

The Quasi Federal Nature of the Indian Political System

Shri Tosanbha Marwein

Abstract: *The Quasi Federal Nature of the Indian political system is unique to India which has adopted both unilateral and federal features of Constitution from other Countries. The special features of the Indian Constitution that gives it a unique character include the following viz., Dual Government with a strong Centre, Written Constitution and the Centre's role in its amendment, division of powers, supremacy of the Constitution with indestructible States, bicameralism and unequal state representation, a blend of rigidity and flexibility of the Constitution. The Indian political system has faced several challenges over the years that have threatened the federal equilibrium of the country. Certain provisions in the constitution have affected the Centre- State relationship and which have come under controversy since the inception of the Indian state. These constitution provisions include Article 356 - the Imposition of President's rule, the role of Governor as well the financial provisions between centre and state. There is however scope for the improvement of Cooperative federalism which highlights the view that the Central and State governments are partners in the governmental process. The 21st Century has brought along with it new challenges as well as opportunities to Indian federalism and has further strengthened the need for Cooperative federalism. The era of Information- Technology and Communication has led to greater advances towards improved coordination, cooperation and interdependence. The threat of terrorism and challenges to the environment is a concern that pans out far and wide in the 21st century and with various international summits and agreements others taking place it becomes important and pertinent for the Centre and States to work together to tackle such challenges. Cooperative federalism is important in the present day context to achieve the goals and objectives of an economic, political and socially strong and progressive India.*

Keywords: Quasi Federalism, Cooperative Federalism

1. Introduction

Article 1 of the Constitution of India states that "India that is Bharat shall be a Union of States". The term "Federation" has nowhere been used in the Constitution of India. Dr. Ambedkar, the Chairman of the Drafting Committee of the Constitution stated that "although its Constitution maybe Federal in structure", the Committee has preferred the phrase "Union of States" over "Federation of States". This signifies two things: a) The Indian Federation is not the result of an agreement among the States like the American Federation. b) The states have no right to secede from the Federation. The Federation is a Union of destructible states with an indestructible Centre. The Indian Federation resembles the Canadian Federation in its formation, in having a strong "Union" and in its Centralizing tendency. Its uniqueness is born out of the necessity of balancing the aspiring demands for regional autonomy whilst preserving the integrity and unity of the country. The result has been an evolution of the federal system imbibing modifications and adjustments over the past period of time being able to achieve a high level of acceptance from the populace and their territorial states.

Unique features that define the Indian Quasi Federal set up:

Nowhere else in the world is there a system quiet like the Indian Quasi Federal system. The special features of the Indian Constitution that gives it a unique character include the following:

a) **Dual Government with a Strong Centre:** The Constitution establishes a dual polity with the Union at the Centre and States at the Periphery. Each enjoys sovereign powers within their respective fields prescribed by the Constitution. The Central Government deals with matters concerning Foreign affairs, Currency,

Communication and so on. The State Governments deal with matters of regional and local importance such as Agriculture, Health, Public order etc. However the federal framework created by the Constituent Assembly is tilted in favor of a strong center. The Constitution has been drafted in such a manner whereby the Centre enjoys a strong position with respect to:

- Union List containing more subjects than State list.
- More important subjects have been included in the Union list.
- Overriding authority of the Centre over the Concurrent list.
- Residuary powers have been left with the Centre.

b) **Written Constitution and the Centre's role in its amendment:** The Indian Constitution contains 465 articles divided into 25 parts and 12 schedules making it the most detailed and lengthiest written Constitution in the world. The purpose of a written Constitution is that it defines and specifies the organization, structure, powers and functions of the Central and State governments. It also acts as a bulwark against the encroachment and interferences as well preventing misunderstandings and disagreements in a federal set up. However the Central government plays an important role in its amendment. Under Article 368 only the Centre (Union Parliament) can initiate an amendment to the Constitution. The State's participation in the amendment process is limited to only those amendment bills that seek to alter or affect the federal structure of the system. Even so the ratification needed is only by half of the state legislatures unlike in the American federal system where it is by 3/4th of the states.

c) **Division of Powers:** The Constitution of India defines the division of powers between the Central State governments in its 7th Schedule. Several special features

of the Indian Constitution give it its highly Centralized form. The Constitution provides for three list, The Union List (100 subjects), The State List (61 subjects) and Concurrent List (52 subjects). However this again is tilted in the favor of the Centre. Reasons include:

- Amendments to the 7th Schedule: Since the coming into force of the Constitution in 1950 the 7th Schedule has seen a number of Amendments. The Union and Concurrent List have increased whilst at the same time we can see a reduction in the number of subjects in the State List. Most notable changes are seen in the 42nd Amendment Act (1976) which transferred the following subjects from the State List to the Concurrent List – a) Education, b) forests, c) weights and measures, d) protection of wildlife and birds, e) Administration of Justice, Constitution and organization of all courts except the Supreme Court and High courts.
- Parliamentary Legislation in the State field: The Constitution empowers the Parliament to make Laws on any subject in the State List under five extraordinary circumstances: a) Under Article 249 : If the Rajya Sabha declares that it is necessary in the national interest that the Parliament should make laws on that particular subject in the state list. This is subjected to the resolution being supported by 2/3rd majority of the members present and voting. b) Under Article 352 – During a National Emergency, c) When States make a request, d) to implement International Agreements, e) Under Article 356 -During President's Rule.
- d) Supremacy of the Constitution with States not Indestructible : The Constitution in a federal polity is considered supreme and the ultimate law of the land . The Laws enacted by the Central and states governments have to conform to the principles and provisions of the Constitution failing to which would qualify for them being ruled Unconstitutional and Ultra Vires by the Courts. However in the Indian Political System the States do not enjoy a Supreme and equal position to the Centre. This because the Indian Constitution follows the Canadian rather than American model of federal set up - A Federation with a strong Centre, Under Article 3 the Parliament is authorized to: a) form a new state by separation of territory from any state or by uniting two or more states, or by uniting any territory to a part of any state, b) Increase the area of any state, c) diminish the area of any state, d) alter the boundaries of any state and e) alter the name of any state. Furthermore the States cannot secede from the Indian federation as they have no right to territorial integrity. Indian Federation rightly been viewed as “an indestructible Union of destructible states”
- e) Bicameralism and Unequal State Representation : The Bicameral structure of the Indian federal state consists of the Upper House (Rajya Sabha) which represents the States and The Lower House (Lok Sabha) representing the People of India as a whole. The main purpose of having bicameral set up is to maintain and preserve the federal equilibrium by protecting the interests of the States from the undue interference of the Centre.

However unlike the American federation whereby the Senate is equally represented in the Congress (2 members elected from each of the 50 states), the case is not the same with India. Representation in India's Upper House is given on the basis of Population. It ranges from 1 to 31. Furthermore the method of representation is through Indirect election i.e. Proportional representation by means of the single transferrable vote.

- f) A blend of Rigidity and Flexibility of the Constitution: Unlike the Major Federal countries like United States of America where the amendment process to its Constitution is a rigid one, The Indian system presents a fine blend of rigidity and flexibility in the amendment of the Constitution. Under Article 368 there are certain provisions that entail amendment through
 - Special majority: majority of the total membership (more than 50 percent) of each house and 2/3rd majority of the members of each house present and voting. These include provisions dealing with Fundamental rights, Directive Principles of State Policy etc.
 - Special majority with consent of states: The method of amendment is the same as the above mentioned procedure (Special majority by the Parliament) but in this case the ratification by half of the states via simple majority in their respective legislatures is needed. These include the recent 101st Amendment Act 2016 dealing with the Goods and Services tax, others include any of the lists in the 7th Schedule, Elections of President and its manner, the Judiciary (Supreme Court and High Courts) etc.
 - Simple majority: This indicates the Flexibility of the Constitution. Provisions that are outside the purview of Article 368 fall under this category. These include: a) The establishment of new states under Article 3, b) Legislative Councils(abolition and creation), c) The official language, d) Fifth and Sixth Schedule, etc.

To quote Pandit Jawaharlal Nehru in his Constituent Assembly remark “While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in a Constitution. There should be certain flexibility. If you make any Constitution rigid and permanent, you stop the nation's growth, the growth of a living, vital, organic people”.

There are certain particular features of the Indian Constitution that highlight its Unitary nature .They have been regarded as important in maintaining and preserving the territorial integrity and unity of the country as well as important in addressing extra ordinary circumstances that may arise in a diverse country like India.

- a) Single Constitution
- b) Emergency Provisions under Article 352, 356 and 360
- c) Single Citizenship
- d) Integrated Judiciary
- e) All India Services
- f) Integrated Election Machinery
- g) Integrated Audit Machinery

Challenges and experiences faced by the Indian Quasi Federal System:

The Indian structure being a unique has not been freed from a multifold range of Challenges over the decades. Since its inception there have been many cases and challenges that have threatened the federal equilibrium of the country. Over the decades there has been a mixed response of accommodation of state demands for more autonomy as well as interference and coercive suppression of regional aspirations. All in all it can be said that despite the challenges and threat to the Indian federal state, it has fared well in meeting these challenges and in the 21st century we can notice are more concerted response from the Centre towards the State problems and aspirations. The principle of Cooperative Federalism is being promoted. However there are still multifold challenges and controversial issues that need to be addressed. These include:

a) Article 356 - The Imposition of President's rule:

- Article 356 states that if the President is satisfied that a situation has arisen whereby the government of a state cannot be carried on in accordance with the provisions of the Constitution he can issue a proclamation to that effect following which the Council of Ministers headed by the Chief Minister of that particular state is dismissed.
- Another ground for imposition of President's rule is under Article 365 - it states that in the event that a State fails to comply or give effect to any direction from the Centre, the President can hold that a situation has arisen whereby that government of that particular State cannot be carried on in accordance with the provisions of the Constitution.

This article has been controversial in the sense that it has been used on more than a 100 occasions since 1950. Its ideal purpose was to deal with unforeseen and difficult circumstances arising in a federal set up as a measure of the last resort. It has been used in an arbitrary manner often to dismiss state governments are not of the same political party or ideology as that of the ruling government at the Centre.

The Sarkaria Commission has drew attention to the continuous misuse of Article 356 and has pointed out that from 1951-1987 of the 75 occasions when President's rule was imposed, only in 26 cases was President's rule inevitable. Most recent cases of imposition of President's rule was in 2016 when the Governments of Arunachal Pradesh and Uttarakhand were dismissed. However the timely intervention of the Supreme Court ensured the order for President Rule was unconstitutional, ultra vires and the state governments were restored.

- b) The Role of The Governor:** The Governor is the regarded as the Chief Executive Head of a State appointed by the President and he holds office at the pleasure of the President. He is considered as an agent of the Centre constitutionally discharging his functions in the State as per the aid and advice tendered by the Chief Minister and his Council of Ministers. The Governor enjoys certain discretionary powers. These can be sub divided into two:

Constitutional Discretion: This power of discretion pertains to certain cases such as:

- When he reserves a bill passed by the State Legislature for the consideration of the President.

- When he sends a report to the President recommending the imposition of President's rule under Article 356.

Situational discretion: During his normal discharge of duty the Governor enjoys certain situational discretion in the following cases:

- Appointment of Chief Minister when no party has a clear majority to form the Government in the state.
- Dismissing the Government when it has lost the majority on the floor of the house (state legislative assembly)

Most prominent and controversial acts have been during the 1970-1980s decade when the office of Governor has been used to topple down various State Governments on multiple pretexts. Furthermore the subjective interpretation of "satisfaction of the Governor" in the exercise of his discretionary power has also led to the interference in the State Government's everyday affairs violating the federal principles of Dual Government and Division of Power. This has given rise to a feeling of insecurity among the States and demand for removal of the Office of Governor. The most recent incidents of Governor's discretionary acts include:

- Dismissal of Governments in Arunachal Pradesh and Uttarakhand (2016)
- Selection of Chief Ministers after recent State elections in Manipur, Goa, Meghalaya and Karnataka. In these States the Party with the most number of seats won was not invited to form the Government rather a coalition of parties with the same party as that of the centre formed the government. The case in Karnataka is more pronounced from the fact that the Congress in an alliance with the JDU (secular) had the numbers and majority on their side yet the BJP Chief Ministerial candidate was appointed as Chief Minister even though he could not prove the majority on the floor of the house.

c) Financial Relations: Another contentious issue that comes up in the quasi federal structure of Indian Political System is in the domain of the financial relationship between the Centre and the States. The powers bestowed upon the Centre by the Constitution enables it to enjoy wide jurisdiction over collection and distribution of revenue making the states dependent upon it for financial aid and support. Article 280 states that a Finance Commission shall be constituted by the President whose duty would be to recommend:

- The distribution between the Union and States of the net proceeds of tax which are to be divided between them.
- The Principle which should govern the Grant in aid of the revenues of the States out of the Consolidated Fund of India.
- Any other matter referred to the Commission by the President in the interests of sound finance.

The Centre has power over important financial matters such as the collection of Income tax, corporate tax, and Import and Export duties along with others such as Currency, Banking and International borrowings. The States sources of income come from taxes like land revenue, irrigation, Electricity duty etc. However most of the taxes have been subsumed under the Goods and Services Tax. This has made the States more dependent on the Centre for grants but at the same the revenue that each State will receive has been

predicted to be much more than the earlier system of multiple structures of taxes.

