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# **FUTURE OF FEDERALISM: ANALYSIS OF THE INDIAN CONSTITUTION**

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## **Introduction**

Federalism implies the division of political and constituent power, i.e., the ability to rule at two levels, however local governments may exist inside a state as well. Every federal system needs to divide authority between the Union government and the State governments, who must both be sovereign in their own right and independent of one another. Power has been split between the Center and the States, which is one of the most significant features of the federal constitutions, in order to prevent the anarchy and conflict between the two contending jurisdictions. The Union List, Concurrent List, and State List are three lists in the seventh schedule of the Indian Constitution that list numerous pieces of legislation: The three legislative lists listed the authority given to the state legislature, the Parliament, and all of them simultaneously. However, a matter would be regarded as a residuary authority of the Parliament if none of the three Lists addressed it. In a federal framework, the independent judiciary plays a crucial role as the final arbiter of constitutional interpretation and upholds constitutional principles.

## **Concept Of Federalism**

The idea of federalism has several different historical roots. Federalism is a national constitution for a group of states that want union but not unification, according to Dicey. A federal state, according to him, is a political ruse designed to balance national unity and authority with the preservation of state rights. The existence of the union and its states, the distribution of power between the union and the states, and the strength of the union's bond are all essential components of a federation.

Consequently, there is a separation of powers between the federal and state governments in a federation. Federal governments are found in nations like the USA, Switzerland, Australia,

Canada, and others. The main characteristics of federalism include the existence of separate federal and state governments, the separation of powers, the rigidity and written nature of the constitution, its supremacy, the independence of the court, etc.

The founding writers of the American Constitution intended for the federal system of government to restore political stability to a "inchoate assembly of thirteen haughty and quarrelling sovereignties." The independence of the states in the United States, the world's oldest federation, cannot be compromised until the Constitution is repealed. The Constitution "looks to an indestructible union consisting of indestructible states" in all of its provisions. Although this fundamental goal has been accomplished during the last 200 years, despite the fact that civil wars were fought along the way, the structure of American federalism today is much more complicated than that. Federal experiments have seen similar modifications to those in the United States in other regions of the world.

The Indian political system, which, in contrast to the United States, began as an administrative rather than a contractual federation, has also gone through the different stages of federal policy, from its quasi-federal character to a stage of cooperation and competition in its center-state relations, and then to a stage of extreme centralization. This is not the place to list all of the Indian Constitution's clauses that grant the Center power over its subordinate entities and that prompted Prof. Wheare to say that "India is a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles." They are far too widely known. In India, the federal legislature has the authority to create new states, change the borders of existing states, and even abolish a state through regular legislative procedure without resorting to constitutional amendment, which contrasts with the United States, underscoring the central government's supreme status. Trends and Concerns regarding the Indian Constitution's distinctive feature, the feature of Indian federalism that sets it apart from the American system is Parliament's ability to enact legislation for all or any portion of India's territory with regard to any of the issues included in the State List during the declaration of emergency. The Indian Constitution granted the Union Government such imposing authority that, if it so desired, it could oversee, supervise, and regulate the operations of state governments not only in times of war or emergency but even in times of peace. In truth, the Indian government assumes a unitary structure in times of emergency.

Despite these commonalities, the Center is mostly dependent on the states to carry out its programmes. This has occasionally prompted numerous state governments to successfully disregard federal orders. The state governments' refusal to impose taxes on agricultural

revenue, which the Center has often advised and which was most recently endorsed by the Raj Committee's proposal, is a prime illustration of their steadfast disobedience of the Union's command. Because of this, several academics have cited India as an illustration of cooperative federalism.

The initial federal character of the Indian system has been significantly altered by the Constitution (Forty-second Amendment) Act of 1976. As Article IV-A<sup>1</sup> of the Constitution stipulates, every citizen of India has a responsibility to safeguard and defend the sovereignty, unity, and integrity of India. This is a new inclusion in terms of fundamental obligations. Additionally, the amendment changed Articles 352<sup>2</sup> and 353<sup>3</sup> to allow the President to declare an emergency only in relation to a portion of the nation or to limit an existing declaration of emergency to only that portion. The intention of the Constitution's authors to create a long-lasting Union in which the states would have no ability to secede has definitely been reaffirmed by this.

