

NATURE OF INDIAN FEDERALISM- AN ANALYSIS

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OBJECTIVE

- To understand the Constitutional provisions as regards the nature of Indian federal structure.
- Factors lead to the adoption of federalism.
- Federal and Unitary features of the Constitution.
- Analyze the provisions clashing to the federal principles.
- Study the revolving issues as regards the federal provisions between the Centre and States.

INTRODUCTION

- ▶ Federalism is the distribution of power within an organization or, it is a type of government in which, the power is not only vested in the central government but rather, divided or shared among all the other governmental units.
- ▶ In the Indian system, it shows the relation between the Union and the States.
- ▶ Thus, sovereignty is split between two territorial levels so as to ensure their independence and equal distribution of power.
- ▶ The Constitution of India establishes a federal structure to the Indian government, it to be a "Union of States" under Article 1.
- ▶ Indian model of federalism is called the quasi-federal system as it contains major features of both a federal and unitary government.

TYPES OF FEDERATION

- In a federation system, there are two seats of power that are autonomous in their own spheres.
- A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.
- ▶ There are two kinds of federations:
 1. **Holding Together Federation** – In this type, powers are shared between various constituent parts to accommodate the diversity in the whole entity. Here, powers are generally tilted towards the central authority. Example: India, Spain, Belgium.
 2. **Coming Together Federation** – In this type, independent states come together to form a larger unit. Here, states enjoy more autonomy as compared to the holding together kind of federation. Example: USA, Australia, Switzerland.

NATURE OF INDIAN FEDERALISM

- In a unitary form, the Centre has the sole administrative and legislative powers, whereas the states have very little autonomy
- On the other hand, in a federal set-up, states which are formed on a linguistic or regional basis, have various powers similar to that of the central government.
- India doesn't follow a rigid form of the federal system.
- Truly unique in its nature, it is rather a blend of federal form and unitary form of government.
- However, it is important to note that even though the powers of the states are sovereign in nature along with the union, they do not coordinate with the Centre.
- In other words, it follows what is known as quasi-federalism.

WHY FEDERAL SYSTEM

- ▶ There are many reasons why federalism was adopted in India.
- ▶ One of the most important factors were the vast size and diversity of the nation.
- ▶ India is a diverse nation in many senses, be it religious diversity, linguistic, regional or cultural.
- ▶ Thus, it would pose great difficulties in administration and governance to a unitary form of government and could eventually lead to a breakdown.
- ▶ Thus, there was the requirement of the system so designed to create harmony and prevent any action by the authorities which go beyond the purview of the constitution, by a system of check and balance.

The Constitutional Character of Federalism in India

- ▶ Dual Government
- ▶ Written Constitution
- ▶ Division of powers between the national and regional government
- ▶ Supremacy of the Constitution
- ▶ Rigid Constitution
- ▶ Independent judiciary
- ▶ Bicameral legislature

Constitutional Provisions regarding Centre-State Relations

- The constitution contains elaborate provisions to regulate the various dimensions of the relations between the Centre and the states
- The relations between Centre and state are divided as:
- **A. Legislative relations:**

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the State

- **B. Administrative relations :**

The administrative jurisdiction of the Union and the State Governments extends to the subjects in the Union list and State list respectively. Articles 257 to 267 deal with administrative relation

- **C. Financial relations :**

Indian Constitution has made elaborate provisions, relating to the distribution of the taxes as well as non-tax revenues and the power of borrowing, supplemented by provisions for grants-in-aid by the Union to the States.

Article 268 to 293 deals with the provisions of financial relations between Centre and State

Provisions of the Constitution that clash with the Federal Nature

- ▶ Unlike in other federations, the states in India have no right to territorial integrity.
- ▶ Union has the power to make new states or alter the boundaries of existing states.
- ▶ Union has the power to make laws on state matters and if both state and union adjudicate on a certain matter, the latter will prevail.
- ▶ During an emergency, the central government becomes all-powerful and the states go into total control of the Centre.
- ▶ The Governor is appointed by the President. Through him, the Centre exercises control over the states.
- ▶ The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the president. The president enjoys absolute veto over state bills.

Judicial Character of Federalism in India

- ▶ The Indian judiciary has heard a number of cases involving the issue of the federal character of the Indian constitution.
- ▶ The first significant case where this issue was discussed at length by the apex Court was *State of West Bengal V. Union of India*. The apex court held that the Constitution of India is not truly Federal in character.
- ▶ *State of Karnataka v. Union of India* - The Indian Constitution is not federal in character but has been characterized as quasi-federal in nature.
- ▶ *Kesavananda Bharati v. State of Kerala* - federalism to be a part of the basic structure of the constitution which means it can't be tampered with.

Revolving Issues on Federalism

- ▶ For a country like India which is divided on the linguistic and communal basis, a pure federal structure could lead to disruption and division of states.
- ▶ India's federal character has undergone, over the past seventy-two years, many trials and tribulations.
- ▶ Formation of Telangana under Article 3 of the constitution raised a lot of questions against the federal nature of the polity.
- ▶ 100th Amendment of the constitution where land was transferred to Bangladesh posed a threat to federalism in India.
- ▶ On the introduction of GST, critics argue on the autonomy of states.

- ▶ With too much power given to a state, it may want to shift away from the union. Jammu & Kashmir's special powers are in question in the public time and again.
- ▶ The continued existence of provisions such as Article 356 (President's rule) goes against the grain of federalism.
- ▶ States such as Karnataka, Tamil Nadu have asserted their linguistic and cultural rights in the wake of the Centre's interventions such as a promotion of Hindi.
- ▶ States are perceiving that their progress is being penalized: 1) While the southern States contribute to the nation economically, they don't occupy a central space politically and are further marginalized culturally.
- ▶ Disputes between states over sharing of river water, for example between Karnataka and Tamil Nadu over Cauvery water.