Article 275 describes the Statutory Grants. This article of the Constitution empowers the Parliament to make grants to the States that are in need of financial aid and assistance. The Parliament may fix different sums for different states and it does not cover financial assistance to every state. The sums are charged upon the Consolidated Fund of India. The bone of Contention is that States have argued that they have not received their timely dues in times of financial trouble. We can see the case of Andhra Pradesh that has been demanding Special Category Status for it to meet the growing financial demands for infrastructure, development of its proposed state capital (Amravati) after the bifurcation of Telangana from it. We also see that State governments with the same ruling political party as that of the Centre enjoying a relative ease with regard to attaining financial aid. For example : Kerala accused the Centre of not providing timely and adequate financial aid during its rehabilitation process after being ravaged by floods in August 2018.

Article 282 highlights the Discretionary Grants. This article of the Constitution empowers both the Centre and the States to make grants for any purpose irrespective of whether or not it is within their respective competence. To quote M.P. Jain "These grants are also known as discretionary grants the reason being that the Centre is under no obligation to give these grants and the matter lies within its discretion. These grants have a twofold purpose: to help the state financially to fulfill plan targets; and to give some leverage to the Centre to influence and coordinate state action to effectuate the national plan".

Provisions of the Constitution pertaining to borrowing by the Centre and the States:

- The Central Government can borrow from within and or outside India upon its security of the Consolidated fund of India or can give guarantees, but both within parameters set by the Parliament
- State governments borrowing is restricted within India upon the security of its consolidated fund of the state or can give guarantees, but both within the parameters set by its legislature
- The Central Government can make loans and advances to any State. These loans are charged upon the Consolidated Fund of India
- A State cannot raise any loan without the consent of the Centre if in case there is any outstanding loan amount made to the State by the Centre.

Improved Prospects for Development of Cooperative Federalism

The Indian Federal state has withstood the test and challenges of its time. The biggest was during the Emergency period of the 1970s that threatened to destabilize the Federal unity and fabric of the country. Over the decades since the Emergency period one concept has emerged that appeal to strengthen the federal polity of the Indian state "Cooperative Federalism". Cooperative Federalism can be understood as a system whereby the Federal, State and local

governments share the responsibility in governance of the country. The concept highlights the view that the Central and State governments are partners in the governmental process. Granville Austin stated in the State of Rajasthan versus Union of India case 1977 that the Indian Constitution was the first constituent body to embrace from its beginning what A.H. Birch and others have called "Cooperative Federalism". In the Keshavanada Bharti case 1973 the courts brought out the concept of "Basic Structure" of the Constitution to save it from the misplaced notion of Parliamentary Sovereignty. Chief Justice Sikri stated that the Federal character of the Indian Constitution formed part of the Basic structure and was thus immune to the whimsical amendments. The 44th amendment Act pertaining to Article 356 reassured the states a certain guarantee to protect them against mala fide abuse of emergency provisions. It provided an opportunity for Judicial review by deleting certain clauses which made the declaration and extension of emergency by President conclusive. In the D.C. Wadhwa versus State of Bihar case 1986 the court challenged the Constitutional validity of the practice of the Governor of Bihar repeatedly promulgating the same ordinance without the effective replacement of the ordinances by Acts of the legislature. In the S.R. Bommai case 1994 Supreme Court laid down certain guidelines to prevent the misuse of Article 356. Some of the important guidelines include:

- Imposition of Article 356 is justified only in the event of a breakdown of Constitutional machinery and not administrative machinery.
- Court intervention and remedy is possible in the event of improper use of Article 356.
- The Floor of the house is to be used to ascertain the majority enjoyed by the Council of Ministers.
- Centre should give a time period of 1 week to the States to reply.

The Sarkaria Commission report was submitted in October 1987. Out of 247 recommendations by the Commission, 180 of them have been implemented by the Central government. Some of the important recommendations include:

- Setting up of an Inter- State council under Article 263.
- Article 356 should be exercised only in extreme cases as a last resort. It should be used sparingly.
- Consultation of the States by the Centre before making a law on a subject of the Concurrent list.
- Governor cannot dismiss a government that commands a majority in the assembly.
- The All India Services should be strengthened and more diversified.
- Withholding of Presidential assent to the States bills, the reason should be communicated to the state government.

