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FEDRALISM IN INDIA: A CRITICAL AND ANALYTICAL STUDY

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ABSTRACT

A Federal Constitutional establishes a dual polity as it comprises two levels of government. At one level there exists a central government having jurisdiction over the whole country and reaching down to the person and property of every individual therein. At the others level there exists the Regional Governments each of which exercises, jurisdiction in one of the regions or administrative units into which the country as divided under the constitutional. Therefore the citizen of a federal country become subject to the two governments- The central and the regional. In U.S.A, Australia or India, these regional governments are called State Government which is Canada it is called Provincial Governments. The originally of a federal system lies in that power is, at one and the same time, concentrated as well as divided. The pattern of inter-governmental relations in a federal country is not static, rather it is dynamic and is constantly finding a new balance in response to the centripetal and centrifugal forces operating in the country.

Keywords: Constitution, Federal, Government

Introduction

The seeds of federal idea can be traced as far back at the decentralization policy of **Lord Mayo** in 1870. However the authors of Montford Reforms declared themselves formally first of all in favour of federalism. Some British Historians, such as **Percival Spear & Wolseley Haig,** have traced federal administrative elements in India as far back as the Moghuls, beginning with Sher Shah's land revenue system or Provinces.[1] Different concepts of federalism and inter governmental relations in Ancient India can analytically be seen in Hindu theories of King and State: "One of the earliest issue to which Hindu Jurisprudence addressed itself was the position of the King and State. He was supposed to rule by divine right.

King was first considered as a judge, taking over the administration of Justice from Kulas and gilds. Vedic theory did not view the King as either the source or repository of law. He was under

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and subject to the law and, failing to maintain it, was destroyed by the law. The checks on the king were religion, custom, pragmatism, natural justice".[2]

Responding to the local circumstances the British established a unique administrative structure in India. Beginning with the Indian Council Act of 1861, the British administrative structure was established and provided a loosely framed centralized colonial authority. **Lord Morley** the Secretary of State from India appointed a **Decentralization Commission** for the purpose 'to simplify relations between the Central Government and its subordinate and coordinates parts'.[3]

Morley's Decentralization Commission concluded that 'even in matters primarily assigned to the Provincial Governments, these act as agent of the Government of India who exercise a very full and constant check over their proceeding's.[4] **Beni Prasad** views that "Indian Polity was saturated through and through with the principles of what for convenience may e called federalism and feudalism".[5]

In the ancient or pre-Muslim period India enjoyed a continuity of government. **Rama Jois** concludes that in ancient India-which was essentially pre-Muslim i.e. Hindu India-that the concept of federal polity was ingrained in the concept of "one law, one people and many states". "…….as a society, the entire Indian population constituted itself into one homogeneous unit.[6]

Muslim rulers in India ware mostly concerned with the policy of conquering the whole of India and bringing under its sovereign power through the concept of a centralized administration. With the advent of British rule in India, the British policy left the social institutions and relationship alone. Dharma was applied to Hindus in matters of marriage, inheritance, caste system and religious usage. Similarly Muslim law was applied to Muslims; and in other matters, a newly created territorial law was applied to all irrespective of their religion. This concept of territorial law was a new concept of Indians, came to be known a common law in India laying the foundation of colonialism.[7]

Lessons from Indian History

The nature of federal structure which the founding fathers have presented in the Indian Constitution in unique in as much as "our founding fathers wisely did not establish for this country a complete unitary government in which there was no distribution of sovereignty among the various nits composing it. Any such attempt would have completely broken down as India is too vast a country to be governed as a completely Unitary State.[8]

K. M. Munshi, too expressed while supporting a federal Constitution with a strong centre: "The units in India were not sovereign States like the American States in the eighteenth century coming together to found a federation".[9]

Two amendments of the constitution in 1992 have also introduced a third level of local governments in the federal structure at the village and municipal levels requiring the States to ensure the democratic functioning of these governments and to share some of their powers with them.[10]

Theoretically, under no Constitution of the world, the Principle of 'quasi-federal' had been given constitutional status. As a matter of fact the whole constitutional system is divided into two major categories- unitary and faderal. It is clear that practically neither federal, nor unitary constitution can perform their role strictly due to many reasons. And thus no 'strict application' of the principle has given bright to the concept of 'quasi-federal'.[11]

Judicial System in India

The Judiciary in India follows a pattern of British Judicial system rather than federal system in United States. Each State of American Federation has Supreme Court of its own, and at the top there is a federal Supreme Court. Under the Indian Constitution, each State shall have a High Court and above all High Courts there shall be one Supreme Court, the highest tribunal of the country.