REFORMS REQUIRED IN THE INDIAN FEDERAL SYSTEM

- In order to remove all obstacles and hindrances which stand along the path to development and to strengthen the Indian federal system, there is a need for some reformatations.
- There is also a need to reflect on past mistakes and create a well-balanced system free from corruption.
- The rise of a multi-party system gives rise to competition. But such a system has led to a power struggle within the federal process. The parties have started to demand autonomy of their states, a situation that demands greater democratization. Political parties should work towards their state interest rather than national interest.
- There is a need to restructure the Planning Commission as it has now come to become almost a Super-Cabinet or Super-Government exercising authority. Experts should be appointed and plans should be made to improve the autonomy of the states.
- The nation has been divided on a regional and linguistic basis, which is now posing a threat to the federal system. Political parties are using it as a tool to gain votes.

- The government should develop policies and make plans to ensure equal distribution of resources for equal upliftment of all the states.
- The Supreme Court is the highest court of appeal whose decisions are binding on all. However, there have been many controversies and questions have been raised regarding the quality of judges and their biased judgments. It is important to strengthen the judicial system to restore the citizens' faith in the law.
- The establishment of administrative agencies by the union government is the need of the hour, in order to maintain contact with its citizens. This is essential as the union government is largely dependent on the states for law and decision making of national interest. This will ensure the decentralization of power in a smooth manner.
- One of the most vital necessities for positive reforms in education. Education opens up people's minds and facilitates a positive outlook. It is important that educational policies should be designed in such a manner so as to inculcate the importance of national integrity, unity and responsibility among the people

Way Forward

- ▶ We need to strike a balance between both unitary and federal features of the country.
- ▶ States should be autonomous in their own sphere but they can't be wholly independent to avoid a state of tyranny in the nation.
- ▶ Long-term solution is to foster genuine fiscal federalism where states largely raise their own revenue.
- ▶ Creating a fiscal structure where the states have greater revenue-raising authority, as well as greater decision making power on spending.
- ▶ India needs to move away from centralization-decentralization thinking, and embrace genuine fiscal federalism by permanently creating a fiscal power Centre in the state.

THANK YOU

QUIZ

1. Who said that the Indian Constitution established “Unitary State with subsidiary federal features rather than Federal State with subsidiary unitary features”.

- A. B.R.Ambedkar.
- B. K.C.Wheare
- C. Ivor Jennings
- D . Granville Austin.

2. Which of the statement is true:

In a Federation-

i) There are three levels of government.

ii) The fundamental provisions of the Constitution can be unilaterally changed by one level of the government.

iii) Courts have the power to interpret the Constitution and powers of different levels of government.

iv) Sources of revenue for each level of government are clearly specified to ensure its financial autonomy.

A. iii) & iv)

B. i) iii) & iv)

C. i) & iii)

D. All

3. Indian Model of Federation is closer to which of the Nation/
Nation-State.

A. USSR.

B. USA

C Canada

D None

4. Which of the following statement correctly depicts the true nature of the Indian Federal system:

A. The Indian Federation is a more 'functional' and 'institutional' concept.

B. There is a necessary incompatibility between the dominant party regime and the principle of federalism in India.

C. India is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features.

D. The Indian Federation is not the result of an agreement between the units.

5. The federal systems of India and the USA are different in all the following respects, except-

- A. States equal representation in Upper House.
- B. Dual citizenship.
- C. Dual system of courts separate from each other.
- D. Dual Government.

6. Which of the following countries is an example of holding together federation’.

A New Zealand.

B Australia

C.USA

D. India.

7. Which of the following is the Unitary feature of the Government.

A. Written Constitution.

B. All India Services

C. Division of Powers

D. Independent Judiciary.

8. In a democracy the ruling party is accountable to the-

A. The Judiciary

B. Its leaders

C. The Opposition

D. The People

9. Which of the following is not the Unitary feature of the Indian Constitution?

- A. An Integrated Judiciary
- B. All India Services
- C. Division of Powers
- D. Single Citizenship.

10. Which of the following are the recommendations of the Sarkaria Commission

- A. A permanent Inter-State Council should be established.
- B. Chief Minister should be consulted in Governors appointment
- C. Centre should consult the State while making the laws on the concurrent list.
- D. All the above.

11. The Inter-State Council may be established by-

A. The Parliament.

B. The President.

C. The National Development Council

D. The Zonal Council

12. The recommendations of the Sarkaria Commission relate to which of the following-

- A. Distribution of Revenue
- B. Powers and functions of the President.
- C Membership of Parliament.
- D. Centre-State Relation

13. The Union List includes the subjects such as-

A. Education, Forest, Trade Union, Marriage, Adoption, Succession.

B. Police, Trade, Commerce, Agriculture Irrigation.

C. Computer software

D. Defence, Foreign Affairs, Banking, Currency, Communication.

14. In case of a clash between the laws made by the Centre and a State on a subject on the Concurrent list-

- A. The State Law prevails.
- B. The Central law prevails.
- C. Both laws prevail with respective jurisdiction.
- D. The Supreme Court has to intervene to decide.

15. Which of the following statement is True regarding the source of revenue in the Federal system-

- A. State has no financial power or independent source of income.
- B. States are dependent on the revenue and funds of the Central government.
- C. Sources of revenue for each level of government are specified to ensure its financial autonomy.
- D. States have no financial autonomy.

THANK YOU