
Yes, India is a Federal Country

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ABSTRACT:

Federalism, as a system of Government is modestly a new sort of Government in our history. Though earliest form of political organization was unitary in nature but due to various social and economical factors, the unitary states were forced to adopt federal form of government in order to address the common concerns of the nation. This gave the concept of Federalism an important historical dimension.

It is the Constitution of United States which first adopted the concept of federal state and therefore, American constitution was regarded as the model of federal constitution. There is an acute problem prevailing in the society relating to the nature of Indian constitution and polity, some author regard it as a quasi federal and some name it as a federal constitution, through this paper by comparing the Indian constitution with U.S Constitution it will be shown that the Indian Constitution, as stated by its framers, is Federal.

KEY WORDS: *Federalism, Yardsticks, Unitary*

1. INTRODUCTION

State, being a political community needs a government to regulate and control its population. The rules and principle to govern a state (country) is prescribed by Constitution of each country, on the basis of which political nature of a country is determined. This governmental mechanism is different for every state depending upon various economic, social and political aspects. Keeping this in mind, constitutions are classified into different categories. According to territorial distribution of powers and autonomy as between central and the territories constituting the state, a constitution can be classified as- Unitary, Federal and Confederation. In Unitary form of government, the concentration of power of a country is vested in one visible sovereign power i.e., Central Government. confederation, is a loose association of

independent states which create union or Central Government for certain limited common purposes while the member state retain their principal powers of government, and the very existence of the Central Government depends on the will of the member states. Now, coming to the federal form, it is a system of government in a country where the sovereignty is shared between two or more levels of government i.e., a federal or central government and several state or provincial legislatures. Powers of both governments are derived from the federal constitution in such a way that on some matters the national government is supreme and on others the states, regions, or provincial governments are supreme thereby, making both supreme in particular spheres. Moreover, the state governments, just like federal government operate directly on people and are not exercising powers delegated by the federal government, nor they are subordinate to it (though they may deal with less important matters). We can say it is a process where different territories coming together and forming a single unit for common purpose, common identity, and common action. States retain power with them when they are part of such unit or we can say regional and national government works independent and cooperatively.

It is very much evident that there no such strict definition or criteria to determine which country is federal or which country is unitary, it depends upon their prevailing situation and how they adopt things in their constitution to make it work properly. Though there are certain basics features which country should possess so that they can be categorized as federalism, these basic features include a written constitution, a dual government, which means there is more than one level of government i.e. one government to control whole nation and the other one to control regional units (Every country face challenges of different nature, some pertains to nation as a whole while other relates local inhabitants. The dual form of government helps to address both levels efficiently and simultaneously.), powers among federal and regional governments are distributed by the Constitution and interpretation by judiciary is the most important feature of federalism. Judiciary in federalism has the position of watch dog with respect to the distribution of powers between both levels of government i.e. regional and federal. It is the duty of the judiciary to interpret the Constitution in such manner so as maintain this distribution. It has the power to invalidate their acts is they try to cross the boundaries set by the Constitution.

Indian constitution fulfills all those provisions, which have been mentioned above, though debates have been going since past about the character of Indian constitution just because various analysts drew the line on which character of constitution is to be considered, various parameters have been drawn to test the character of constitution, which basically is making chaotic situation, nothing else. Indian constitution contains very clear provision regarding its character, even if that is related to the unitary features they have been expressly mentioned in the Indian constitution.

The paper proposes to analyze and carry out exhaustive study of these features and aims to determine whether Indian constitution fulfills all these features or to what extent they are adopted by India by comparing it with the Constitutions of United States. Nature of Indian Constitution is always confused with Quasi-Federal but through this paper it will be shown that the Indian Constitution, as stated by its framers, is Federal.