The 21st Century has brought along with it new Challenges as well as opportunities to Indian Federalism and has further strengthened the need for Cooperative Federalism. The era of Information- Technology and Communication has led to greater advances towards improved coordination, cooperation and interdependence. The 1990s marked the period of the LPG reforms in India. L- Liberalization, P- Privatization and G- Globalization. It involved structural and

stabilization reforms targeted at reviving the Indian economy. Reforms included Abolition of License-Permit Raj, Tax reforms, De licensing of Industries, Bank Reforms and allowing private enterprises to compete in the Indian market, Encouraging Foreign Investment, Abolition of FERA(Foreign Exchange Regulation Act) and replacing it with FEMA(foreign exchange Management Act), etc. The period from the 1990s has seen a significant shift in Centre-State relations in India. The Globalization era has proved that interconnectedness and interdependence is the key to progressing forward in every sphere be it Economic, Political and Social. For Example we see that in times floods and natural calamities aid and cooperation is seen among various states both far and near along with the Centre's role. The recent "Give it Up" Campaign pertaining to LPG (liquefied petroleum Gas) users who can afford to pay the market price for LPG to voluntarily surrender their LPG subsidy, saw a tremendous response with over 1crore people having given up their subsidy as of 2016 to enable the Central government to effectively implement their plan of providing free LPG connections to the poor households under schemes such as PAHAL, UJJWALA etc.

The Challenges to the Environment is a concern that pans out far and wide in the 21st century. These include:

- Climate Change
- Global warming
- Rising sea level
- Increasing levels of Floods and prolonged periods of droughts
- Increased mortality rates due to pollution
- Growing number of diseases

With various International summits and agreements such as the Paris climate change summit 2015, Kyoto protocol, Cartagena protocol and others taking place it becomes important and pertinent for the Centre and States to work together to tackle such challenges. Cooperative Federalism is a hallmark in India's case as it allows for a coordinate strategy in solving problems as well as meeting international re-fulfilling by 2030.

The growing threat of Terrorism is another case in point whereby the Centre and States have to work together. The growing radicalization of youths, voluntary movement of people to join international terrorist group, growth of Fundamentalist and radical violent groups, cross border terrorism and terrorist attacks on life and property are a few such challenges. These offer scope and opportunity for the Centre and States to work together and ensure that terrorism in all forms is effectively tackled and all terrorist threats to the Country are neutralized. For example: Growing radicalization of youths in the borders especially in the Indo-Pak border, Left wing Extremism and violence, militancy, organized crimes, terrorist attack such as in the case of 24x11 etc. The Need to come together is not only due to the arising new challenges but will act as an antidote to prevent new challenges from emerging in the future. To address the fissiparous tendencies that arise the legitimate grievances of the States should be addressed within the federal boundaries of the Constitution. Cooperative Federalism strengthens the Country from within allowing it to withstand the adversities,

challenges and problems due to its malleability and resilience.

2. Conclusion

The Indian Union has shown remarkable ability and capability to withstand the challenges of the past and present. There have been numerous cases of increasing demand for autonomy and separatist tendencies. The Indian State has responded with a policy of accommodation as well as suppression of Anti- National elements. Along with granting more autonomy and independence to the States in formulation of their own policies and running their administration work, the Centre has encouraged States in a more proactive role with regard to Central policies and implementation of schemes. Some notable ones can be seen in the GST council, NITI Ayog, Implementation of schemes such as Swachh Bharat Abhiyan, Namami Gange Programme, Mahatma Gandhi National Rural Employment Guarantee Act and the recent National Health Protection Scheme (Ayushman Bharat Yojana). Cooperative Federalism is important in the present day context to achieve the goals and objectives of an economic, political and socially strong and progressive India.

References

- [1] Arora, B. (2015) The distant goal of Cooperative Federalism. Retrieved from <https://www.thehindu.com/opinion/op-ed/the-distant-goal-of-cooperative-federalism/article7232184.ece>.
- [2] Basu,D.D.(2013) Introduction to the Constitution of India(21sted) Noida: LexisNexis.
- [3] Goyal,S. (2019) Concurrent List and Seventh Schedule Article 246 Constitution. Retrieved from <https://digitallylearn.com/demand-abolishing-concurrent-list-seventh-schedule-article-246-upsc/>
- [4] India Today (2019) List of Taxes that every Indian pays: From GST to Income Tax. Retrieved from <https://www.indiatoday.in/information/story/list-of-taxes-that-every-indian-pays-from-gst-to-income-tax-1430531-2019-01-14>.
- [5] Laxmikant,M.(2017) Indian Polity(5thed) Chennai: McGraw Hill Education (India) Pvt. Ltd.
- [6] Mitra,S.K.(2014) Politics in India – Structure, Process and Policy. New Delhi: Oxford University Press.
- [7] Narang,A.S.(2005) Indian Government and Politics(6thed) New Delhi: Gitanjali Publishing House
- [8] Shanmugasundaram, M. (2018) Governor's discretion. Retrieved from <https://www.thehindu.com/opinion/op-ed/governors-discretion/article25021561.ece>.
- [9] Singh,A. (2014) Development of Cooperative Federalism in India. Retrieved from <http://www.legalserviceindia.com/article/I441-Cooperative-Federalism-In-India.html>.