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NATURE OF INDIAN FEDERALISM

The most controversial issue of the Indian Constitution finds its place in its essential nature emanating from the words of its opening Article that declares India to be 'a Union of States'. While presenting the draft of the Indian Constitution in the Constituent Assembly, Dr. Ambedkar described it as a federal Constitution. However, nowhere in the final body of the Constitution has the word 'federal' been used to describe the nature of the Indian State. The views of eminent jurists & political scientists in this controversial matter widely range from those who call it federal to those who dub it as unitary with some taking the middle position of designating it as quasi-federal. This is due to the provisions as contained in Part I titled Indian Union and its Territory, Part XI dealing with the distribution of legislative and administrative powers between the Centre and States, Part XII, specifying the nature of financial relations between the federal and regional governments and above all, Schedule VII, incorporating three lists, showing division of powers as conclusive evidence of India's having a non-unitary system of government.

The Supreme Court of India, while interpreting the various provisions relating to the nature of the Indian state, took the stand that India is a federal country. The apex court in many of its important cases, like the *Kesavananda Bharati vs. State of Kerala, 1973*, *Shri Kumar vs. Union of India, 1992* and *S.R. Bommai vs. Union of India, 1994*, recognised the federal system as the basic structure of the Constitution. Further, in *Kuldeep Nayar vs. Union of India, 2006*, the apex court admitted that 'the basic features of a federal system are all present in the Indian Constitution'. A federal government is a dual polity in which the powers are distributed between two levels of the government – Central and Regional – that are coordinate and autonomous in their allotted spheres. Thus a federal system 'is a fusion of several states into a single state in regard to matters affecting their common interests, leaving each component state to enjoy autonomy in regard to other matters'. The governments of the component states are not mere delegates or agents of the component states but both the federal and state governments draw their authority from the same source, the Constitution of the land.

Upon an analysis of the Indian Constitution, it is found to have all the **chief characteristics of a federal system:**

- a. **Written and Rigid Constitution:** As in a federal system, the Indian Constitution is written and rigid. Indian Constitution is one of the longest written Constitutions of the world. At the time of adoption, it had 395 Articles, 22 Parts, and 8 Schedules. At present, these have increased to 448 Articles, 25 Parts and 22 Schedules. Along with these, more than a hundred constitutional amendments have been added to the Constitution. Thus, with time, the size of the Indian Constitution has increased. One of the reasons for this huge size of our Constitution is that it has detailed analysis of both the Central and the constituent states' governmental machinery along with Centre-State legislative, administrative and financial relations.

The method of amending the Indian Constitution is mentioned in Article 368. It provides for three different ways of amending our Constitution. However, most

of the articles relating to the federal system of the country have been made relatively rigid. A special two-thirds majority of the members present and voting in the Indian Parliament along with the approval of at least half of the state legislatures have been made mandatory for amending provisions relating to the federal structure.