2. HISTORY OF INDIAN FEDERALISM

The British established a unique administrative structure in India. Beginning with the Indian councils Act of 1861, the administrative structure in India revolved around the viceroy's executive council and the imperial legislative council. The British administrative structure established by the Indian councils Act of 1861 (and later by the Indian councils Act of 1892) provided a loosely framed centralized colonial authority. The administrative structure, combined with increased local demands for representation, prompted the British government to formulate a more precise administrative structure. In his role as Secretary of State for India, Lord Morley eventually appointed a Decentralization commission for the purpose 'to simplify relations between the central government and its subordinate and coordinate parts'. Morley's Decentralization Commission concluded that 'even in matters primarily assigned to the Provincial Governments, these act as agents of the Government of India who exercise a very full and constant check over their proceedings. These reforms paved the way for the so-called Morley-Minto Reforms of 1909.ⁱ

The Government of India Act of 1909 presented unassuming changes in the arrangement legislative council and the provincial legislatures. The 1919 Montagu-Chelmsford Changes in

the end inspected the working of the new authoritative gatherings and endeavored to quicken the appearance of a constrained parliamentary framework in India. From the Montagu-Chelmsford Changes paving the way to the government of India Act of 1919, more powers were organized to the provincial legislature bodies under a dyarchical framework. Under the procurements of the government of India Act of 1919, different Focal and temporary Records divided some managerial and authoritative purviews in this two-level government framework. The devolution of political force to the Indian areas and the proceeding with pattern towards decentralization was later created in the Legislature of India Demonstration of 1935.

India's Federal Structure under the Government of India Act of 1935

The Government of India Act of 1935 was the first legal document that proposed to unite the provinces of British India and Indian states into a federation .The Government of India Act of 1935 was one of the most notable outcomes of the three session of meetings at the Round Table Conference held between the British government and the congress leaders between 1930 and 1932.

The Act was divided into three parts that involved the structure of the central government, the extent of provincial autonomy, and legislative machinery at the centre. The legislature was divided into an upper and a lower House .The Viceroy's Executive Council comprised of ministers appointed by the Governor-General from the members of the Lower House.

The Government of India Act of 1935 introduced an important federal element in that it established a dual system of Government with the centre and the states functioning autonomously. The Government of India Act of 1935 was novel in that it envisioned a decentralized federation or at least a loose federal structure. The centre was to be weak and confined to three subjects: namely, foreign affairs, defense and communications. Ironically, the 1935 Act later served as the model in the trends towards decentralization that followed India's Independence.

Overall, the Act established a dual system of government with the centre and the states being assigned different (and overlapping) functions, under the ultimate control of the Governor-General in council. The Act described the administrative machinery in terms of legislative and executive powers and the responsibilities of the Governor –General and other appointed

and elected officials. It also provided a bicameral federal parliament that never came into being due to the Reluctance of the princely states to join up.ⁱⁱ

The Demands for Centralization in the Constituent Assembly of India

Cabinet Mission Plan was a complete failure to make compromise between Indian national congress and the Muslim league but that did not prevent the formation of the constituent Assembly in December 1946. The first report by the Constituent Assembly initially envisioned a relatively weak centre as advocated by the Cripps and the Cabinet Mission Plans. However, the similarities were done to integrate and accumulate the Muslim League. The passing of the India Independence Act and the eventual Partition of India led the Constituent Assembly to adopt a more unitary rendition of federalism. The Constituent Constitutional Assembly eventually embraced a more unitary version than that laid out by the British in the Government of India Act of 1935.

Ambedkar's safeguards provided for the division of legislative and executive power between the centre and the states .He declared that the basic principle of federalism 'is that the legislative and executive authority is partitioned between the centre and the State not by any law to be made by the Centre but the Constitution. 'Ambedkar noted that the states under the constitution are in no way dependent upon the centre for their legislative or executive authority. The centre and the state are coequal in this matter.'He stated that' the federation was not the result of an agreement by the States to join in a Federation, the federation not being the result of an agreement no State has the right to secede from it.ⁱⁱⁱ