In my opinion, it is crucial for all political entities, both national and regional, to improve their internal organizational structures so that state and local concerns can be resolved there without the need for unnecessary intervention from the top. In the past, state leaders had a tendency to do this, which seriously undermined their own autonomy system and gave the central leaders more power to impose their will at the state level.

All of this additionally entails the growth of a unique political culture that, for lack of a better term, one would refer to as federal culture. If the idea of unity in diversity is to be restored to its original power in India, it is necessary for both the Centre and the States to acknowledge the richness and vibrancy that result from the sub-cultural variations among the country's numerous and diverse regions. However, such a transition wouldn't occur until the Union and its constituent entities as a whole began to establish a spirit of federal comity and spirit. The process of political modernization in India seems to have reached a point where an open, decentralized system may address systemic issues while advancing toward economic, social, and political modernity. In the end, though, Indian federalism is likely to remain a flexible, pragmatic, and easily reversible imperfect process—just as it was in the past.

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<sup>1</sup> Fundamental Duties, Ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 11 (w.e.f. 3-1-1977)

<sup>2</sup> Proclamation of Emergency, Art. 352 of Constitution of India

<sup>3</sup> Effect of Proclamation of Emergency, Art. 353 of Constitution of India

## Two-Way Analysis Of The Constitutional Character Of Federalism In India

India's constitution is exceptional in that it is extremely detailed and substantive. The Indian constitution is special since it declares India to be a union of states<sup>4</sup> despite having a federal structure.

In contrast to the United States of America, whose constitution grants dual citizenship, the United Kingdom's constitution provides for a single citizenship. All citizens are unified under the same identity as "Indians" because to single citizenship, which provides the constitution a unitary aspect.

The Indian Constitution established a dual polity in which the state and union governments each have the authority to enact legislation on specific subject matters.<sup>5</sup> The fact that the central government is in control of the remaining powers makes this situation unique. The Indian federalism is a little difficult to understand because of this characteristic that sets it apart from other nations.

The written constitution is a further indication that India is a federal nation. The Indian Constitution, which fully outlines everything from rights to remedies, is the longest and bulkiest constitution in the world. As a result, the nation's federal structure is strengthened and state and citizen security is guaranteed.

The three democratic pillars of the legislative branch, the executive branch, and the judicial branch each hold a portion of the national authority. All three of these pillars work best when combined with an independent judiciary, which upholds the supremacy of the constitution and resolves disputes between two or more states or between the Centre and the States. This ensures a strict corrective system. But is that enough? The constitution's foundation of unitary administration is provided by the court, which, while independent, is a cohesive institution. Other provisions of the same constitution indicate that the president shall designate governors,<sup>6</sup> who shall hold office in accordance with the wishes of the president. That implies that the heads of state are chosen at the whim of the federal government, doesn't it? One may be curious.

India's constitution is rigid and flexible at the same time. One essential component of

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<sup>4</sup> Art. 1 of Constitution of India

<sup>5</sup> Schedule VII of Constitution of India

<sup>6</sup> Art. 155 & 156 of Constitution of India.

federalism is the constitution's rigour. But in less than 75 years after Independence, the same rigorous constitution has undergone a century's worth of modifications.

A bicameral legislature made up of an Upper House (Rajya Sabha) and a Lower House is established by the Constitution (Lok Sabha). The Lok Sabha represents all of India's citizens, while the Rajya Sabha serves as a proxy for the states of the Indian Federation. Despite being a less powerful body, the Rajya Sabha is necessary to maintain federal stability by defending state interests against the Centre's unwarranted meddling.

Other than the aforementioned clauses, the following clauses of the constitution conflict with its federal nature:

The Union has the authority to create new states and redraw the borders of existing ones.

- The Union has the authority to enact laws relating to state affairs, and in the event that a dispute arises between the Union and the State, the Union will prevail.
- The emergency articles of the constitution when conjured up, give a unitary character.

