

## **A STUDY OF THE GROWTH OF FEDERALISM IN INDIA AND THE IMPEDIMENTS LYING AHEAD**

*Written by Dr. Rakesh Chandra*

*Academician, Former Civil Servant, LL.M. from B.B A. (Central) University, Lucknow,  
Ph.D. in Law from Lucknow University, India*

---

### **ABSTRACT**

Article 1 of the Indian Constitution declares India as a "Union of States". Answering the question as to why India is a "Union" and not "Federation of States", Dr. B.R. Ambedkar stated in the Constituent Assembly on November 4, 1948, that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation. The federation is a Union because it is indestructible. Some political analysts have termed it as "holding together". However, this federal system has survived India for over seventy years and is still thriving. But of late, this indigenous concept of federalism is facing criticism from various quarters, and on varied grounds. These are of three types, namely, a Constitutional claim of autonomy, a demand for fairer distribution of taxes, and an assertion of linguistic and cultural rights. Sometime ago, the Prime Minister of India termed federalism as "cooperative federalism" and also, as "competitive federalism". Factually, the growth of federalism depends upon the trust between its various constituent units. If a set of states develop the perception that the policies of the Central Government have the tendency to create obstruction in their path of progress in any manner, the bogey is raised to get more autonomy which does not go away with the idea of federalism under Indian Constitution. This paper tries to go to the roots of various dissenting voices against federalism in India and explore the possible solutions.

**Keywords:** Indian Constitution, Federalism, Cooperative Federalism, Linguistic and Cultural Autonomy, Fairer Distribution of Financial Resources.

## **INTRODUCTION**

Article 1 of the Indian Constitution states that India is a "Union of States". While moving the Draft Constitution in the Constituent Assembly on November 4, 1948, Dr. B.R. Ambedkar, responded to the question as to why India is a "Union" and not a "Federation of States", by saying that : "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 in a 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."<sup>i</sup> This statement makes it amply clear the intention behind making India as a "Union of States" and not a "Federation of States". In this context, political scientist, Alfred Stepan, classified India as a "holding together" federation as opposed to "coming together" federation. Unlike the United States having the federal form of government, which is described as an indestructible union composed of indestructible States, India is an indestructible union of destructible States.<sup>ii</sup> While the flexible nature of federalism under the Constitution has served India in good stead and successfully "held together" as a federation for 75 years, the journey has not been smooth. The questions have been raised regarding several provisions in the Constitution and the demand for reconsidering the distribution of powers between the Union and the States has been vociferously raised by the States on several occasions in different contexts.

## **HISTORICAL PERSPECTIVE**

1. Historically, federalism in India can be viewed in four distinct phases. The first phase lasted for about four decades after Independence. In this quasi-federal system, created by the Constitution, the hegemony of one ruling political party, the Indian National Congress, resulted in a strong Centre with several States having the same Congress-ruled governments. This period witnessed a tilt in favour of the Centre, with States largely toeing the line, even if slightly unhappily. In case any State hesitated to follow the line, stern measures like the imposition of Centre's rule under Article 356 was not uncommon.
2. In the second phase, a new era of the coalition governments post-1989 saw the light of the day. The Congress was no longer the dominant political party at the Centre. The

regional parties held a sway in the political arena. In this phase, States assumed a bigger role in policymaking. The use of Article 356 to topple down the elected governments in the States also lessened. It was apparent that the balance of power was tilting towards the States.

3. The third phase ranged from 2014 and 2018 when the Bharatiya Janata Party (BJP) assumed power at the Centre and in many States. This revived the role of the Strong Centre with the States willing to abide by its commands. Epoch-making legislation like the Goods and Services Tax, replacing various central and state taxes, was enacted in this phase.
4. The fourth phase is still continuing post-2018 which has witnessed both a strong Centre and in many States. But at the same time, the phenomenon of the revival of strong regional parties taking the reins of some of the States, such as Telangana Rashtra Samithi (TRS) in Telangana, Biju Janata Dal (BJD) in Orissa, YSR Congress Party in Andhra Pradesh and a few more, became a reality. Resultantly, the voices of dissent could be clearly heard against the Centre's diktats in selective matters. To put it otherwise, a strong Centre is on a collision path with a set of assertive States. Apparently, the noble concept of cooperative federalism, as invoked by the Prime Minister Narendra Modi, is looking a bit hazy.

## **THE PERCEPTIBLE FAULT LINES IN THE EXISTING FEDERAL STRUCTURE IN INDIA**

### ***1. A Constitutional Claim for Autonomy***

(i) The presence of Article 356 in the Constitution of India is attributed to be against the spirit of federalism. The regional parties, in particular in the States, often question its relevance which remains as a vestige of colonial rule.