The constituent assembly adopted the constitution of India on 26 November 1949. The constitution of India was eventually inaugurated on 26 January 1950. The Indian constitution established its federal principle. It allotted federal and state responsibilities that are incorporated in the lists in the seventh schedule of the constitution. These lists are separately known as union and state lists. They were in parts identical to the provincial and central lists established by the Government of India Act of 1935. However, an innovation of the newly formed constitution featured the presence of a concurrent list in the seventh schedule that provided the centre and states with a buffer between likely aspects of overlapping

jurisdiction, particularly on such issues as criminal, commercial and educational matters. This was very much criticized by many of the members of the constituent assembly on the basis of centralization of powers as constitution has widely empowered centre over the regional power, for instance appointment of governor, some financial powers, and emergency powers. This provision of centralization of powers was highly condemned by various states. As a result of this dissatisfaction, the government of Tamil Nadu appointed **Rajamannar Commission** in 1969, “to examine the entire question regarding the relationship between the centre & the states in federal set up, with reference to the provisions of the constitution of India & to suggest suitable amendments to the constitution so as to secure to the states the utmost autonomy.”

The committee in its report issued in 1971 criticized certain aspects of the Indian-constitution because they were not reconcilable. The Committee accepted the position that the power vested in the centre “does not reduce the states of the state to that of administrative-units in a unitary government as in the days of the British rule. The committee suggested some modifications in the constitutional-provisions relating to the distribution of legislative & taxing powers emergency etc. The proposals made by Rajamannar Committee suffer from an extreme over-statement of the case for the state-autonomy. These proposals did not evoke much public-enthusiasm & were endorsed neither by any state-government nor by any All India political party & the report became a dead-letter.

Later **Sarkaria commission** was also formed to give practical shape to federalism and to assess federalism, which has given many recommendations for the practical shape which can be given to legislative, financial and administrative wings. Basic aim of Sarkaria commission was to review the existing relation between centre and state. Sarkaria commission offered several recommendations to deal with the concerns of state government, for instance, appointment of governor can only be made after having satisfied that he has minimal connection with politicians, he is from different state. The commission emphasized that coordination of mutual consultation is prerequisites of smooth and harmonious working of the dual system.^{iv} It remains to be seen whether any governing party will be able to implement the recommendations given by the Sarkaria commission.

3. FEDERALISM IN INDIA: COMPARISON WITH U.S.A

The conventional methodology to deciding Federalism in a nation is simple, as in just 5 criteria's must be satisfied to be known as a Federal nation. At the same time because of expanding differing qualities even in the manifestations of Federalism, it got to be important to advance diverse recipes to test and discover the level of Federalism in a nation. The United States of America is accepted to be the bad-to-the-bone Federalist nation, and prior, if a nation didn't deal with the standards like that of U.S.A., it wouldn't be known as a Federal nation. Because of changing circumstances and development of States and even change in the working of U.S.A. and to a degree its liberal methodology, regardless of the possibility that a nation fulfils that Federalism is the fundamental peculiarity of working of that Constitution, then it would be called as a Government nation. Like-wise, numerous nations which contrasts on some meeting expectations routines for the U.S.A. like; Australia, Canada, India, Germany, South-Africa and 70 more nations of the world can be known as a federal nation. Basically, the 5 traditional approaches to Federalism are:

- Dual Polity
- Distribution of Powers
- Supremacy of Courts
- Written Constitution
- Rigidity

But by evolving these basic features, in the year 1985, Professor Ivo Duchacek in his book *Comparative Federalism*^v has given 10 yardsticks on the basis on which one can find out what degree of federal character has been rooted in a country.

Explaining each yardstick, India's situation and working have been discussed below.

1. Has the Central Authority exclusive control over Diplomacy and Defence as befits a nation state in reference to other nation state?

In a federation, then, it is the national (federal) government in whose hands lies the ultimate control over the major issues in foreign policy and the conduct of peaceful or violent international relations.

U.S.A:

First, looking into the U.S context which provides in Article 1, Section 10, Clause 3 of the U.S Constitution that the ultimate control of defence and diplomacy is with Central Government.

