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FEDERALISM IN INDIA

AUTHORED BY:- ADV. PRADNYA PATIL

What is Federalism?

Federalism is derived from the Latin word “foedus”, which means “covenant, pact, and treaty”. Federalism is a principle that defines a system wherein the government divides its power between the National Government and State Government. It is a dual machinery system upon which a government works. There is a distribution of powers between the central authority and various state authorities.

The principle followed by these types of government is “Separation of Power”. India works on the principle of two levels of government system in which it divides its power between Central Government and State Government. The constitution of India which envisages the Parliamentary form of Government is federal in structure with unitary features. The main branches of the Federal Government are the legislative, the executive, and the judiciary.

Principles of Federalism in the Constitution

Federalism is based on two principles:

Separation of Power

Checks and balances

The Federal form of Government highly maintains these two principles. The power of each machinery of government is distributed and none of the machinery interferes with the work of others. The first judgment concerning the principle of separation of power was given in the case *Ram Jawaya v State of Punjab*¹, where the Supreme Court noted that "The principle of separation of power was not fully accepted in India". However, the same principle found a clear place in the Indian context from the case of *Indira Nehru Gandhi Vs. Raj Narain*².

The principle of checks and balances in the federal system is required for the proper functioning of all levels of organs of government. Each organ of government checks the functioning of other

¹ <https://indiankanoon.org/doc/1318432/>

² <https://lawtimesjournal.in/indira-nehru-gandhi-v-raj-narain/>

organs so that the other organ may not violate the principle of separation of power and no organ becomes too powerful. Some examples of checks and balances are:

The judiciary may exercise judicial review upon the legislature and executive.

The executive has the power to appoint judges for courts.

Legislation may review the functioning of the judiciary.³

Function of Federalism

The basic function of federalism is to maintain the separation of power between the Central Government and State Government. Central Government makes laws from the areas listed in List I of the Seventh Schedule (e.g, Foreign Affairs, Extradition, Foreign Jurisdiction, etc) and State Government makes laws from the areas listed in List II of the Seventh Schedule (e.g, Public order, Public health, and sanitation, etc). List III is the Concurrent List, it talks about the areas where both governments have the autonomy to make law.

Another function of federalism is to maintain justice by the supremacy of the Supreme Court. Also, there are proper checks and balances under this form of government so that no branch becomes more powerful in suppressing the other. According to James Madison “If men were angels. No government would be necessary”.

Federal Features of the Indian Constitution

1. Two sets of Government

There are 2 sets of government in India and that is union government and central government. The central government looks after the whole country and the state government mainly works for the states. The working of both governments are different.

2. Division of Powers

Powers between central government and state government have been divided by the Constitution of India. The seventh schedule of the Indian constitution provides how the division of powers is made between state and central government. Both central and state governments have separate powers and responsibilities.

The 7th schedule of the Indian constitution consists of the union list, state list, and concurrent list.

³ <https://blog.ipleaders.in/federalism-in-india-2/>

Union list

It contains all the matters on which only the central government can make laws.

State list

It contains all the matters on which the state government can make laws.

Concurrent list

It contains all the matters on which both central and state governments can make laws.

Written Constitution

India has one of the largest constitutions in the world which consists of 395 articles 22 parts and 12 schedules. Every article of the Indian constitution is clearly written down and has been discussed in full detail.

Supremacy of the Constitution

The Constitution of India is regarded as the supreme law of the land. No law can be made or passed against the constitution of India. The Constitution of India is above all citizens and organizations of the country.

Supreme judiciary

The Supreme Court of India is regarded as the superior court of the country. The decision of the Supreme Court is binding upon all courts and it has the power to interpret the articles of the constitution.

Bicameral-legislation

In India, the legislature is bicameral. It has two houses that are Lok Sabha and Rajya Sabha. The upper house of the parliament which represents the states is the Rajya Sabha and the lower house of the parliament which represents the people in general is Lok Sabha.

The constitution of India consists of federalism features such as division of power, supreme judiciary, two sets of government, bicameral-legislation, etc which clearly shows its federal nature. The division of power between state and central government shows the federal nature of India and the supremacy of the judiciary shows the absolute power of the Supreme Court that its decision is supreme and binding upon all courts. However, the powers given to the central

government have more weight in comparison to the state government.⁴

What makes India Quasi-Federal?

There are many examples that clearly show that the Indian constitution has federal features but it also shows that it has been evident with quasi-federal features too. Some of the examples that show that India is a quasi-federal are followed

- Division of power between the central and state government but the central government has been given more power than the state government.
- Parliament can override the laws which are passed by the states for the reason of national interest.
- Residual powers are vested with the central government.
- Major taxation powers are also vested with the central government.
- Parliament does not represent the states equally, however, in a pure federal government the upper house of the legislature has equal representation from the constituent states. But in our Rajya Sabha, the states do not have equal representation. The populous state has more representatives in the Rajya Sabha than the less populous states.
- In India, citizens are allotted single citizenship which is not a feature of pure federal government. As in true federal nation, citizens are allotted dual citizenship. First, they are the citizens of their provinces then they are the citizens of their nation.⁵

Conclusion

Indian structure of Government is federal with some feature of Unitary form of Government. Union and State follow the principle of separation of power but not in the strict sense. Principle of Distribution of powers is usually followed in India. This makes India a federal country of its own types. For easy convenience, it is described as Quasi-Federal Country.

⁴ <https://blog.ipleaders.in/what-is-federalism/>

⁵ <https://epgp.inflibnet.ac.in/>