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FEDERALISM IN INDIA

Evolution of Federalism

The thirteen British colonies in America revolted and liberated themselves from the British yoke. Thereafter they constituted themselves into a federal state. Thus, in the modern world, the United States of America became the first federal state. Thereafter British colonies in Australia and Canada were also granted self-governments and they too adopted federal forms of government. The trilingual Switzerland similarly adopted a federal form of government. The European Union today another example of federal formation on a voluntary basis.

Rise of Federalism in India

The beginnings of federalism in modern India could be traced in the Regulating Act of 1773, which brought the three regions in India under East India Company's authority (Madras, Calcutta and Bombay) under the supervisory control of the governor general at Calcutta.

The Indian National Movement recognized the plural character of colonial India and it was inspired by the already existing federal democracies in the USA, Switzerland, Australia and Canada; the last two had been British colonies.

The Government of India Act 1919, introduced partial autonomy (Dyarchy) in the Presidencies, while the Government of India Act 1935, granted provincial autonomy at the presidencies and proposed a Dyarchical form of government at the centre.

The Nehru Committee Report in 1928 and Pandit Jawaharlal Nehru's first proposals of a constitution favoured a federal structure with more powers for the constituent states. However, the creation of Pakistan and consequent human tragedies changed the views of the constituent Assembly resulting in weak state governments and an over centralized union government, but the whole of the Princely state of Jammu and Kashmir became a district state within the Indian Union.

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The constitution of independent India establishes federalism through its Part VI provisions. The Seventh Schedule of the constitution contains the three lists relating to the distribution of powers between the centre and states.

Centre State Relations

The Centre State Relations revolve around the fulcrum of distribution of Powers between Centre and States. Distribution of powers is the foundation feature of federalism and in federal constitutions there are three types of distributions they are

1. Legislative Power Distribution
2. Executive Power Distribution
3. Financial Power Distribution

Legislative Relations

There are two aspects to the distribution of legislative powers between the Centre and States in our constitution. They are

- a) Territorial Distribution
- b) Subject Distribution

a) Territorial Distribution of Powers

- a) The powers are distributed between the union and state governments territorially. The union government possess the powers over the entire territory of India while the states have jurisdiction over their own territories.
- b) The central government has extra territorial jurisdiction that means that its laws govern not only persons and property within India but also Indian citizens and their properties located in any corner of the world.
- c) In contrast the state legislatures do not possess jurisdiction outside their own territory. The territorial jurisdiction of Parliament of course, is subject to certain limitations imposed by the constitution especially with regard to union territories and scheduled areas

b) Subject Distribution

- a) The constitution distributes the legislative subjects between the union government and states in an elaborate scheme. There are three Lists of distribution.

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List I (Union List) contains the subjects and powers exclusively allotted to the union parliament. There are 100 subjects here including defense, foreign affairs, banking, currency

List II (State List) contains the subjects that are exclusively allotted to the state governments. There are 59 items including public order, and police, public health, local government, agriculture, forests, fisheries

List III (Concurrent List) contains 52 items including Criminal law and procedure, Civil Procedure, marriage, education. This list is called as Concurrent List. Both the union and state governments have powers over these subjects. But when there occurs a clash between the union and state governments the law of the parliament will prevail

- b) There is also another category called residuary powers. Any subject not mentioned in the above three lists will automatically come under the jurisdiction of the union government. Our constitution broadly follows the legislative distribution of powers provided in the Government of India Act 1935 enacted during the British colonial era.

Exceptions

The above scheme of legislative power distribution will be normally followed. But under exceptional circumstances the scheme will be suspended. The power of the Union Parliament will be expanded and concomitantly the powers of the state legislatures will be diminished.

a) National Emergency - When the President of India declares National Emergency the union parliament acquires the powers to legislate over the subjects in the State List. The emergency is declared by the president to tackle problems like war, external aggression and armed rebellion that pose a danger to the existence of our nation. Therefore, to tackle the challenges successfully and effectively these challenges the union government gains control over state legislature powers too.

b) Agreement between States - When two or more states agree that their mutual interests will be served better if there is common law on a particular subject and request the union government to enact the needed law, the Parliament can enact a

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common law for the desiring states on that subject even if it falls in the List II (State List).

- c) The Parliament will have powers of enactment on a state subject for the purpose of implementing an international agreement.
- d) After the declaration of article 356 emergency in a state the President can declare that the parliament will enact on state list subjects for that state

Executive Relations

Our constitution distributes executive powers between the union and state governments. The distribution is co-terminus with legislative power distribution to a great extent. The union government possesses executive powers over the subjects that are included in the List I namely the Union List. The states have executive powers over the subjects that are included in the List II namely the State List.

The executive power of the union government extends over the territory of India while the executive power of the state governments extends over their own territories. The distribution of executive powers over the List I and List II is based on the simple principle that they are coterminous with legislative powers of the union and state governments.