India:

Under Article 53(2) of the Indian Constitution, it vests the power of defence in the President. Moreover, in Schedule 7, List 1 Entries 1, 2,4,10,11,13,14 and 15 provides the power to the Centre. (Article 246 read with Schedule VII gives such powers only to the Union Government)

Moreover, under Article 352 Central Executive has the ultimate authority to declare Emergency in case of wars, external aggression or armed rebellion.

2. Is Federal Union constitutionally immune against dissolution by secession?

U.S.A:

The situation in U.S is crystal clear in this regard as Article 4, Section 3 read with the case Texas v. White^{vi}, “U.S is an indestructible Union of indestructible states.”

India:

Except in the Berubari case^{vii}, in which it was decided that by a constitution amendment, a part of India can be seceded, it has been now established that Article 1 read with Section 1 clarifies that secession is not possible of Indian states. Article 19(2) & 19 (3) restricts the freedom of speech to propagate secession. Moreover, the Preamble by its words “Unity” and “Integrity” curtails the power of States to secede away. Thus Indian constitution provides such immunity to the centre.

3. Is the exercise of Central authority as it reaches all citizens directly independent of the individual approval and resources of the component units?

This question basically has two indirect questions,

- a. Can union directly tax people without state’s permission
- b. Can union directly reach people and provide welfare without state’s permission.

U.S.A:

Article 1, Section 8 gives power to Congress to lay and collect taxes. Also, the money collected can be distributed without looking into individual demand.

India:

Article 246(1) read with Schedule 7, Entry 82 to 92, Union has direct authority to impose tax and distribute according to its wish.

4. Who has control over Constitution Amendment?

U.S.A:

Article 5 deals with the constitutional amendment, which states that it can be introduced by either i.e. house of parliament or Senate, it can also originate from states (only if 2/3 states seeks amendment). 2/3rd members of both the house of congress need to pass the amendment, along with it, 3/4th states need to ratify it. Thus U.S states have control over constitutional amendments.

India:

Only 58 Articles and 2 Schedules (out of 395 articles and 12 schedules) require the ratification of States. Parliament has more power regarding constitution amendments, but in some cases of federal implications, states have a role, thus this is partially fulfilled.

5. Are the component units immune to elimination of their identity and authority?

U.S.A:

As discussed earlier, article 4, section 3 read with case of Texas v. White, the states cannot be destroyed, their boundaries cannot be altered and not even their names.

India:

By virtue of Article 2, the Parliament, without the consent of the individual state can rename, alter the boundaries. The units have no authority over this matter. Article 3 read with babulal parathe^{viii} makes it clear that state have no role to decide, by which we mean that state identity can easily be loosen.

But, this provision has been used by the Indian Parliament when there is a demand from the individual states. This power has not been used by the Parliament (except in Kutch Award Tribunal Case) on its own discretion.

6. Is there equal representation of unequal units in a bi-cameral system?

U.S.A:

There is equal representation from all states of the U.S in the Senate. Every state has 2 seats reserved in the Senate.

India:

States are represented unequally in the Rajya-Sabha on the basis of population of an individual State.

7. Are there two independent sets of courts, one interpreting Federal Laws and the other State Laws?

U.S.A:

The U.S. Supreme Court has jurisdiction over the entire country but only in case of Federal Laws. The States have their own Constitutions and their individual Supreme Court to interpret their own laws.

India:

There is only one hierarchy of courts with the Supreme Court at the apex and High Courts of individual States at the lower level. These two have the power to adjudicate both; Federal as well as State laws.

8. Is there a judicial authority in Central authority but standing above that Central authority and the component units to determine their respective rights?

U.S.A:

Yes, there is this concept of judicial review where the Supreme Court has jurisdiction to try centre-state dispute. *Mculloh v. Maryland*^{ix} is the classic case of centre state dispute, where judicial review was used.

