
A CRITICAL STUDY OF UNITARY AND FEDERAL FORM OF GOVERNMENT IN THE LIGHT OF CONSTITUTIONALISM

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ABSTRACT

This paper takes a closer look, critically comparing unitary and federal forms of government, especially through the lens of constitutionalism, focusing on India's constitutional framework. It dives into the theoretical underpinnings and unique characteristics of both unitary and federal systems, pulling in examples from countries like the United Kingdom and the United States. The analysis explores how key constitutional principles—like separation of powers, checks and balances, judicial independence, and the supremacy of the constitution—function in various governance structures.

A special emphasis is on Indian federalism, tracing its roots from the Government of India Act of 1935 all the way to how it's been integrated into the Constitution of India. Even though the term "federalism" isn't explicitly mentioned in the Indian Constitution, this paper points out how judicial interpretations have broadened and reinforced federal principles, especially through landmark cases like *Kesavananda Bharati v State of Kerala*, *S. R. Bommai v Union of India*, and *State of Rajasthan v Union of India*. The discussion critically examines how federal and unitary features coexist in the Indian Constitution, looking at aspects like emergency provisions, the appointment of Governors, and the centralized amendment process.

In conclusion, the paper argues that Indian federalism is not static; it's a dynamic and evolving entity. It strikes a balance between constitutional decentralization and a strong central authority. The importance of cooperative federalism and judicial oversight is highlighted as crucial for upholding constitutionalism and ensuring that there's a harmonious relationship between the Union and the States, especially in our ever-changing political and governance landscape.

INTRODUCTION

The Constitution of India is the grundnorm of the country and all are abided to the rules and regulations. It's a legal document for the smooth working and functioning of the country. The constitution of India was framed by an elected constituent assembly and the drafting committee was headed by Dr BR Ambedkar, it was adopted on 26th November 1949 and came into force on 26th January 1950 and every year January 26 celebrated as Republic Day for commemorating the importance of Indian Constitution and its implementation. It sets out the framework and the principal function of various organs of the government and also the duties and rights of the government and citizens.

Under the Indian Constitution there are several terms and doctrines which strengthened the functioning of the governments and also some terms were coined by the courts through different famous cases for to protect and preserve the sanctity of the legal document. Judiciary is one of the important body for preserving this legal document. Court introduced several concepts like basic structure, separation of power, rule of law and federalism. Ironically these concepts are not in the Indian constitution, but there are some provisions which upheld these concepts and if we compare the Indian constitution with foreign countries constitutional law, we can see the wide difference between them, especially in their concepts. the constituent assembly framed the constitution by borrowing several features from several foreign countries, so for that reason we can say that Indian constitution is a borrowed constitution.

UNITARY AND FEDERAL FORM OF CONSTITUTION

UNITARY FORM OF CONSTITUTION

Unitary system, this system of political organization you switch all the powers are vested in the central government on the basis of separation of powers between the center and the state governments. Through this, it will help to identify the character of the government. There are mainly two types of system one is unitary and the other one is federal. Both have its own importance and it's basically framed according to the political structure of the nation. Unitary system always lies on a single government here the national government has the total authority and there is no division of power between central and the state governments. The unitary state is the most common form of government which we can see in the world they have ponds and coins too.

There is only a single unit and no decentralization of power and the central government has the top priority for making rules, laws and for taking decisions. But sometimes the central government may delegate the authority to the states for making laws and for governance. They mainly focusing on delegated legislation and they have the full control for amending it too. Britain, France, Italy, Spain, China are a perfect example for this system. British constitution is an unwritten constitution and the Monarch is the head of the State and Prime Minister is the head with the government.

There is no separation of powers, no checks and balances. Before that, we have to understand that there are two different types of government. Parliamentary and Presidential form of Government. In short, Parliamentary government means, the Prime Minister is the head of the government and king is the nominal head whereas in Presidential form of Government, The President is the head of the state and the government and there is only one single executive head i.e., The President and there is a clear-cut division of powers. America is a perfect example for federalism and Presidential form of Government. In Unitary, States have no authority to make laws.

DISTINCTIVE FEATURES OF UNITARY SYSTEM

CENTRALISATION OF POWERS

Here, the Center is omnipotent. All the powers are concentrated on one unit. The central unit delegates certain powers to state levels for making laws under strict central supervision and it's not absolute and can be taken back at any moment. They are free to make rules because there is no checks and balance.

SINGLE GOVERNMENT

There is a single Central government at the Center. This is somewhat similar to the concentration of powers, lack of this, all the powers are vested in the central hand. All the affairs are vested with union government.

UNIFORMITY IN LAWS

With the one central government, all the laws are made for the whole state and it is equally applicable to all the States and it removes all the difficulties. Majority citizens are well aware

about the laws because same law is applicable to the states too.

