

The Journey of Indian Federalism

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Introduction

India is a big country characterized by cultural, regional, linguistic and geographical diversities. Such a diverse and vast country cannot be administered and ruled from a single Centre. Federalism is a remarkable vehicle for managing diversities, multiplicities and pluralities. It refers to a political system where in the Central government and constituent States jointly share the powers of government within their respective areas distributed between them under supreme authority of Constitution. It is a pragmatic political organization aimed at maintaining a compromise between the states which wish to come together under the authority of Union and at the same time retain their autonomy, diversity and identity¹. It is the most natural form of governance in pluralistic setting. So, founding fathers of Indian Constitution who were deeply concerned about ensuring the unity and integrity of country made no exception. The existence of numerous groups, with diverse legitimate interests within the political system, left no alternative for them but to opt for federal setup². The Constitution explicitly incorporated a federal structure, with States as sub national entities having reasonable autonomy.

A federation can be formed in two ways, that is, bottom up or centripetal where in peripheral units integrates to form a whole (like the USA) with virtually sovereign provincial units ceding power to form Union, another one is top down or centrifugal with a strong unitary structure carving out federated units by granting them autonomy to promote their regional interest and better management. From within the above two models of federation, we adopted the later one with strong Centre because of the contextual circumstances of 1940's and eventual partition of India-Pakistan led to deep seated apprehension regarding the future existence of Indian republic.

Features of Indian federalism

Being a federal state, Indian federal system has the following features.

Written constitution - The most important feature of a federation is that its Constitution should be written one, so that both the Union government as well as the State can refer to that as and when needed. The Constitution of India is a written document and is the most elaborate Constitution of the world. It establishes supremacy of the Constitution because both the Union and the States are given powers by the Constitution as to be independent in their spheres of governance.

Rigid Constitution - The procedure of amending the Constitution in a federal system is normally rigid. Indian Constitution provides that some amendments require a special majority. Such amendment has to be passed by majority of total members of each house of the parliament as well as by two-third majority of members present and voting there in. However, in addition to this process, some amendments must be approved by at least 50% of the states. After this procedure the amendment is signed by the Head of the State i.e. the President. Since, changes

related with federal aspects take place by special majority and ratification by half of States, Indian Constitution has been rightly called a rigid Constitution.

Division of powers - In our Constitution, there is a clear division of powers so that the States and the Centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of the other. Our Constitution enumerates three lists viz. the Union, the State and the Concurrent List. The Union List consists of 100 subjects (originally 97) of national importance such as Defence, Railways, Post and Telegraph etc. The State List consists of 61 subjects (originally 66) of local interest such as Public Health, Police etc. The Concurrent List has 52 subjects (originally 47) important to both the Union and the State such as Electricity, Trade Union, Economic and Social Planning etc. The residuary powers to legislate on subjects not mentioned in any of the three lists are given to Centre.

Bicameralism - The Constitution provides for bicameral legislature consisting of an Upper House (Rajya Sabha) and Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian federation, while Lok Sabha represents the will of the people of India as a whole.

Supremacy of the judiciary - Another very important feature of a federation is an independent judiciary to interpret the Constitution and to maintain its sanctity. The Supreme Court of India has the original jurisdiction to settle disputes between the Union and the States. It can declare a law as unconstitutional, if it contravenes any provision of the Constitution.

Nature of Indian Federalism: Is India a Quasi-Federation?

Federalism in India has evolved to suit Indian context which is typical in nature. Hence we have a combination of both unitary as well as federal features. While the basic federal features are inherent in the Constitution, rest of the features has been suitably modified so as to suit the Indian requirement. Also given the context in which our federalism evolved (traumatic partition, centrifugal tendencies, pluralistic society, illiteracy and ignorance, chronic poverty and unemployment etc.) many of the features were toned down so as to give fundamental importance for preservation of unity and integrity of country. Hence, Constitution of India deviated from traditional federal system like USA, Switzerland and Australia and incorporated a large number of unitary provisions which makes the Centre to have greater power than States, tilting the balance of power in favour of Centre.

Article 1 of the Constitution reads India, i.e. Bharat shall be the Union of States, and the term federation is not used at all. It implies that Union has not been brought into existence due to an agreement between the States rather to a large extent it implies that States have been created by the Constitution. The States do not have right to secede from the Union. However the Union has the right to create new States by altering, adding or reducing territorial boundaries of the state. In this sense, India is a rightly described as 'an indestructible Union of destructible States'.

The Centre appoints the Governor of the States and may take over the administration of the State on the recommendations of the Governor or otherwise. In other words, s/he is the agent of the Centre in the States. The working of Indian federal system clearly reveals that the Governor has acted more as Centre's representative than as the Head of the State. This office has been very much misused by Central Governments to serve their vested interests. The Governors themselves sold to the wishes of political masters at the Centre causing abysmal fall of their constitutional authority. This enables the Union Government to exercise control over the state administration.

