious, ethnic and cultural patterns of life, they have also developed a sense of common

identity that they do not desire to lose. This is not to deny that, in spite of these social and cultural differences, there must be an over-riding sense of unity to bind the diverse people together, but that needs to be in the interest of the general people.

The federal State, differing as it does from the Unitary State in essential features, has to face a number of problems. It has two sets of governments which must work in concert and harmony. Integration implies the co-existence of the people of various languages, religions, races etc. in India. But there are certain fissiparous federal tendencies which threaten national unity and integrity. They pose hindrances to federal system in India. Here we will continue our discussion to the following major areas of challenges:

### **2.1 Challenges of Regionalism**

Regionalism has been traditionally present in India but its emergence as a limiting factor of Indian politics is a post-independence phenomenon. The fathers of the constitution were aware of it and they wanted to keep it under control. The demand for separate states in India, demands for full statehood for different areas, demands for state autonomy and emphasis on regional interests over national interests are some of the examples which show how regionalism is quite strong in India. In a positive sense regionalism means love for one's area of living or a particular region to which one belongs. However in the negative sense and in its present form regionalism means love for one's region over and above the country as a whole. The negative view is dangerous from the point of view of federal system in India.

Regionalism is a great hindrance to federal system in India. It takes the different forms like demands for secession, demands for separate statehood demand for full state hood etc. The issue of creating smaller states like Telangana and Vidarbha and the demand for the division of Uttar Pradesh into four states needs to be tackled rationally, in a manner that would take into account demographic, economic facts and administrative conveniences. A fresh States Reorganization Commission can be set up to give recommendations on the whole issue. This can certainly help in containing misgivings' and controlling public passions.

### **2.2. Problem is to effect a division of powers**



Two sets of governments operate simultaneously in a federation. The Central and State governments enjoy powers under the constitution. The main problem is to effect a satisfactory division of powers between them. It is, to adopt Bryce's metaphor, "to keep the centrifugal and centripetal forces in equilibrium, so that neither the planet States shall fly off into space, nor the sun of the Central Government draw them into its consuming fires". The general principle underlying the division of powers is that all matters of national importance, e.g. defence, foreign affairs, railways, currency are allotted to the Central government while matters that are primarily of local or regional importance e.g., education, public health, local administration are assigned to regional governments. The details of the division vary under different federal conditions. There is variation not only in the particular subjects which fall within the sphere of the Centre and of the Units, but also in the way in which the division is affected. Broadly speaking, there are three such methods. *First*, in the U.S.A., Switzerland, Australia and the U.S.S.R., the powers of the Central government are enumerated in the constitution while the remaining powers or residue is left to the regional governments. *Secondly*, in Canada, the powers of the provinces are enumerated; the residue is left to the Centre. *Thirdly*, in India the powers of both the Central and State Governments are specifically enumerated in the Union list and State list respectively while powers mentioned in the Concurrent list are enjoyed by the two sets of governments. The residuary powers are vested in the Central government.

The governmental powers must not only be satisfactorily distributed between the Centre and the Units, but provision must be made to prevent either from encroaching upon a sphere allotted to the other. The most important safeguard is the setting up of an independent Supreme Court to interpret the constitution and decide conflicts of jurisdiction between the Centre and the Units. Again, the constitution is made rigid so that neither the Central nor State legislatures can unilaterally change its provisions. Some part is given both to the Centre and the Units in the process of amending the Constitution.

### **2.3. Protection of the Smaller Units against dominance by the larger**

In most federations the Units are unequal in size and the larger units may have a predominant influence in the Central Government on account of their larger representation in the lower House of the Central legislature. The first provision to prevent this evil is that in the second Chamber of the Central Legislature, every unit is given equal representation (followed

in the U.S.A., Australia, Switzerland and the U.S.S.R.). Further in all these federations the second Chamber is given powers very nearly equal to the first. The second safeguard is that all amendments to the federal constitution require ratification by at least half of the Units.

#### **2.4. Organization of the relation between the Centre and the Units**

Normally in a federation the Centre and the Units are independent of each other in the spheres allotted to each by the Constitution in legislation, in administration, and in finance. In actual practice various points of contact are established between the two. Under the American Constitution the federal government shall guarantee to every State a republican form of government and to protect them against invasion and domestic violence. In Canada the Governor General is empowered to veto provincial laws and appoint Governors of the provinces. The Indian Constitution provides for detailed legislative, administrative and financial relationships between the Union and States.