(ii) The national capital, Delhi has got a unique status as a Union Territory (UT) with an elected Assembly and government. On December 20, 1991, the then Home Minister S.B. Chavan tabled the Constitutional Amendment Bill in the Lok Sabha to add Articles 239 AA and 239 AB into the Constitution. This Amendment augured the creation of a Legislative Assembly and a Council of Ministers for the National Capital Territory (NCT) of Delhi. (Ibid.) The first

assembly election took place in Delhi in 1993. Since then, there are two power centres in Delhi: One in the chief minister's office and the other at the Lieutenant Governor's office. The two worked in tandem for several decades but this working relationship is marred by the political bickering between the ruling AAP government and the Centre. In 2021, the Government of National Capital Territory of Delhi Act was passed on the basis of which the L-G sought to expand his powers. This Act makes it incumbent on the elected government to refer almost every decision to the L-G. Since Delhi is not a full State, special provisions for it are contained in Article 239-AA which stipulates that the Delhi government will have no legislative or executive control over public order, police and land. The rest of the work lies within the domain of the Delhi government. On May 21, 2015, a notification was issued by the Union Ministry of Home Affairs to the effect that L-G would exercise control over 'services' too. The reason assigned was the Delhi government didn't have its own public services like other states. Against this, the Aam Aadmi Party government moved the Delhi High Court. The Court however, ruled in 2016 that matters relating to services fell outside the purview of the Delhi government. The Appeal was heard by the Supreme Court of India and adjudicated on 11th May 2023,<sup>iii</sup> that the Delhi government needs to have control over the bureaucracy otherwise the principle of collective responsibility would be adversely affected. The beginning of the showdown between the AAP and the Bharatiya Janata Party originated with the administrative affairs but it escalated into a long and unsavoury fight due to political edge. The Supreme Court has stressed in its verdict on the importance of cooperative federalism, and it cautions against the flip side and excesses of political overreach.<sup>iv</sup> In the aftermath, the Central Government promulgated an Ordinance on May 19, 2023, which seeks to create an authority for transfer and posting of Group-A officers in Delhi. The AAP government has challenged this Ordinance in the Supreme Court. Thus, the battle for supremacy over the services still continues.

## ***2. Increased Gubernatorial Interventions***

In the last few years, the fine balance between the Chief Minister as head of the Council of Ministers and the Governor of the State has created much bad blood. States consider them as unnecessary and unwanted. They also treat such Interventions as a challenge to their autonomy which has been granted to them in carrying out legislative and executive works. In a recent incident, the Tamil Nadu Governor dismissed a cabinet minister on his own without acting on the advice of the Council of Ministers. However, he reversed his decision after he was advised

by the Union Home Ministry to take legal advice on the matter. This was a flagrant violation of the Constitutional provisions. Similarly, there was much furor in West Bengal when the Governor appointed eleven Vice Chancellors in the universities. In West Bengal and Tamil Nadu, move was afoot to take this power of appointing Vice Chancellors of the universities from the Governor and vest in the Chief Minister. Besides that, the tussle between the two Constitutional functionaries was witnessed in Punjab, Maharashtra, and few other States where the ruling governments belonged to other parties than BJP.

### ***3. Withdrawal of General Consent by the States for CBI***

Central Government often orders a CBI enquiry into some intricate criminal matters where it finds that the concerned State police is not capable of solving the case. Such an order is made at the request of the State itself. For this purpose, a general consent has been accorded by all the States. This general consent is given under Section 6 of the Delhi Police Establishment Act, 1946, which lays down the provision for the federal agency to seek permission of the State for investigation. However, in the light of continuing tussle between the Central and State Governments, States have started to withdraw such consent. In the month of June 2023, Tamil Nadu became the 10th State to withdraw such consent. Prior to this, the States of Jharkhand, Punjab, Meghalaya, Chhattisgarh, Kerala, Mizoram and Rajasthan have already done this due to various reasons.<sup>v</sup> This clearly reflects the confrontation between the Centre and States which is not healthy for the federal structure of the country.

### ***4. Appointment of DGP of the States***

In the month of June 2023, the Punjab government passed a Bill that sought to get rid of the Supreme Court-mandated process of appointment of the State police chief, the Director-General of Police (DGP). The Bill replaced a panel of seven members to be set up by the Union Public Service Commission. This provision was a part of guidelines issued by the Supreme Court in the 2006 case of Prakash Singh versus Union of India. As per the Court's orders, it would be mandatory for the States to prepare a list of senior police officers at least three months prior to the retirement of the incumbent and send it to UPSC. Afterwards, a panel of three candidates would be prepared by the UPSC. The panel would be sent to the States for the final selection for the post. The move of the Punjab government is clearly a violation of the federal principles enunciated under our Constitution.