The distribution of the executive powers over the List III namely the Concurrent List is based on a slightly complicated scheme. Succinctly it can be stated that the executive powers over the subjects in the Concurrent List is ordinarily with the state governments. Nevertheless, the union government retains powers to issue directions to the state governments in the execution of executive functions both in normal times and during emergencies.

Another feature in the executive powers distribution scheme in the constitution relates to mutual delegation of functions between the union and state governments. The union government can entrust its functions to the state government after getting the consent of the concerned state government.

Conversely the state government can entrust its executive functions to the union government after getting the consent of the union government. Moreover, the union

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government even without the getting the consent of the state government can entrust its executive function to the state government but with the consent of the parliament.

Financial Relations

Finances are very fundamental in the successful operation of federal system. Indian constitution distributes financial powers between the union and states in a comprehensive arrangement that is broadly modeled on the 1935 Government of India Act.

There are two sources of revenue distributed by the constitution namely Tax Revenue and Non-tax Revenue.

a) Tax Revenue Distribution

There are five important ways in which the tax revenues are distributed between the union and state governments.

1. Certain taxes like Corporation tax and Custom tax are exclusively allotted to the central government
2. Certain taxes like sales tax are exclusively allotted to the states
3. Certain taxes are levied by the Union but collected and appropriated by the concerned states and the examples are stamp duties on Bills of Exchange and Excise duties on medicinal and toilet preparations containing alcohol
4. Certain taxes are levied and collected by the union government but the proceeds are assigned to the states in which they are levied like the taxes on the sale of advertisements in newspapers.
5. Certain taxes are levied and collected by the state governments and are distributed between the union and state governments in a certain proportion like the tax on income other than an agricultural income

b) Non-tax Revenue Distribution

Both the union and state governments are provided with non-tax revenue sources. The union government gets its revenue from the receipts from commercial and industrial

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undertakings relating to central subjects like Industrial Finance Corporation. It gets its revenue from Railways, Posts and Telegraphs, Broadcasting etc.

The state governments get revenue from the receipts of commercial enterprises and industrial undertakings allotted to them. The sources among others include forests, irrigation, electricity, road transport.

The constitution understands the greater financial needs of certain states and therefore the article 275 asks the union government to provide Grants-in-Aid to states especially the state of Assam keeping in mind the imperative of the development and welfare of the tribal population.

Finance Commission

The president of India will constitute a Finance Commission once in five years. The article 280 of the constitution describes the composition of the Finance Commission. It will have one Chairman and four other members.

The Chairman will be a person with experience in public affairs and the members will have experience in financial administration, special knowledge of economics, special knowledge of public accounts and government finances, and one member will have experience of a High Court judge.

Finance Commission will provide recommendations in the following manner

1. For the distribution of net proceeds of taxes between the centre and states
2. Principles governing grants-in-aid
3. Measures needed to increase the Consolidated Fund of India or states to supplement the resources the Panchayat Bodies
4. Measures needed to increase the Consolidated Fund of India or states to supplement the resources the Urban Local Bodies

Any other matter referred by the president So far fourteen Finance Commissions have been constituted once in every five years

◆.....◆ **Co-operative Federalism**

The American Constitutional expert Granville Austin described Indian federal system as Cooperative Federalism designed to promote cooperation between the centre and states. The concepts of co-operative federalism apply to those federal governments like the USA where the states have more or adequate powers and the formation of the union is based on “the indestructible union composed of indestructible states”.

In a quasi-federal state like India, the Union Government can very easily pull down any constituent state for non-cooperation or non-compliance or defiance of union government’s will through constitutional provisions, especially through the emergency powers assigned to the President. The constitution does not permit states defiance to centre.

There are many provisions, institutions and bodies created in Indian political system to promote the co-ordinative functioning of the central and state governments in India. They can be classified into constitutional, statutory and Political bodies and provisions.

Constitutional Provisions and Institutions

The constitution itself has created a number of devices to promote cooperation and co-ordination.

I) Inter State Council

The article 263 of the constitution says that the President of India can establish the Inter-State Council to serve public interests. There are three functions and duties assigned to the Inter State Council

- a) To enquire into and advise upon disputes among the states
- b) To investigate and discuss the subjects that are common to the union and state governments
- c) To make recommendations to the President for better co-ordination on any particular subjects among the state governments.

A number of councils have been created to promote cooperation on specific subjects in the past like the Central Council of Health, Transport Development Council, and Central Council of Local Self- Government.

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The holistic Inter State Council was established in early nineties to deal with general cooperation among the units of Indian federal system on the recommendation of the Sarkaria Commission. The Prime Minister functions as the chairperson of the council.

The Chief Ministers of all the states and Union Territories with Legislative Assemblies, six cabinet ministers of the union government, administrators of the Union Territories without Legislative Assemblies and Governors of states under President's Rule.

A Standing Committee consisting of the with union Home Minister, five other cabinet ministers and nine Chief Ministers also works as part of the Inter State Council to promote cooperation among the members of the federal system.