India:

According to Article 131, the Supreme Court of India has original jurisdiction to try centre-state dispute. Moreover, judicial review is a basic feature of Indian Constitution^x provide in Article 13(2) read with 14, 32, 226.

9. Who retains the residuary power?

U.S.A:

Article 1, Section 8 of U.S Constitution provides for 18 subject matters for the centre to legislate upon and is restricted. The remaining power is with the States. Thus residuary power is with states.

India:

In India, exhaustive lists are prepared which chalks out the various areas of the Centre and States. There never arose any question of residuary power. But then too, if any entry is not mentioned in any of the three lists, then the Centre has the authority over it. Thus residuary power is with Centre.

10. Is territorial division of authority clear?

U.S.A:

Reading this with the above discussed, clearly the working areas of both centre and state has been clearly defined. Even if some confusion remains, the final authority is with centre.

India:

Exhaustive three lists are given under Article 246. Thus, there is clear demarcation of authority. Though a question arise, whether state can make a law which will have effect over union, answer to this question is yes, but there should be territorial nexus, that is subject should be real, not illusory, subject must be concerned with the object. But there are very few instances which came up before the court regarding conflict of lists; this makes it clear that there is no ambiguity prevailing in India.

4. ANALYSIS

In the above examined article, we have perceived how India has also shown different character during the past and it embraced agreeable federalism in its approach. So let us first close on the 10 measuring sticks of Ivo Duchacek and grade India on the scale of 10, one each for one measuring stick.

The question in the first yardstick was of control over defence and diplomacy. In India, the ultimate and sole control is with centre and the relevant provisions have already been discussed. **Score: 1 / 1(India)**

In India, immunity from dissolution is there with the centre and state cannot secede away. **Score: 2 /2(India)**

Third was the taxation power of the centre without prior approval of the individual states. In India, union has been entrusted with the power to reach directly, i.e. they completely follow this yardstick. **Score: 3 /3(India)**

Fourth was the amendment of Constitution. In India some of the articles having federal significance require state concern, so we can say, India partially follows this yardstick. **Score: 3.5 /4(India)**

Fifth was the independent entity of state and the Centre's power in it. Situation in India in this regard as the States have no say and the Centre can alter boundaries, names according to their discretion. So this has not been fulfilled by both the countries. **Score: 3.5 / 5(India)**

Sixth was equal representation in Parliament. In India while dividing seats population matters, (Article 80 read with IV schedule) which means there is no equal representation of unequal units, so India does not follow this yardstick. **Score: 3.5 / 6(India)**

Seventh is regarding the two different set of Courts. In India both federal and state laws can be interpreted by both. India does not fulfill this yardstick. **Score: 3.5 / 7(India)**

Eighth was about the Judicial Authority which is above the Central authority. In India, Article 13(2) with 32, 226 make it very clear that India fulfils this condition. **Score: 4.5 / 8(India)**

Ninth one was regarding the residuary power. In India where, the residuary power is with Centre (even though exhaustive lists have been provided), this one is not fulfilled by India. **Score: 4.5 / 9(India)**

Tenth one is the clear Territorial division. In India there is no ambiguity regarding demarcation of subject matters, thus completely followed by India. **Score: 5.5 / 10(India)**

So we can clearly state that India, though does not strictly follows those yardsticks, but considering the practical features, India can be termed as federal country.

5. CONCLUSION

The framers of Indian constitution intended it to be both, Unitary as well as Federal according to time and circumstances. In historical as well as present context, the above statement is fully correct because: federalism is not static but a dynamic concept, it has evolved to what it is today and is still evolving from time to time in the light of the contemporary needs and the demands being made on it. Though every form of government has its own merits and demerits but on a close scrutiny, it can be seen that the federal form of Government supersedes all other forms in terms of effective governance as here, there is direct interaction with people at central level, state level and sometimes at local levels. The centre and states carry out discussions and negotiations so as to remove frictions & difficulties in the area of inter government –cooperation.