The equality of units (states) in a federation is best guaranteed by their equal representation in the Upper House of the federal legislature (Parliament). However, this is not applicable in case of Indian States. They have unequal representation in the Rajya Sabha. In a true federation such as that of United States of America every state irrespective of their size in terms of area or population it sends two representatives in the Upper House i.e. Senate. In case of disturbances in any state or part thereof, the Union Government is empowered to depute Central Force in the State or to the disturbed part of the State.

In addition to all this, all important appointments such as the Chief Election Commissioner, the Comptroller and Auditor General are made by the Union Government. Besides, there is a single citizenship. There is no provision for separate Constitutions for the States. The States cannot propose amendments to the Constitution and such amendments can only be made by the Union Parliament. In order to ensure uniformity and to maintain minimum common administrative standards without impairing the federal system, All India Services such as IAS and IPS have been created which are kept under the ultimate control of the Union. The federal principal envisages dual system of court but in India, we have unified Judiciary with Supreme Court at apex.

In financial matters too, the States depend upon the Union to a great extent. The States do not possess adequate financial resources to meet their requirements. No State is financially self-sufficient as each one is dependent on Centre for financial grants which cut at the very roots of State autonomy. The functioning of Finance Commission and Planning Commission has further eroded the autonomy of States because in the name of real and supposed needs of planned development, it has expanded the authority of Union Government often in total disregard of federal intentions of Constitution³. The Constitution of India establishes a strong Centre by assigning all important subjects to Centre as per Union List along with residuary power to legislate. Moreover, during emergencies – national, state and financial, the Central Government becomes all powerful and the states go into the total control of Centre. It converts federal structure into unitary one.

It is clear that there is a tilt in favour of Centre which has promoted the Constitutional expert and scholar K.C. Wheare to term the Indian Republic as a 'quasi-federal'. He remarked that "Indian Union is unitary state with federal features rather than a federal state with subsidiary unitary features"⁴. Another scholar Morris Jones described it as 'cooperative federalism' and also as bargaining federalism⁵. Ivor Jeanings described it as "Federation with a strong centralizing tendency"⁶. However, Granville Austin aptly summarized and analyzed by saying that though the Constitution has created a strong Central Government, it has not made the State Government weak and has not reduced them to the level of administrative agencies for execution of policies of Central Government. He described the Indian federation as "A new kind of federation to meet India's peculiar needs"⁷.

Federalism through the ages –

Phase I (1947-1967) - Concentration of powers in hands of Central government did not create serious conflicts in early years of functioning because of single party rule both at the Centre as well as most of the States, that is, the Indian National Congress (with few exceptions, like Kerala and West Bengal). Many potential Inter State or Centre- State conflicts were resolved within

party. In spite of centralization and unitary bias of the Constitution, States were largely optimistic and hopeful about economic progress of the country.

Political leadership at the apex level was democratic in nature and was able to articulate the collective needs and aspirations of the people. Institutions like Planning Commission which demonstrated a centralizing trend were started. But this period was not solely dominated by trend of centralization. One of the major democratic movements in the post independence period, the movement for formation of linguistic states took place in fifties which resulted in the formation of linguistic States in 1956. This laid the basis for the assertion by States for greater powers. So Union government followed it up with the institution of National Development Council (NDC) to ensure that formal and participation of State Government happens in the national planning process. All in all, this phase was largely homogeneous and relatively conflict free.

Phase II (1967-1975) - By the mid sixties, centralized planning had started to show structural and operational flaws. State governments were becoming increasingly restless about the pace of economic progress and social development. Year 1967, was a watershed moment when single party rule came to an end. The Congress party for the first time lost in nine states and non-Congress state governments came into being including Left oriented United Government in West Bengal and Kerala. Regional elite which emerged in the States were no longer willing to accept the overall domination of the Centre and demanded key concessions to State governments and restructuring of Centre-State relations.

At the apex level, there was a change in political leadership and the then P.M. started making attempts and initiated reforms which were seen as efforts to consolidate Central domination over the State. Article 356 was now increasingly used for political score settling and toppling rival state governments. The unitary tendencies were reinforced with the institution of Governor now becoming more of an agent of Centre. The post of Governor became largely politicized. There partisan and selfish acts have reduced the Indian federalism into mockery of State autonomy. This phase was largely characterized by combative relationship between Centre and State.

Phase III (1975-1977) The Emergency Phase- The previous phase ultimately culminated in the declaration of emergency which was later extended on internal grounds also. The country got transformed into a unitary set up and into a near authoritarian regime. The 42nd Constitutional Amendment of 1976 was enacted which resulted into fundamental changes. The Centre sought to transfer subjects from State list into Concurrent list whenever an opportunity presented itself. Some of these actions reached zenith during internal emergency.

Phase IV (1977-1989) - With the change of leadership in the post emergency period there was also change in the party and many of the measures taken during emergency phase were revised by the 44th Constitutional Amendment Act. However the experiment was short-lived and after a break, the single party rule was restored. From 1985 onwards, the then PM initiated a new trend by talking of decentralization. He started holding direct conferences with District Magistrates / Collectors which was not well received by the States which treated this as an unwarranted interference in their domains. Also, Panchayati Raj was talked about which was perceived by the State government as an attempt to bypass federal character and create a strong local government.