The maintenance of the independent and impartiality of the judiciary both in letter and spirit is the basic condition of the Rule of Law and liberty of people. As between the individual and the State, as between the majority and the minority, as between the powerful and the weak, financially, politically, or socially, courts must hold an even hand and give judgment without fear of favor. Though in doing so they are performing a governmental function, but it is a complete misunderstanding of our form of government or any kind of government that exalts justice and righteousness to assume that the judges are bound to follow the will of the majority of an electorate, in respect of the issue of their decision.[12] As **Dr. B.R. Ambedkar** has pointed out that there shall be "one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the Constitutional Law, and the civil law and criminal law, for, such a judicial system, plus uniformity of law are essential to maintain the unity of the country".[13]

The Supreme Court is an essential part of the federal system. It is the highest interpreter of the Constitution and the protector of the fundamental rights of the citizens. Under Article 32 it is the supreme duty of the Supreme Court of guards their rights against every infringement either by the Union or by the State Governments. It is endowed with the power of reviewing the decisions of the courts below it, in civil as well as criminal cases.

The role to be played by the Supreme Court as interpreter of the Constitution and as the protector of the fundamental rights has been described by **Alladi Krishnaswamy Aiyer:**

"The future of evolution of the Indian constitution will thus depend to a large extent on the work of the Supreme Court and direction given to it by the Court ……. while its functions may be one of the interpreting the Constitution …….it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the times which furnish necessary background. It has to keep the poise between seemingly contradictory forces…. It is the great tribunal which has to draw the line between individual liberty and social control".[14]

Other provisions

Jawaharlal Nehru, the chairman of the Union Powers Committee had taken the first step in this direction when he said that even though going back to the Unitary State would be a retrograde step, the Centre should be armed with adequate powers to be able to maintain internal peace, solve economic problems and project a unified image of the country in foreign affairs.[15]

The scheme of distribution of legislative powers between the Centre and the State was explained in the Constituent Assembly, "that we should make the Centre in this Constitution as strong as possible consistent with leaving a fairly wide range of subject to the Provinces in which they would have the utmost freedom to order things as they liked".[16] If we look broadly to the scheme of distribution of legislative powers, it seems that much broad/extensive powers have been bestowed upon the Central Government in Article 249 (Power of Parliament to legislate with respect to a matter enumerated in the State List in the national interest if the Council of States declares by a resolution that such legislation is expedient in the national interest), Articles 250, 353, 355 (power of Parliament to legislate with respect to any matter in State List if the proclamation of Emergency is in operation under Article 352 or 360), Article 357 (power of Parliament to exercise legislative powers of a State when a State is declared by a Presidential Proclamation to be under President's rule under Article 356).

Articles 245 to 254 deal with the distribution of legislative powers between the Union and the States. List I (Union List) include 98 subjects over which the Union shall have exclusive power of legislation. These include Defense, foreign affairs, banking, currency and coinage, Union duties and taxes.[17]

List II (State List) comprises 66 items of entries over which the State legislature shall have executive power of legislation such as Public Order and Police, local government, Public health and sanitation, agriculture, forests, fisheries, state taxes and duties.[18]

List III (Concurrent List) empowers Union and the State legislature over 52 items such as Criminal law and procedure, Civil procedure, Marriage contract, Torts, Trust, Welfare of Labour, Insurance, Economis and Social Planning and Education.[19]

In case of any conflict in the matters of the three lists, predominance has been given to the Union Legislature, as provided under the Government of India Act, 1935.[20]

Emergency provisions of the Constitution (Article 352-360) constitute the most explicit statement of the overwhelming power of the Center, not only to transform the normal federal arrangement in three circumstances i.e. National emergency (Article 352), failure of constitutional machinery in States (Article 356) and financial Emergency (Article 360) into abnormal unitary functioning, but also to suspend and abridge the authority of States and impose central rule of ceratin period of time (Articles 356 and 365).