## **Federalism In India And The Role Of The Courts**

Numerous cases challenging the federal nature of the Indian constitution have been heard by the Indian judicial system. To assist you digest its contents, I have compiled a few of instances in reverse chronological order to illustrate the judicial system's perspective on the matter.

"The Constitution of India is not truly Federal in nature," the court ruled in *State of West Bengal v. Union of India*.<sup>7</sup> The Union and the States share authority on the assumption that "the powers which are concerned with the regulation of local problems are vested in the States, and the residue, notably those which serve to maintain the economic industrial and commercial unity of the country, are left to the Union."

*State of Rajasthan v. Union of India*<sup>8</sup>, the Indian Union is a federal organization, in a sense. However, the requirements of progress and development of the country, which must be nationally united, politically and economically coordinated, and socially, intellectually, and spiritually elevated, greatly dilute the scope of federalism in it. With this structure in place, the States would be powerless to thwart the Central Government's plans for the lawful and all-encompassing development of the country.

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<sup>7</sup> *State of West Bengal v. Union of India*, 1963 AIR 1241.

<sup>8</sup> *State of Rajasthan v. Union of India*, 1977 AIR 1361

In *State of Karnataka v. Union of India*<sup>9</sup>, it has been said that the Indian Constitution is quasi-federal in nature yet not federal. It is true that the federal government and the states have different roles in executive and legislative branches, yet there is still a way to limit the federal government's influence.

Simultaneously in *Kesavananda Bharati v. State of Kerala*<sup>10</sup>, some of the justices ruled that federalism is integral to the Constitution and so cannot be changed.

In the case of *S.R. Bommai v. Union of India*<sup>11</sup>, there were four separate judicial rulings on this matter. First, Justice Ahmadi ruled that the constitution was only "quasi-federal" because the word "federal" was not used in any of its articles. Second, Justice Sawant and Kuldeep Singh both agree that federalism is a crucial part of our legal system. In a third major ruling, Justice Ramaswamy proclaimed India to be a "Organic Federation" tailored to the requirements of the parliament. Justices Jeevan Reddy and Justice Agarwal ruled that the term "federalism" in the Constitution should be interpreted in light of its surrounding content. Limits on the discretionary application of Article 356 were imposed as a result of this case.

## **Federalism In India: Benefits And Drawbacks**

In a multicultural nation like India, federalism has benefits and drawbacks. The division of power makes it easier to run the seventh-largest nation, while the second-largest nation requires a unified government to rule over adherents of virtually every religion known to man. The nation benefits much from the integrated and independent judiciary since it aids in providing appropriate redress for rights. However, a written constitution with the flexibility and rigour that the Indian constitution possesses is beneficial for codifying rights, but the same rigidity can be detrimental if revisions are required. The Indian Constitution is not very difficult to change, though.

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<sup>9</sup> *State of Karnataka v. Union of India*, 1978 AIR 68.

<sup>10</sup> *Kesvananda Bharti v. State of Kerala*, (1973) 4 SCC 225.

<sup>11</sup> *S.R. Bommai v. Union of India*, 1994 AIR 1918, 1994 SCC (3).

## **Conclusion**

India has always placed a high value on the phrase "Unity in Diversity," and a federal government supports the establishment of a nation with coexistence and mutual tolerance. A pure federal structure would cause disarray and state separation in a nation like India, which is split along linguistic and sectarian lines. A state will desire to leave the union and form its own government if it is given too much power. I think that's why Jammu & Kashmir's special privileges are frequently questioned in the media.

To address all of this and the aforementioned drawbacks, a balance between the nation's unitary and federal structures is required. States should be independent in their own right, but they cannot be completely autonomous to prevent a tyrannical state from arising in the country. The Indian Constitution, with its particular provisions, offers the safety and security that the people of India require from such things. It creates a state that is simultaneously a union and a federation, giving India a quasi-federal governmental structure that has unified India's diversity for the past 71 years and will continue to do so for decades to come.