Though U.S. Constitution is viewed as epitome of classical federalism, but America has started its federal path with a powerless centre, reason of which is very clear i.e. it has been created by a result of voluntary compact entered into by pre existing state, which have given limited power to the centre. The power of centre has been stretched since 1787 which led to situation in which power of states have been shrunken, that too without any radical amendments in the constitution itself, but through the judicial activism only. Courts have played a significant role to bring such changes by their liberal interpretation in the favor of

centre. We have seen many of the examples in which centre has placed huge pressure on the state to adopt such schemes, knowing the fact that, it is not in their domain. This is not the case with U.S. only, many other countries who have started their path through strict federal measures have come to liberal approach and gave powers to centre, such as the case with Canadian constitution which has laid an emphasis on the centre itself in the starting, but in course of time by process of liberal interpretation by the privy council, centre has assumed the powers. Australian constitution gives a similar kind of example by which we can clearly have an idea that operating in a water tight compartment is now not at all necessary and reality now. We have seen a complete transformation of centre becoming more powerful even in the countries which strictly follows federal principles. It is very clear that even the older federations have more or less centralizing features due to which regional government do not enjoy equal status as that of centre. So we can say it is not necessary for any of the country to bind itself into the fix parameters of the federal features or we should rather say that overall assessment should be the practical approach while deciding the federalism. Countries mould the federal implications as per their existing circumstances. This clearly indicates that merely having some unitary feature does not limit Indian constitution to be called as unitary constitution, looking into the past, we get clear face that giving less power to union will lead to destruction of the unity and will lead to disintegration of the country. We should look into the time when India got independent, that time we cannot even imagine of having weak centre as states unit were not at all developed at that time as was the situation in U.S.A., so while looking into various conditions prevailing in India, we have adopted accordingly the principles of federalism. In spite of having few exceptions, that too expressly provided by the constitution itself, Indian constitution has federal implication principles such as distribution of powers and courts as a watchdog for this, we are of the view that Indian constitution possesses all the qualities of being called as federal.

The analysis made under this paper is carried out on the basis of yardsticks provided by Ivo Duchacek. After scrutinizing these yardsticks, it can be concluded that India is a federal country i.e. it possesses essential features of federalism. Though this cannot be stated in strict sense but still the conclusion is correct as Indian Constitution contains many provisions having federal implications. But, yardsticks of Ivo Duchacek cannot be accepted as a straitjacket formula for deciding whether a country is federal or not. There are some other

conditions also which should be considered while coining a country as federal or unitary such as social, cultural and political aspects of a country as these aspects differ from country to country thereby demanding a different system of governance. Federalism should be seen as concept and rest all other things are decided as per factors prevailing in a country. It is very difficult to define an exact parameter to prescribe any constitution as federal as there is not agreed definition of federalism. Another problem is that the scholars ascertain federal character of country on the basis of U.S.A. model of federal constitution. The countries which do not stand on the parameters prescribed by the model constitution are excluded straightaway. The researcher suggests that for deciding the federal nature of a country more flexible and reasonable parameters should be considered and to make Indian constitution more self dependent and to overcome the great-challenges of difference, external & internal – security & socio-economic development, the current differences between the centre and state must be sorted out and this should be done in such manner that neither the federal structure of our country is diluted to be more of unitary nor it becomes so loose and weak that it affects the unity and integration of our nation.

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^{vi} Justice salmon chase in *texas v. white*, 74 U.S. (7 Wall.) 700, 19L. Ed. 227 (1868), explained the necessity for the constitutional limitations that prevent concentration of power on either the state or national level: “[T]he preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution, as the preservation of the Union.... The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.”

^{vii} *In ref* Berubari case, AIR 1960 SC 845

^{viii} Babulal Parathe v. state of Bombay, 1960 SCR (1) 605

^{ix} *Mculloh v. Maryland*, 17 [U.S. 316](#) (1819)

^x *S. R. Bommai v. Union of India*, AIR 1994 SC 1918