Under Article 262 the Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of any interstate river or river valley. Similarly Article 263 provides for the establishment of another Inter-State Council to enquire into and to advise upon the disputes between the Centre and the States, or amongst the States themselves.

In India, the scheme of distribution of sources of revenue between the Centre and the State is bassed on the scheme laid down in the Government of India Act 1935. The Drafting Committee had recommended that in view of the unstable conditions prevailing in 1948, the existing distribution of the sources of revenue under the Government of India Act, 1935 should continue for at vast five year after which Finance Commission be appointment within two years of the inauguration of the Republic or thereafter at the expiration of every fifth year or earlier, a Finance Commission. The duties of the Commission are to recommend to the President, the distribution of the taxes which are distributable between the Centre and the States and the

principles on which grants should be made out of the Union revenues to the States. The Constitution of India thus provides for a new solution to the problem of distributing the public revenues. It is indeed a flexible method and the whole division comes under review after every fifth year and even earlier.[21]

The idea off the Constitution provisions embodying the co-operative system of revenue distribution between the Union and the States is based on economic and administrative ground.[22]

The scheme of distribution of revenue collecting power is construed such as to maintain a financial equilibrium between the Center and the States. A brief of such framework is as follows:-

1. There are taxes levied and collected by the Union and of which the Union retains the proceeds, such as taxes on income, corporation tax, duties of customs, duties of excise on tobacco, taxes on companies, surcharges levied on Union or State tax heads, and a variety of taxes.[23]
2. There are taxes levied and collected by the Union but the proceeds of which are to be shared with the States, such as primarily income tax and excise duties, excepting that agricultural income tax and certain excise duties are reserved for the States.
3. There are taxes levied and collected by the Union but the proceeds of which are assigned wholly to the States, such as succession and estate duties, terminal taxes on goods and passengers, etc.
4. There are taxes levied by the Union, but collected by the States, such as stamp duties and excise on medicinal preparation.
5. Finally, there are taxes which are within the Jurisdiction of the State Governments, for example, taxes concerned with land, such as land revenue, agricultural income and land succession taxes, estate duties in respect or agricultural land, excise duties on alcoholic liquors and narcotics, sales taxes, taxes on professions and callings, taxes on vehicles, taxes on passengers traveling by roads or inland waterways, taxes on luxuries and amusements.[24]

Though the Constitution describes the distribution of revenues as “better than any financial system”.[25] but the obvious reason for the controversy seems to be that “the States are very largely dependent for their resources on grants made to them by the Centre”.[26] Be that as it may, in financial relations, as in legislative and administrative relations, the Union and the States are

mutually dependent in as much as "the States need Union funds, but the Union without the co-operation of the States could no long exist. The State Governments may often be instruments of Union (national) policy, but without their help the Union could not give effect to its program".[27]
From the above-mentioned analysis, the main principle underlying the financial scheme seems to be that under the Constitution of India it is not possible to separate the financial power as between the Union and the State into any watertight compartments, and any endeavors to do so would be an exercise in futility and non-workable.[28]

Conclusion

The Centre as well as State have to proceed positively towards establishment of such councils to strengthen co-operation and co-ordination among the Central and State Governments. A study team of the Administrative Reforms Commission as well as Sarkaria Commission have suggested the establishment of Inter-State Council under Article 263. Moreover the Supreme Court has also suggested the setting up of a council under Article 263 to sort out problems of Centre State taxation.[29]
The Supreme Court of India has original jurisdiction under Article 131 of the Constitution to decide the issue which arises between Union and State on one side and between two or more States on the other side. The main task of the Supreme Court is to act as guardian of the Constitution and made sure that its provisions are complied with. It further keeps a check on the encroachment of the Centre and State and States inter-se into each other jurisdiction. Through a close study of the 'Federalism in India' we come to know the fact that thus the idea of federalism in India was no a new concept. The seeds of federalism could be traced back to the British India. However, the federal idea in India does not follow the orthodox pattern of federalism represented by the American Constitution or the Australian Constitution.
The federal character is flexible in nature. But the condition of a flexible federal nature of a Constitution is not only in a country like India, but in other federations in the world neither of them is purely federal or unitary. Our constitution is federal in nature, quasi federal in working and strictly unitary in emergency.

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