

**‘CENTRALISED FEDERALISM’: AN ANALYSIS OF INDIA’S FEDERAL
STRUCTURE**

Prateek

Hidayatullah national law university Raipur

ABSTRACT

As Indian Constitution is adoption of different constitution but despite all these drafting of Constitution has indigenous touch particularly appropriate to unify one of most diversified nation of world. Diversification of culture, politics, economic in nation such as India prophesized the nation as mutually exclusive to existence of democratic principles such as federalism, separation of power, universal adult franchise. . The Indian model of federalism is designated with special titles such as Morris Jones termed it as bargaining federalism, renowned constitutional philosopher K.C Wheare coined the term quasi federal to define Indian federalism. Granville Austin termed it as cooperative federalism. The deciding factor sowing the seed of discrepancy between Indian federalism and USA federalism is presence of diversified population based on racial, ethnic, linguistic or religious grounds and challenges to unify it. Therefore Indian Constitution makers performed two mammoth nearly mutually exclusive process of unionization and regionalization proved to be foundation of hallmark of Indian Constitution. Constitutional debates regarding adoption of provision mentioned in article 246-253 is of paramount importance as it was fulcrum of balancing the separation and division of power. Also it was key factor to decide the extent of quasi federal in Indian Constitution with regard to three legislative list. .However the color of quasi federal with strong center was imprinted marks by providing upper hand to Center over State in subject matter enshrined in third list i.e. Concurrent list mean that State legislature have been provided room to enact law on subject matter of Concurrent list although subject to Parliament law.

Keywords: Federal, Quasi federal, Indian constitution

INTRODUCTION

Indian constitution is amalgamation of different constitutional principles and practices of democratic countries. It would be wrong to declare the Indian Constitution as reflection of western political and constitutional thoughts. As Indian Constitution is adoption of different constitution but despite all these drafting of Constitution has indigenous touch particularly appropriate to unify one of most diversified

nation of world. Diversification of culture, politics, economic in nation such as India prophesized the nation as mutually exclusive to existence of democratic principles such as federalism, separation of power, universal adult franchise. Astonishingly Indian Constitution has proved to be exception against many constitutional jurist prophecy. Federalism is one of the exhibition of sui generis brilliance magic of Constitution. The model of federalism established by Indian Constitution doesn't fit in clothes of ideal or true federalism as defined by various Constitutional jurist. Pragmatically no country is painted to be as true federalism although USA claim it to be. The special designation provided to Indian federalism have clearly denoted that Indian Constitution is quasi federal with unitary bias means that Centre acquires dominated power in federal state of India. Each nation's Constitution is also reflection of then economic, social and political scenario of nation and therefore Indian Constitution is product of its circumstances. Firstly British failure of unitary system persuading to include cooperative federalism in Government of India act 1935 had biased the minds of Constitutional framers to adopt it as originally.

India followed reverse movement from unitarism to federalism means several independent sovereign were surrendered to establish a unified sovereign contrary to other countries where historical process was vice versa. Partition aftermath ,Kashmir imbroglio ,the secession threat game of Naga and emergence of several other centrifugal forces had added fire in flames to adopt the strong center federal government.

QUEST FOR PREFECTORIAL FEDERALISM

The historical constitutional debate provide the several hardship affirmative and negative points with regard to any issue that it would be always beneficiary to look upon it as master key to unlock all the locks of modern problem. Schedule 7 of Indian Constitution consist of three list i.e Union list ,State list and Concurrent list. The matters enshrined in particular list is governed under article 246 -253 of Indian Constitution. Constitutional debates regarding adoption of provision mentioned in article 246-253 is of paramount importance as it was fulcrum of balancing the separation and division of power. Also it was key factor to decide the extent of quasi federal in Indian Constitution with regard to three legislative list.

Draft article 217 consist of 6 clauses where it was stated that states had exclusive authority to frame laws in their sphere or classes of subject enshrined in List I and similarly union has exclusive authority to enact laws on subject matter enshrined in List III. However the colour of quasi federal with strong center was imprinted marks by providing upper hand to Center over State in subject matter enshrined in third list i.e. Concurrent

list mean that State legislature have been provided room to enact law on subject matter of Concurrent list although subject to Parliament law. Government of India Act 1935 were undecided in vested power of residuary power but as it was intended that by Constitution makers that residuary power lies with Union therefore it should be redrafted according to it. This depict the argument to strengthen the center in federal structure of Government. The same has been adopted as article 246 and article 248 of Indian Constitution.