FLEXIBLE FOR AMENDMENT

In unitary government the constitution is flexible in nature with a view to amend them in accordance with the need of time and changing circumstances as compared to amendment in federal structure. British Constitution is a flexible one to amend.

SINGLE CITIZENSHIP

There is only single citizenship for the persons who are living in the country and there is no way to possess the citizenship of any other country and it is strictly prohibited under this system.

FEDERAL STRUCTURE OF THE CONSTITUTION

Federal structure is just opposite to the unitary form of government. Federal structure means, the constitution itself delegates the power between central and the state governments. In other words, we can say, it's a clear cut of division of powers between national and the state level. Each one of them has their own autonomy. There can be two level of federal governments. In federation, the states have some rights and they enjoy autonomy. India, America, Brazil, Canada are the significant examples of federal form of government. Here, the power is jointly shared between the central and the state and no one interfere in the matter of others. Each branch of government has its own autonomy and can act independently of each other in some areas. Each state has its own constitution.

DISTINCTIVE FEATURES OF THE FEDERAL SYSTEM

DIVISION OF POWERS

The core feature of a federalism is the division of powers between the federal and the state government. In the US, the president is the head of the government and they don't interfere with the lawmaking powers of the state government. They following the presidential form of government or single executive system. But in India they following the parliamentary form of government and the head of the government is Prime Minister and the head of the state is president. In US, the right to make laws mentioned in residuary list are with the states but in

India, it vests with central government. There are mainly 3 list, they are union list, state list, concurrent list in American constitution and we can see a clear cut of division of powers or separation of powers between each branch.

WRITTEN CONSTITUTION

Written constitution is necessary for the division of powers. The constitution is a supreme document in a federal setup. Here it mentions about the powers and law-making subjects of central and state government. This means that both the center and the state derive their powers from the constitution and gives specific area and jurisdiction for making laws. Neither the central nor the state can make laws which violating the provisions of the constitution. For amending this type of constitution, it is rigid in nature and needs the confirmation of states too in some matters.

INDEPENDENCE OF JUDICIARY

The function of interpreting the constitution is usually given to the courts. The Supreme Court of India which decides the legal disputes arising between the center and the states or between two or more states. If there is any law made against the constitution or violates any of the fundamental rights of the individual then the Supreme Court can declare it as unconstitutional. There are mainly 3 branches for the government and judiciary is one of them and it is independent and no interruption from any branch. The aim is to preserve and protect the individual rights and prevent the abuse of power through its judicial review. It should act as the custodian and guardian of the constitution.

DUAL GOVERNMENT

In a federal form of government, both the central and the state units have their own governments. They have their own autonomy and their own constitution and states have also separate, executive, judiciary and in US it's a federation of states.

BICAMERALISM

This means that the legislature is mainly divided into two that is upper house and lower house. Normally the lower house represents the interests of the nations and the upper house gives importance to the states. For any amendments in the constitution needed both houses should

pass the bill and it will become law only after approved by the President by giving his assent to the bill.

WHETHER INDIA IS A FEDERAL STRUCTURE OR NOT

When we look into the history of Indian federalism, the Government of India act, 1935 plays a significant role. The concept of federalism was introduced in this act. The Government of India act 1935 was passed by the British government, it was the longest act enacted by the British parliament at that time. Here, the concept of federalism was first introduced later it incorporated under the Indian constitution. This act divided powers into three list between the central and the provinces. They are federal list, Provisional list and Concurrent list, the viceroy was vested with the residual powers. This act gave autonomy to the provinces and gave way for the formation of a federal court. Then the Government of India act 1935 was replaced by the Indian Constitution and elaborate the concept of federalism and Indian constitution is a borrowed constitution and the word federalism is not anywhere in the legal document. The courts enlarged the concept of federalism through several judgments and interpreting the constitution.

Under Indian constitution, if we examine the articles of constitution, we can understand the nature of our Indian constitution. The Constituent Assembly adopted the concept of federalism from US constitution. The Indian constitution is not federal as much as of US constitution. The Indian Constitution is federal in nature with unitary features. It is tilt towards to the unitary features. There is a separation of powers between the three branches of government and no one is above the law and each branch has its own responsibility to check the activities of the other branches whether they curtail any of the fundamental rights or law or whether they use the power in an uncontrolled way. Here, Indian constitution possesses both unitary and federal natures and, in some circumstances, they tilt towards unitary features or natures. So, we can say that India is a federal state with a strong centralized government. K C Wheare described Indian constitution as a quasi-federal system. The Supreme Court of India also describes it as a federal structure with a strong bias towards the center.

FEDERALISTIC PRINCIPLES IN THE CONSTITUTION

SEPERATION OF POWERS

Under article 246 of the Indian constitution says about the subject matter of law made by the parliament and by the state legislature. They are mainly three types of lists. They are union list or state list, and concurrent list. Schedule 7 defines the distribution of powers between union and state. The central can make law with respect to any of the matters enumerated in union list. State list, the states can make laws and in case of concurrent list both the central and the state government can make laws, if there is any dispute between any law then the central government act will prevail and also the central government has the residuary power to make laws too.