- b. **Supremacy of the Constitution:** Supremacy of the Constitution is one of the basic features of a federal system. Although nowhere in the Indian Constitution it has been declared supreme, the Supreme Court in *Kesavananda Bharati vs. State of Kerala, 1973* case, gave the ruling that the basic structure of the Constitution is not subject to amendments, establishing thereby, the supremacy of the Constitution.
- c. **Division of Powers:** Another very important characteristic of a federal system is the written division of power between the centre and the constituent states. In the Indian Constitutional system, power is not concentrated but divided. Part XI and the Seventh Schedule of the Constitution have divided powers between the centre and the states. Thus, there is a written clear cut division of powers between the two sets of government. Both the Centre and State governments derive their powers from the Constitution itself. Thus, the state government is in no way, dependent upon the Central government for its powers and authority.
- d. **Dual Government:** As per the rules of a federal system, India has a system of dual government. There is a government at the Centre and one each in 29 states. The source of powers of these two sets of government is the Constitution. In normal conditions, these two governments exercise their powers and authority independent of each other. While the authority of the Central government extends throughout the country, the jurisdiction of the state governments is within their territorial boundaries. Except for times of emergency, these two sets of government act as complementary to each other.
- e. **Federal Court:** In a federal state, it is mandatory to have a neutral, independent and highest Court in the country. In India, the Supreme Court functions as the apex court. In its original jurisdiction, the Supreme Court settles disputes between the centre and one or more states and also between different states. Further, the Supreme Court of India acts as the guardian of the Constitution. It interprets the various provisions of the Constitution, including provisions relating to the federal structure of the country. The apex court, by its rulings in various cases, has ensured that the federal structure of the Constitution is not hampered in any way.
- f. **Bicameral Legislature and Federal representation in its Upper House:** As per the principle of a federal system, the Indian Parliament has two Houses - Rajya Sabha and Lok Sabha. And the Upper House, that is, the Rajya Sabha is constituted on the basis of federal representation in the national Parliament. Elected representatives from different states become the members of the Rajya Sabha – their main responsibility being promoting and protecting the various demands and interests of their respective states. Along with that, the Rajya Sabha as a body looks after the proper functioning of the federal system in the country.

- g. **Separate sources of Revenue for both levels of Government:** Merely creating two sets of government and endowing them with powers is not enough for the proper functioning of a federal system. Unless both the governments, especially those of the constituent states, have enough revenue at their disposal, it becomes impossible for them to function independently. The Indian Constitution in the Seventh Schedule has given a clear directive as to among the Centre and States of India, who will impose, collect and utilise tax revenue from what sources. The States have been given ample sources of revenue to function properly. Thus, it enables the proper functioning of the federal system in India.

It appears from the above discussion that India has many features of a federal system. It is very clear that India is in no way a unitary country. However, at the same time, many features of other federal countries of the world are absent in the Indian system. These may be termed as the **un-federal characteristics of Indian Federalism**, and these are enumerated below:

- a. **States do not have a separate Constitution:** In countries like USA, Germany, Switzerland, Australia etc, we find that the different constituent states have their own separate Constitutions along with a national Constitution of the country. But in India, the states do not have such separate Constitutions. They are governed by the national Constitution of India, which has detailed provisions of the state level governmental machinery as well. The only exception was the state of Jammu and Kashmir. Due to the special historical conditions under which the state acceded to India, it was allowed to have a separate Constitution of its own.
- b. **Absence of Dual Citizenship:** In federal countries like USA, Switzerland, Australia etc., a citizen is both a national citizen as well as a citizen of the state where he lives. India does not have this system of dual citizenship. Hence, a citizen is known only as an Indian citizen.
- c. **No Equal Representation of states in the Upper House of the Central Legislature:** In the federal systems of countries like USA, Switzerland, Australia, South Africa, Nigeria etc, all states irrespective of their population and size, send equal number of representatives to the Upper House of the Central Legislature. India is an exception to this federal rule. The Indian Constitution in its Fourth Schedule has allocated different number of seats in the Rajya Sabha, the Upper House of the Parliament to different states in consideration of their size and population.
- d. **No Separate Judiciary at the State level:** In the US federation, constituent states have separate judicial systems of their own. There is no such arrangement in the Indian federal system. Here there is a unified judicial system covering both the centre and the states with the Supreme Court at its apex.
- e. **Central Dominance in the formation or Reorganisation of States:** In the federations of USA, Australia, South Africa etc, the centre cannot form any new state or reorganise any old state or states without the approval of the state or states concerned. In India, however, according to Articles 2 & 3 of the

Constitution, the Parliament can, by law, on its own, form or reorganise a state and change the name of a state. On the recommendation of the President of India, the Bill concerned may be introduced in either House of the Parliament and must be passed by simple majority in both the Houses. However, prior to that, the President shall send the Bill to the legislature of the state concerned to have its opinion. The President may fix the time limit within which the state legislature needs to communicate its opinion. But the centre is not bound to go by this opinion. This shows that under the Indian federal Constitution, for the formation of a new state or the reorganisation of an existing one, the consent or approval of the state is not necessary.