### **5. *Changes in the All-India Service Rules***

In 2022, the Central Government proposed changes in the All-India Service Rules of IAS and IPS officers. The proposals were objected by ten opposing parties including Kerala, Tamil Nadu, Maharashtra, West Bengal and Delhi. The avoidable clashes between the Centre and West Bengal were witnessed regarding the transfers of an IPS and an IAS officer of Chief Secretary rank in West Bengal to the central pool in the last two years (2021-2022).

### **6. *Federalism and Judiciary***

In a recent judgment, Justice Abdul Quddhose of the Madras High Court has held that federalism is a part of the basic structure of the Constitution and it applies to the judiciary as well. A High Court in one State cannot exercise powers which, under the normal circumstances, can be exercised only by the High Court in another State. It was further stated that only the Karnataka High Court can rule on a dispute related to removing a Bengaluru medical college from the ambit of deemed-to-be university in Chennai.<sup>vi</sup> This judgment is unique in the way it stresses upon the federalism in judiciary also.

### **7. *A Demand for Fairer Fiscal Federalism***

#### **(i) Goods and Services Tax (GST)**

GST was first discussed in the report of Kelkar Task Force on indirect taxes in 2003 and it was introduced by the 101st Constitutional Amendment in 2017. In the entire GST regime, the concept of the GST Council is unique to India. This council, a Constitutional body, is represented by the Centre and the States is responsible for taking all the decisions regarding policy and the implementation strategies. Recently, a ruling of the Supreme Court on May 19, 2023, gave a jolt to the smooth working of this august Council in which it was held by the Apex Court that the recommendations of the GST Council should be seen as having persuasive value rather than be considered binding on the Centre and the States. "The ruling may well be the biggest threat the GST regime has faced in its existence-one best addressed by the Centre and the States working together ."<sup>vii</sup> It is pertinent to note here that the States are allegedly of the view that the GST Council is often dominated by the Union government with the help of BJP-ruled States. The Council is also said to be dismissive of the spirit of cooperative federalism on many occasions.

(ii) Discontentment over the Terms of Reference of the 15th Finance Commission

A considerable amount of heat was generated in regard to the terms of reference of the 15th Finance Commission. In April 2018, the Kerala government hosted a meeting of three southern Indian States, namely, Andhra Pradesh, Karnataka and Union Territory of Puducherry at Thiruvananthapuram that culminated into a unified stand in regard to the 15th Finance Commission on mainly two counts: first, its terms of reference would resort to the use of 2011 Census data for evolving the resource sharing formula, and secondly, that the southern States have been contributing more to the Central exchequer than what they receive from it through devolution. Tamil Nadu abstained from the meeting, but the State opposed the terms of reference of the Finance Commission.<sup>viii</sup> However, the final report of the 15th Finance Commission has been submitted to the Central Government for further necessary action after taking into consideration all the objections raised by different parties. A viable formula for devolution of financial resources needs to be evolved by consensus involving the Centre and the States.

**8. Assertion of Linguistic and Cultural Rights**

(i) Linguistic Claims

The southern States, especially Tamil Nadu, witnessed large-scale agitations and shows of resistance against the imposition of Hindi as the national language in the decade of 1970s. This position is unchanged till date. In fact, the issue of national language in form of Hindi has become extremely cantankerous for any political party ruling at the Centre.

(ii) Cultural Claims

A few months ago, a separate flag was designed and unfurled at some places in Karnataka to highlight the importance of the cultural identity of the State. Every now and then, the sparks of controversy temporarily blur the otherwise calm atmosphere of the country.

## **THE FUTURE FEDERAL FAULTLINE: ENVIRONMENTAL PROTECTION**

Apart from the above-mentioned fault lines, a new fault line may be added to the existing list, namely, Environmental Protection. The burden of protecting India's environmental resources is unavoidably unequal across States and regions. Accordingly, the regions or States majorly contributing to India's stock of natural capital and providing ecosystem services to other parts of the country, deserve to receive adequate federal compensation. Ecosystem services include carbon storage, natural air and water filtration mechanisms, and flood protection which are invisible. But their presence and availability are not infinite.<sup>ix</sup> In this context, it needs to be mentioned here that the previous Finance Commissions have made recommendations of this nature. For instance, the need for green compensation was for the first time identified by the 12th Finance Commission headed by C. Rangrajan. Resultantly, a small grant of Rs. 1,000 crores to States was awarded which was distributed among them in proportion to their share in the total forested acreage. Similarly, this grant was raised to Rs.5,000 crores by the 13th Finance Commission headed by Vijay Kelkar. It was averred that the States need to be given incentive to protect forests and biodiversity. The 14th Finance Commission headed by YV Reddy further raised the grant money and the share of forested area in each State was included, for the first time, in the devolution formula for distributing tax proceeds among States. A 7.5 percent weightage was assigned to the criteria of forest. The 15th Finance Commission, headed by N.K. Singh, raised this weightage to 10 percent. In this way, the Finance Commission acknowledged the trade-off between the need to conserve natural resources and the requirement of rapid economic growth.<sup>x</sup>