#### **2.5. Organization of the relation among the Units**

Federal Constitutions contain provisions to regulate the relationship of the Units so as to secure harmony among them in respect of certain essential matters. Thus every State is enjoined to give full faith and credit to the public acts, records and judicial decisions of every other State; the citizens of every State are entitled to the privileges and immunities of citizens of every other; it is required that all goods and commodities produced in anyone of the Units mechanism which unites separate politics within an overarching political system shall be admitted free into every other; all alliances of a political character between the Units are forbidden; and so on.

#### **2.6. A Satisfactory Method of Amendment**

A federal constitution is necessarily rigid. The peculiar problems with regard to the amending body are that:

- (a) Neither the Centre nor the Units could unilaterally amend the constitution, and

(b) It is desirable that in the body which is authorized to change the constitution, both the Centre and the Units are given some place, and further that the smaller units must be protected against dominance by the larger.

### **2.7. Secession/Separation from the Union:**

It is possible that one or more of the Units may, as the Southern States of the U.S.A. did in 1861, claim the right to secede or break away from the federal Union. The issue in the U.S.A. was decided by the civil war against secession. The Soviet Constitution is unique in recognizing the legal right of secession. Where such a right does not exist the only method for a Unit to secede from the federation and regain its sovereignty would appear to be an amendment of the Constitution. However, the working of federalism exhibits a strong bias against secession. Some federations have proved successful, while others have failed. Some of the federations have disintegrated while others have been converted into unitary political unions.

### **2.8 Issue of Religion**

Religion may also be a challenge for federalism. India is a fine example of religious heterogeneity creating occasional turmoil to weaken the federation. But the religious process need not be always divisive. So long as there is a reasonable tolerance on the part of the people and a genuine secular policy on the part of the government, religion may not cause imbalances in a federation.

In a federation, if there is ethnic variety, the solution is to make the boundaries of the constituent federal units coincide with the boundaries of each ethnic group. This has been the case in Yugoslavia, Czechoslovakia, the Soviet Union, India, Switzerland etc. However, in such cases also problems occur. Even when ethnic groups occupy compact geographical areas their boundaries are not so sharp and distinct that minorities of one will not be left in a political unit designed for another group. Moreover, great difficulties may be created as migration and urbanization mix up the groups.

### **2.9 External forces**



External forces also sometimes disrupt a federation. For example, there are tensions in the North-Eastern states in India due to the involvement of neighbouring countries. The Tamil issue in Sri Lanka creates disruptive forces in India.

### 3. CRITICAL ASSESSMENT OF FEDERAL SYSTEM

The temperament of federalism in India during the coalition era has been changed evidently. Political deliberation seems to surpass the administrative and financial aspects of the Union-state relations in India. The states having the governments of those parties that form part of the central coalition give the impression that to have little conflict with the Centre. Their complaints are submissive or subdued and the general awareness is that they get particular contemplation and hold in matters of resources approved by the Centre. As a consequence, it is raising noise sometimes that the Centre is being partial against the states having governments of the opposition parties..

**In January 2015, the central government had announced its decision to scrap the Planning Commission and replace it with NITI Aayog.** With this decision, the role that Planning Commission played in allocating resources to the states, keeping in mind the regional disparities, has come to an end. NITI Aayog, which replaced the planning commission, is established with a regressive mandate to take India further down the path of free markets, privatization and dilution of social welfare policies.

It cannot be denied that the erstwhile Planning Commission was an instrument in the hands of the Central Government, with the states having no say in the resource allocation. However, Modi's claim that the new set-up would be based on cooperative federalism\* with the states as stake-holders has turned out to be a spurious.

In January 2016, a year after the *dismantling of the Planning Commission*, the Central Government announced that it wished to completely *replace the National Development Council by the Governing Council of NITI Aayog*, which is a powerless body, designed to work like a think-tank. The governing council is directly under the control of the Prime Minister and the Prime Minister's Office -Making it in essence a centralized Unitarian structure.