Another article 229 which is adopted as an article 252 in Indian Constitution. Article 229 was in a way surrendering of rights of State on their own will .The article state that if any provincial legislature passed a resolution in their state legislature declaring that Parliament are authorized to enact law on specified matter of State list and shall apply to the provinces concerned. The tool would be changed to Center weapon to encroach in provincial autonomy. The contention raised by Consttutional framer hold the water in present scenario. Rarely invocation of article in post Constitutional India is all the evidences which can be attached to the contention raised. This article also contributed to hold foundation of Quasi Federal with Strong Centre edifice

LENSE OF STATE TOWARD PREFECTORIAL FEDERALISM

Legislative Supremacy

In prefectorial federalism, Center gain overreaching power over State and compromise the provincial autonomy. Indian Constitution proved to be not so kind toward State legislative autonomy. Article 200 which states to reserve bill by Governor for assent of President .The article authorized necessity of final stamp of Union to permit Bill in enactment of Act. The provincial autonomy is necessarily compromised as Governor is also puppet of Union as well as President who has been chained with shackles of Council of Minister. Another article 201 provide power to President to grant the assent at any time in consonance with political circumstances .For instance Karnataka Essential Commodities (Amendment) Bill prophesized that State will enjoy a great extent of autonomy through the Act on the matter concern. To avoid this blessing President reserved the assent for six finally and lastly withheld it. Therefore Ambedkar statement “*State under our Constitution are in no way dependent upon Centre for their legislative and executive authority*” proved to be a gangland fallacy and myth in pragmatic world. The Doctrine of Repugnancy enshrined in Article 254 is another example of Centre domination the State legislature.

Executive Hegemony

Article 355 and 356 suppress the state autonomy through Center executive hegemony gameplay .Article 355 and 356 empowers Union Executive to intervenes in state affairs however are subjected to certain circumstances such as external aggression, internal disturbance and breakdown of constitutional machinery in state. Sarkaria Commission also recommended several suggestion to invoke article 355 and 356 despite all this misabuse of the article has not been avoided. During 1971-1984 era witnessed the particular unnecessary invocation of article 355 and 356.Thre misabuse of the article had been tried to countered by judiciary to an extent. In S.R Bommai Case the court held that tool of article 355 and 356 should be used with good conscience and rarely to meet the necessity of objective. However the safeguarded didn't avoided inevitable Union Executive hegemony over state.

Financial Handicapped

The overriding and overreaching power of Centre in regard to financial matter has worsened the wounds of state autonomy.Under article 292 Union are provided with unlimited power to borrow and restriction are self regulated by Parliament .The State are restricted to raise their funding from foreign sources and while raising fund among the fences of country they are restricted under article 293 .Article 293 makes prior consent of Union Government mandatory in order to raise funds.Union are proved to be affluent whereas state hold the effluent status under quasi federal institution.

JUDICIAL PERISCOPE ON PREFACTORIAL FEDERALISM

In Automobile Transport v State of Rajasthan¹ while interpreting Article 301 implication observed that basic structure of Constitution include the distribution of power along with three legislative list enshrined in Schedule 7.While interpretation of article one should always keep in mind that India is quasi federal nation. Judiciary also imposed Centre dominance over state in case of State of West Bengal v Union of India². The court rejected the state contention that Indian Constitution is federal also state shared sovereignty with Centre. The judgement also rejected the state argument that Center can't acquire state properties. The judgement was praiseworthy on initial contention however disappointed many scholars on non recognition of India as federal state. Although the disappointment didn't last for long time and In Keshavnanda Bharti v state of Kerala³ recognized the federal character of Indian Constitution as basic structure. The same view was

¹ Automobile Transport v State of Rajasthan/ IR 1962 SC 1406

² State of West Bengal v Union of India/ AIR 1963 SC 1241

³ Keshavnanda Bharti v state of Kerala/ AIR 1963 SC 1461

upheld in *State of Rajasthan v Union of India*⁴. The majority didn't agree on federal character of Constitution but minority observed the federal character. Kailsam J acknowledged the fact while scrutinizing distribution of power it can't be deny that it is tilted toward Union however this doesn't grant license to override any constitution power.

In *S.R Bommai v Union of India*⁵ observed that Central government are inherited greater extent of power but despite State are also granted supremacy in their supremacy. There is nothing concern hidden in name granted to federal structure such as quasi federal instead the attention should be provided to application and implication of various constitutional provision. In *UCO bank v Dipak Debbarma*⁹ the court tried to maintain the balance of federalism by preventing any overriding power of Central government.

CONCLUSION

As Indian Constitution is adoption of different constitution but despite all these drafting of Constitution has indigenous touch particularly appropriate to unify one of most diversified nation of world. Indian Constitution makers performed two mammoth nearly mutually exclusive process of unionization and regionalization proved to be foundation of hallmark of Indian Constitution. Constitutional debates regarding adoption of provision mentioned in article 246-253 is of paramount importance as it was fulcrum of balancing the separation and division of power. Also it was key factor to decide the extent of quasi federal in Indian Constitution with regard to three legislative list. . However the color of quasi federal with strong center was imprinted marks by providing upper hand to Center over State in subject matter enshrined in third list i.e. Concurrent list mean that State legislature have been provided room to enact law on subject matter of Concurrent list although subject to Parliament law.

Economic issues would invite Centre interference in state to meet the economic objective and it can be witnessed in federation existed such as USA due to exigencies of time and judicial pronouncement Centre had attracted larger power than State. Another article 201 provide power to President to grant the assent at any time in consonance with political circumstances. The Doctrine of Repugnancy enshrined in Article 254 is another example of Centre domination the State legislature. Therefore Ambedkar statement "*State under our Constitution are in no way dependent upon Centre for their legislative and executive authority*" proved to be a gangland fallacy and myth in pragmatic world.

⁴ *State of Rajasthan v Union of India/ AIR 1977 SC 1361*

⁵ *S.R Bommai v Union of India/ AIR 1994 SC 1918*