Again, apart from these un-federal characteristics of the Indian Constitution, there are certain provisions in the Constitutional Articles which clearly shows a unitary bias, thus opposing the federal principle. These may be rightly regarded as the anti-federal features of the Indian Constitution. If we examine the Union-State Legislative, Executive and Financial relations, it becomes clear that the Indian Constitution gives much more power to the Centre than the States.

- a. **Legislative Relations:** There is a clear cut central dominance in the sphere of legislative power in India. The Seventh Schedule of the Constitution gives three lists, namely the Union List, the State List and the Concurrent List. Of them, the Union List is the longest and most of the important items are included in this list. Since these items included in the Union List are only under the jurisdiction of the Union Legislature, it is evident that the powers of the Central Legislature are far greater than the powers of the State Legislature. Besides, the Union List has more than 95 subjects and the jurisdiction of the Union Legislature extends throughout the entire territory of the country. The State List has only 61 items in it and laws made on these items are applicable only within the territory of the concerned state. Of the 47 items of the Concurrent list, both the Central and State Legislature may promulgate laws but if there is any conflict between the two, the state law will become null and void and the central law will prevail. The power to legislate on the residuary items also rests with the Union Legislature.

Apart from this, there are certain special provisions in the Indian Constitution which provides the Centre with the power to interfere in the state's legislative sphere. During national emergencies or in case of the breakdown of the Constitutional machinery in any state, the Parliament may legislate on any matter included in the State List. Besides, various Articles of the Constitution, for example 249, 252, 253, 254 (1) etc establishes the Centre's predominance in legislative matters.

- b. **Executive Relations:** The Constitution has also made the Centre predominant in the executive sphere. According to Article 73 of the Constitution, the extent of the executive power of the Union is equal to that of its legislative power. Naturally, this too facilitates central dominance in areas of executive power in the same way as in the legislative sphere. Besides, some provisions of the Constitution make room for the Centre to dominate over the state in the

exercise of its executive power. For example, under Articles 256, 257 (1), (2), (3), 339 (2) etc., the Central government may direct the state government on how to exercise its executive powers. Besides, during national emergencies (Art. 352), the Centre may direct the state in the executive matters. In case of breakdown of Constitutional machinery in a state (Art. 356), the Centre takes the rule of the state in its own hands. Besides, the Governor, who is the head of the State executive, is appointed by the President on the recommendation of the Union Council of Ministers. Thus, the Governor acts as a resident agent of the Union Government in the constituent states.

- c. Financial Relations:** In case of financial relations as well, the Constitution provides for Central dominance. The sources of revenue allotted to the states are not many and are not much lucrative. On the other hand, the Central government is provided with the most lucrative sources of revenue and is thus, much financially stronger than the state governments. In most of the cases, the states have to depend on the various Central grants and aids. This naturally hampers the independence and autonomy of the state governments. Besides, the Finance Commission which determines the basis and amount of grants to be allotted to the different states is set up by the Central Government. It is obvious that this Commission acts according to the policy and preferences of the Central Government. Again, by invoking Article 360, i.e, financial emergency, the Centre may control the state's financial policy and powers.

It is evident from the above discussion that the Indian Constitution has given the centre dominance in all spheres which goes against federal principles and ideas. This has led to a lot of controversy as to whether the Indian political system is truly federal or not. However, it is to be kept in mind that even in the most ideal of the federations of the world, there has been a growing centralising trend from the beginning of the last century. The Indian Constitution, which was drafted during the mid-1940s, incorporated this trend in its various provisions. It would be too harsh to criticise the Indian federal system and to call it un-federal. Rather, as Professor K.C Wheare has called the Indian state, 'quasi-federal' seems to be the most apt description of the Indian federation.