After dismantling of the Planning Commission, as a substitute to the five-year plan, Central Government is coming up with a *15year vision document* comprising of 3 year action agenda and a 7 year strategy document. In this context Niti Ayog's chief executive officer, Amitabh Kant sent a letter directly to all the district collectors requesting them to prepare a one page document listing the suggestions and priorities of the citizens from every gram Sabha. This document is to be forwarded to NITI Aayog by January 31, after convening a 'special gram Sabha' on January 26. The letter to the collectors also says that 'Once collated, the national priorities will be taken into serious consideration in drafting India's vision document and shall also be presented as Citizen's Vision of India to the Prime Minister'.

*No communication in this regard has been made to the State Governments* and the letter has been directly sent to the district collectors. This is the second instance in which the Niti Aayog has directly given instructions to the district collectors.

If at all the Prime Minister was serious about formulating a *Citizen's Vision of India*, it would have been appropriate to convene a meeting of the Inter-State Council to draft it. It would have ensured that the citizens' voices from all across the country are recorded. Considering the fact that this is the second instance where the State Governments have been bypassed by the NITI Aayog, it is clear that this is a deliberate and planned effort at dismantling the federal structure of our country.

Another problem pertains to the allocation of *financial levies* in the context of the recent changes introduced. In this perspective the Central Sales Tax, VAT and the on-going discussion on GST (Goods and Service Tax) have strained the attention of the bargaining stakeholders at the Centre and the states. What is praiseworthy is that the discussion between these stakeholders is based on rigid facts and on the consideration of shared interest. Such joint spirit is a trademark of major federalism. It is vital to make sure that issues which are fundamentally economic should not turn into outstandingly political issues.

It is a frequently apprehended view that the Union government employs financial leverage to favour or disfavour particular states. This is the prevailing insight. Further, the dependency condition indicates a continuous dependence of the states on the Centre needs a far-reaching adjustment. There is a call for to work out a satisfactory mechanism that would ensure a more

equitable and liberal sharing of the economic resources so that the dependency syndrome gives way to a healthy relationship between the territorial components.

Better wisdom in the struggle against *terrorism and Naxalism* by the Centre and the states is immediately addressed for. It is a strong sign that since 2007, a physically powerful federal initiative is going on to counter Naxalism in the exaggerated states of the country and that joint operations are being embarked on to combat this depression. The opposition from the states to the use of Central police force is fading, as now it is documented that without a supportive endeavour, crucial subject of internal security and advance management cannot be embarked upon effectively. Likewise, in the North East and Jammu & Kashmir, mutual discussion on the issue of tackling insurgency and terrorism has become essential to the political dialogue.

It is advantageous that legislations to contain terrorism, in consonance with the need for defence of human rights, should be calculated in a manner that they become successful gadget of internal security. The disagreement between the Centre and the state on the nature and contents of such state legislations ought to be determined through a composed contemplation of the necessity of internal defence.

On the subject of the *imposition of Article 356*, it is broadly held that the principles of natural justice and fair reflection must be pursued. 1970s and 80s will be remembered for the most malicious use of Article 356. From the year 1971 to 1984, *it was used 59 times* with maximum being used in the period 1977-79 during which Morai Desai government ruled. It was used by the post-emergency Central government as vendetta against Congress-ruled state governments. Later, Indira Gandhi returned the favour after storming back to power in 1980 and during the period 1980-84 it was *used 17 times*. The Law Commission has experimented that in a large number of cases, where article 356 has been in-motion, the situation could have been better gripped under article 355 without striking the President's rule. Article 355 speaks: *It shall be the obligation of the Union to defend every state against external aggression and internal disturbance and to ensure that the government of every state is accepted on in accordance with the provisions of the Constitution*. Almost not any precise attempt has been made to open downsize article 356 and to prevent the requirement to inflict the President's rule. Even in the substance of article 356, the concerned state is given very rarely a chance to give details at its place and restore the situation. True, the Central government has to take a wider

view of national safety and steadiness, but this view should not be coloured with a narrow-minded, malicious or merely political considerations. The Union leadership should illustrate statesmanship while making such an important verdict moving the functioning of our federation.