There are some other minor irritants in the functioning of smooth federalism in India. In this context, the observations made by CJI, Y.V. Chandrachud need to be mentioned here where he said in the case of Delhi government's powers vis-a-vis Centre<sup>xi</sup> that federalism in a multicultural, multi-religious, multi-ethnic, and multi-linguistic country like India ensures the representation of diverse interests. He further said, "that recognizing regional aspirations strengthen the unity of the country and embodies the spirit of democracy ". Justices Chandrachud also quoted Dr. B.R. Ambedkar who had stated that "Centre and States under the Constitution are co-equals". That is how the Tamil Nadu chief minister repeatedly insists that the Central government should be addressed as a Union of States. Finally, in the above judgment, Justice Chandrachud has concluded, relying on Dr. Ambedkar and the judgment

pronounced in S.R. Bommai's case, that the States are not subservient to the Union or its mere appendages.<sup>xii</sup>

The delicate matter of Centre-State relations was referred to Justice R.S. Sarkaria in February 1984 for deeper scrutiny and examination. The Commission submitted its 600-page report in October 1987. Some of its recommendations were adopted while many of them are still lying in the dust. It is obvious that the spirit of the Constitution is self-evident but whenever the line is crossed by the strong Centre, such fault lines appear with much venom. Noted jurist Nani A Palkhivala has rightly diagnosed the problem as such: "The problem has arisen today in an acute form because over a period of years the Centre has acted in a manner in which at best has been contrary to the spirit of the Constitution and at worst has been tantamount to a fraud upon the Constitution...The truth of the matter is that it is a noble Constitution which has been worked in an ignoble spirit".<sup>xiii</sup> This is, indeed, a telling commentary on the state of Centre-State relations.

## **CONCLUSION**

The Centre-State relations under the Indian Constitution are based on the principles of cooperative federalism. The States and the Centre are co-equals, and their common driving force is good governance and the growth of the country to the best possible level. Plainly looking, in the light of these objectives, there seems to be no bones of contention between the two. But in such a diverse country like India with a representative democracy having a multi-party system of governments, some kind of tussles and problems of specific nature are bound to appear on the surface. This happens more so when there is a strong Centre with governments in many States belonging to the same party. India has witnessed such scenarios often. But such problems can be amicably solved with continuous dialogue and with good intentions. Federalism demands mutual trust in an abundant quantity. Whenever this trust wanes or largely disappears, the federal structure of the country begins to shake. There is no denying the fact that the internal enemies and external foes both try to exploit the situation. Their only purpose is to disintegrate the country. In a federal structure, mutual respect for each-other's culture and traditions is most necessary. Similarly, the financial allocation of resources among the States should be based on their backwardness and level of property. Though this is not a soft option,

yet the Central Government must exercise its best discretion in a transparent manner so that the trust of the States in the Centre is not breached. There is no precise formula for doing this but with good intentions and fairness, the above goal is achievable. India must move from federalism to cooperative federalism imbibing the spirit of the Constitution.

## **ENDNOTES**

- 
- i Constituent Assembly Debates, Book No. 2, Vol. No. VII, Lok Sabha Secretariat, 2014. P.43.
  - ii Federalism and fairness, Mathew Idiculla, The Hindu, Apr 3,2018.
  - iii Government of NCT of Delhi v Union of India, Civil Appeal No. 2357 of 2017.
  - iv Editorial, Hindustan Times, May 13, 2023.
  - v HINDUSTAN TIMES, June 15, 2023.
  - vi Mohammed Imranullah S. Hindustan Times, June 22, 2023.
  - vii Editorial, Hindustan Times, May 21,2022.
  - viii Shaibal Gupta, Shortchanging The South, The Times of India, April 13, 2018.
  - ix Prmit Bhattacharya, Environment may be a new federal fault line, Hindustan Times, May 30,2023.
  - x Ibid.
  - xi Government of NCT v Union of India, Civil Appeal No. 2357 of 2017.
  - xii Faizan Mustapha, One nation, many governments, The Indian Express, May 13,2023.
  - xiii Liz Mathew, In current frictions between Centre and States, a recall from decades ago, The Indian Express, March 8, 2022.