CHECKS AND BALANCES

The judiciary can review the laws enacted by the parliament by judicial review. The executive has the power to appoint judges.

The legislature has the power to amend laws which are declared as ultra virus by the court and the impeachment and removal of judges, also through non confidence motion, it can dissolve the government.

Through these features each branch can evaluate the actions of other organs.

FEDERAL CHARACTERS IN THE INDIAN CONSTITUTION

DECENTRALIZATION OF POWER

Article 246 of the Indian constitution clearly demarcated the subject matters for making laws with the central and the state government also can see the separation of powers from the central and the state to the local bodies that is the panchayath and the municipalities, through 73rd and 74th amendment created the three-tier system of government at the grassroot level and gave local bodies a constitutional status.

INDEPENDENCE OF JUDICIARY

Independence of judiciary is one of the basic structure of the Indian constitution. Judiciary is free from executive and the Supreme Court of India is the apex court and the High Courts are constituted in each state to protect the rule of law and to protect the fundamental rights of the citizens. Article 50 of the directive principles of state policy says about the state shall take

steps to separate the judiciary from the executive and can also use the judicial review for reviewing the law.

WRITTEN CONSTITUTION

Indian constitution is the lengthiest constitution in the world and in that legal document it defines the rights, duties of citizens and government.

SUPREMACY OF THE CONSTITUTION

The Grund norm of the nation is the Indian constitution and it is the supreme law of land. Everyone is bound to follow the laws of the nation and the judiciary is there to protect and preserve the constitution, rule of law is strictly followed and no one is above the law and also it restricts the parliament in certain matters.

UNITARY FEATURES OF INDIAN CONSTITUTION

EMERGENCY PROVISIONS

The President of India can declare emergency under article 352 ,356 and 360. Article 356 says about the state emergency parliament has the power to make laws during state emergency.

APPOINTMENT OF GOVERNORS

The Governor act as the representative of union and it is appointed by the President of India. Article 155 says about the appointment of the Governor. Under article 200 says about the veto power of governor over state bills and the governor may reserve certain bills passed by the legislature of state for the consideration of the President.

CONSTITUTION IS MORE FLEXIBLE THAN RIGID

In some areas it requires special majority for amendment in the Parliament and at the same time most provisions can be amended by a 2/3 majority in Parliament and the union has the power to make new states or alter the boundaries of existing states under the articles 2 and 3 of Indian constitution.

APPOINTMENT OF COMPTROLLER AND AUDITOR GENERAL OF INDIA.

Through Article 148, The President of India appoints Comptroller and Auditor General of India for auditing the central and the state's accounts.

POWER TO REMOVE OFFICIALS

The states can't remove the Government officials like Election Commissioner of a State, Judges of the High Court, Chairman of the State Public Service Commission and these rights are vested with the Central Government.

CASE LAWS

KESAVANANDA BHARATI V. STATE OF KERALA¹

The Supreme Court held that federalism is a part of the basic structure of the constitution. It was subsequently reiterated in *Minerva mills V Union of India*.²

SR BOMMAI V. UNION OF INDIA³

The Judges given different opinions regarding federalism. Justice Ahmadi said that the Indian Constitution is quasi federal and there is no mention of words like federal.

STATE OF RAJASTHAN V. UNION OF INDIA⁴

In this case the Supreme Court laid down the cooperative federalism. It means about the cooperation between the union and the state governments for the upliftment of the country and work in a collective manner to resolve a common problem and the main aim behind this system is to uphold the harmony between the central and the state governments and states are an integral part of the country.

CONCLUSION

When we look into the federalism, we can understand that each country's principle is different some nations support federalism and some other nations not and some other nations partially supports the federalism. The debate on federalism is still going on and it's an evolving

¹ Keshavananda Bharati V State of Kerala, AIR 1973 SC 1461 (India).

² Minerva mills V Union of India, AIR (1980) SC 1789, 1981 SCR (1) 206

³ SR Bommai V Union of India, AIR 1918, (1994) SCC (3), India

⁴ State of Rajasthan V Union of India, 1977 AIR 1361, India

concept. Indian constitution is federal in nature with unitary features and also have separation of powers between union and the state governments and also there are so many tussles ongoing between the central and the state governments on the federal principle. States argued that the union government encroaching to the rights of the states to make laws and in recent case named NCT of Delhi V Union of India, the court held that the Delhi government had the power to make laws regarding state public commissions except public order, police and land subjects which are excluded by article 239 AA. So, in present scenario the concept of federalism is getting worse day by day and through this we can understand the importance of federalism and the law-making rights of Central and State governments.

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