In the current era of coalition government, *the role of Governor* in state administration has also become moderately less political and ever more moderate. The Sarkaria Commission, S R Bommai case and the Punchhi Commission - all have gone over a more than impartial and balanced approach to the role of Governor as an important establishment of federal polity. It is indispensable that the Governors should not become compulsive to prove their faithfulness to the Union government and should make only measured and balanced interventions at appropriate times. As political heads of their respective states, the Governors are expected to first think in terms of the concentration of the states, instead of according dominance to political benefits, choice and product.

The coalition governments at the Centre have controlled the imposition of the President's rule in the states under article 356. It is a vigorous sign that the partners in a ruling coalition at the Centre have not always encouraged the slight interest of the dominant political party and have taken a purpose view in relation to article 356. The randomness generally found in the one-party dominant rule, has now given way to a more lawful constitutional standpoint in maintaining a fragile federal political equilibrium

A sound constructive approach to federalism in India also need that the *Zonal Councils* as well as the *Inter-state Council* should turn out to be permanent institutions to make possible long-lasting significant connections between the Centre and the states and among the states themselves. There are a number of critical subject that need a determined action through a serious discussion, the most imperative *being the river water disputes* that occasionally appear as subject of discontent. There have been a few success narrative in this respect. For instance, concerning the Krishna River, the role of tribunal for adjudication on river water disputes has been eminently functional. This needs to be reversed by greater amiability among various states. Self-centeredness of a particular state should not come in the way of wider national interest. There is a demand that all the major rivers should be speak out national assets and the subject of distribution of their water should fall within the domain of the Union government.

Even when this principle is established, it will be pleasing to engage all the states anxious in the debate for shielding the federal as well as state interests in water management. It is far above the ground that the Inter-state River Water Disputes Act 1956 is made a successful device of determining the pending inter-state water disputes pertaining to Godavari, Narmada, Cauvery and other rivers that are our perennial national possessions.

The Concurrent List, as experimented by the Law Commission, presents a fine balance between the need for regularity in the national and the state legal systems and creating an instantaneous jurisdiction for the states to put up individual diversities and peculiar characteristics of different regions. However, there is a steady *grievance of states* against the Centre unilaterally legislating on the subjects mentioned in *the Concurrent List*. The main criticism against the Centre is that it uses its powers in this realm without sufficiently discussing with the states. As a result, the prevailing need is that this legislative power is used to get deeper inter-dependence and cooperation, and not strain the supremacy of Union government.

At the end, it is pertinent to mention here that the various recommendations put forth by various commissions on centre-state relations has proved effective to some extent, but the Indian governance-system should come up with some positive attitude keeping the state-interest in mind. The author would like to *highlight some suggestions*, so as to understand the main concern in the concept of co-operative federalism, these are:

- The preamble of the constitution should describe India as a *federation of state* than the *term union*. All the states should be accorded more powers to impose taxes.
- Rajya Sabha should be directly elected with equal representation of states and its power should be equal with that of Lok Sabha.
- English as an official language should be continued in non-Hindi regions.
- Article-249 should be abolished and Centre should have no jurisdiction of the State services. The 7<sup>th</sup> schedule and its list should be reformulated and the states should have exclusive control over police and paramilitary forces.
- For the President to consult the Chief Minister of the concerned state, before the appointment of a Governor is not a constitutional requirement. It must be held that the chief minister's consultation is mandatory.
- Article 248, should be repealed, and all the residuary powers should be vested with the state legislature.



- The inter-state council should be made a permanent body, not at the desire of the president.
- The president should not make any delay on state bills.

## CONCLUSION

'Federalism' is one of those good echo words that evoke a positive response towards many concepts such as democracy, progress, constitution, etc. Federalism tries to facilitate the sociopolitical cooperation between two sets of identities through various structural mechanisms of 'shared rule'. But because of the above reasons, center- state relations and the state autonomy have become the cardinal issues of the Indian federalism. The union government appointed Sarkaria Commission in 1983 to examine and review the working of the Indian Federalism, but this Commission doesn't make any useful recommendations for structuring the Indian federalism in a proper manner. The Union government also took in a very easy approach some of the recommendations made by this commission. This shows that even though our constitution is said to be a federal, but this overemphasis on the power of the federal government makes incapable of dealing effectively with socioeconomic challenges and strengthening national unity. Hence, it is appropriate to restructure Indian Federalism to make it more effective and promote center – state relation.

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