Statutory Bodies There are certain bodies created through the statute of the parliament but not mentioned in the constitution that function to promote cooperative federalism.

1. Zonal Councils

The Zonal Councils were established by the States Reorganization Act in 1956 to achieve cooperation and co-ordination among states. They were created in the backdrop of linguistic reorganization of India and the first Prime Minister of India Jawaharlal Nehru described their objective as to “develop the habit of co- operative working” Originally five Zonal Councils were created and later on in 1971 one more Zonal Council was established for the North Eastern States. They are

1. Northern Zonal Council
2. Southern Zonal Council
3. Eastern Zonal Council
4. Western Zonal Council
5. Central Zonal Council
6. North Eastern Zonal Council

The Union Home Minister will be the common Chairperson of all the Zonal Councils. Additionally, each Zonal Council will consist of the Chief Minister and two other Ministers of each state and the Administrator of the Union Territory in the zone.

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The Zonal Councils will discuss and suggest measures to promote cooperation among the members in areas like economic and social planning, border disputes, inter-state transport etc.

2. River Board

The River Boards Act, 1956 establishes River Boards to provide advice to the concerned governments for the regulation of an interstate river or river valley.

3. Water disputes Tribunal

The inter State Water Disputes Act 1956 was enacted in accordance with the article 262 of the constitution that mandated that all interstate river disputes should be resolved through negotiations. The act provides for the formation of ad hoc tribunals for resolving interstate water disputes if repeated negotiations prove to be futile in resolving the issue.

Political or Resolution Bodies

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The union government created the National Commission for Transforming India after dissolving the Planning Commission in 2015.

The Prime Minister is the ex office chairman and the permanent members of the governing council are all the Chief Ministers of all the states, Chief Ministers of the Union Territories of Delhi and Puducherry and the Lieutenant Governor of Andaman and Nicobar Islands.

One of the primary objectives of the commission is to “foster cooperative federalism through structured support initiatives and mechanisms with the states on a continuous basis”. It recognizes that strong states will make strong nation.

But, without constitutionally empowering more the constituent states and adequate devolution of revenue resources, the states continue to remain over dependent on the Union Government, even in matters relating to tackling of natural calamities.



Inter – State River Water Dispute

Inter State River Water Disputes play a crucial role in the evolution of federalism in Indian politics. There are a large number of such disputes in our country. The Cauvery dispute involving Tamil Nadu, Karnataka, Kerala and Puducherry Union Territory, Vamsadara River dispute involving Andhra Pradesh and Odisha, Sutlej dispute involving Punjab, Haryana, Mahadayi river dispute involving Goa, Maharashtra and Karnataka are the major ones.

We have a following dispute settlement mechanism in Indian federalism to solve them.

1. Constitution and Inter – State River Water Disputes

The article 262 of the constitution empowers the parliament to enact a law providing for the adjudication of any dispute, complaint relating to the use, distribution and control of any inter – state river or river valley. It also provides that parliament can exclude the Supreme Court or any other court from exercising any jurisdiction over inter-state river water disputes.

For this purpose, parliament is empowered to enact a law overriding any provision of the constitution. The logic of this provision is that inter – state river water disputes contain emotional and economic implications affecting the lives and livelihood of millions of people. Judicial adjudication of the disputes may create social and economic problems.

Therefore, the national legislature must have competence to evolve a mechanism for resolution of these disputes through negotiations and direct dialogue.

2. Inter-state river water disputes act, 1956

Empowered by the article 262 of the constitution the parliament enacted inter – state river water dispute act, 1956. This act enables the union govt. to establish a Tribunal for the adjudication of an inter- state river water dispute. The Indian constitutional and legal consensus is that all inter-state river water disputes must be resolved through peaceful negotiations. If no fruitful decisions can be reached through negotiations the concerned states can approach the union for the constitution of a Tribunal on ad hoc basis for resolving that issue.

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When the union govt. decides to constitute a Tribunal the Chief Justice of Supreme Court of India will nominate a person to head it. The Tribunal will always consist of one person only. Later on, this provision was amended to include more members. The Chief Justice will choose from the sitting or retired Judge of the Supreme Court and High Courts.

The decision of the Tribunal shall be published in the in the official Gazette and there after that decision shall be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court shall have jurisdiction over any inter-state water dispute referred to a tribunal under the act.

No tribunal can be constituted for any dispute that has been placed for arbitration under the river water board act – 1955. Succinctly we can say that our constitutional, legal and political strategy advocates a dual strategy to resolve inter- state river water disputes. It advocates negotiated settlement as the first choice and as and when sincere negotiations fail to resolve the issues, ad hoc tribunal based adjudication should be established

Questions:

1. Examine the dispute settlement approach to Inter State River Water Disputes in India
2. Analyse the scheme of centre state relations in Indian constitution
3. Provide a detailed account on Cooperative Federalism of Indian constitution