In the later part of this phase, parties with regional agendas (e.g. Assam, Andhra Pradesh, and Punjab) came to power in some states. They started demanding greater autonomy to the states and were against the use of Article 356 and politicization of Governors post. The Centre responded by appointing Sarkaria Commission which was to go into the entire gamut of the Centre-State relationship and give its recommendations.

Phase V (1990-1995) – Since the 1990's India appears to have become more federalized than before. The political contestation between the forces of centralization and federalism did not result into clear-cut victory of either side. While there has not been substantial change in the unitary features of Constitution and financial system, the political parties has evolved on federal lines. The end of one party (Congress) domination by late eighties created an atmosphere to check the rampant centralization. After a brief period of instability, a coalition government came to power at Central level. Regional parties had played an important role both in the formation as well as in the sustenance of Central government. For the first time in 1989, a National Front coalition government headed by Mr. V.P.Singh, which had major regional parties like TDP, DMK and AGP, took office at Centre. This government took certain steps to strengthen federal principles by setting up an Inter State Council (ISC) and also by promising to rejuvenate NDC so as to make it an effective forum for Centre and State to discuss policy issues.

In the early nineties , with coming up of Minority Government, New Economic Policy was brought out, which made fundamental changes in the economy and heralded the beginning of Liberalization , Privatization and Globalization (LPG) phenomenon. However the States were hardly kept in the policy loop since much of the reforms were macro-oriented and did not involve active participation of State governments.

This phase was also momentous. Due to the passage of 73rd and 74th Constitutional Amendments which brought Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) the third tier of federalism. This phase saw beginning of bargaining nature of Indian federalism.

Phase VI (1995 onwards) - Coalition government seems to have become norm at the Central level and national politics seems to have become sum total of State / Regional politics. Formation of United Front Government and in all subsequent Governments- the 1998, 1999, 2004 and 2009 endorses the coalition regime. Strong regional parties asserted themselves and obtained not just representation but also key portfolios at Union level. This phase was also marred by rising regional inequalities (Bharat Vs India) due to LPG and Centre had to respond by initiating regional development programmes to ensure balanced regional development.

However there was a perception that Centre is suffering from 'step mother syndrome' and only those States whose parties form part of Central Government are being benefited. Compulsion of second generation reforms has made both Centre and State to come together so as to harness potential of LPG and combat the crisis and challenges put forward by complex modern days' time. Today the Centre is also in a greater engaging mood with the States since it is the State government performance which will ultimately ensure success of policy initiatives taken by them. Also changes in contours of law and order are forcing Center and State to find consensus based solutions so as to take a united and an effective stand and adopt multipronged strategy to deal with problems like naxalism, terrorism, communalism etc.

Conclusion and Suggestions-

In a federal system of government there is a need for clear cut division of power between the Union and States. This also requires a written and rigid Constitution and an independent Judiciary to decide disputes between the Union and the States. Though the Indian Constitution has all such features of a federal state, it is indeed difficult to put the Indian Constitution in the category of true federations.

The framers of the Constitution have incorporated certain non federal features in it such as single citizenship, single judiciary, a strong Centre, appointment of the Governor by the President, unequal representation in the Rajya Sabha and so on. All these indicate a tilt towards strong Centre and the States have to work in close co-operation with them. The Constitution is federal in form but unitary in spirit. The Centre has been assigned a dominant role which became necessary keeping in view the dangers to the unity and integrity of the nation. Therefore, there are provisions for co-operative federalism.

The working of the Indian Constitution over the year indicates that relations between the Centre and the States have not remained very cordial. The States have started demanding more autonomy. Various commissions have been appointed by the Government of India to review the Centre-State relations. The Sarkaria Commission examined the problem and recommended changes in the area of federal, legislative, administrative and financial relations.

In the contemporary times, for all practical reasons, concept of State has undergone a fundamental transformation. Now, we have adopted a calibrated and holistic approach. If growth has to be integrative and inclusive, both Centre and State needs to establish congruency of goals and strategies. Isolated efforts however well-intentioned will be inadequate in solving the problems. Today, India is poised for takeoff with its huge social capital and demographic dividend at their disposal. However, to tap it, it requires synergy to be established between Centre State and Local government by collaborative efforts and thus, there is not fundamental dichotomy between Centre and State. Both can coexist with each other. The need of the hour is to have strong governance which will ensure that policies are translated into action.

End Notes:

1. A.P.Avasthi, "Nature of Indian Federal Structure", Indian Government and Politics, 2001, L.N. Aggarwal, Agra P. 217.
2. S.L. Sikri, "The Indian Federal System", Indian Government and Politics, 1989, Kalyani, New Delhi, P. 265.
3. M.V. Pylee, India's Constitution. S. Chand, New Delhi, 1999, P. 252.
4. K.C. Wheare, Federal Government, 1951, P. 28.
5. Morris Jones, The Government and Politics in India, 1960, P. 14.
6. Ivor Jeanings, Some Characteristics of the Indian Constitutions, 1953, P. 1.
7. Granville Austin, The Indian Constitution – Cornerstone of Nation, 1966, P. 186-88.