



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## The Essence of Federalism in India

Khushi Nagrath<sup>a</sup>

<sup>a</sup>Vivekananda Institute of Professional Studies, New Delhi, India

*Received* 17 March 2022; *Accepted* 26 March 2022; *Published* 01 April 2022

---

*Federalism in India has been a subject of debate for decades. Indian constitution has been characterised by certain features that are federal as well as those that are unitary. India is said to be a “federation of its kind” due to the varied nature of the features of the Indian Constitution. The consolidation of federal policies and the recognition of diversity have contributed to the uniqueness and dynamism of the Indian democracy. While pronouncing judgments in various cases, judges have tried to highlight the meaning of federalism and how the nature of federalism has evolved. The Indian constitution is federal with a unifying disposition to maintain the unity and integrity of the nation. This article highlights the essence of Indian Federalism by taking into account the judicial trends toward federalism in the country and how it is a “federation of its type”. The question arises as to why there is still room for debate about the true nature of Indian federalism despite the clarity provided by the Constituent Assembly, the Constitution, and various court decisions.*

**Keywords:** *federalism, constituent assembly, unitary, diversity.*

---

### INTRODUCTION

Federalism is the division of power between the centre and the state governments so that each of them can work independently. The division of force is one of the main elements of the government constitution. Power is divided between the two levels of government so that both can work autonomously and are not subordinate to each other. The constitution of India lists

different things of regulation in three lists: Union List, Concurrent List, and State List in the VII Schedule of the Constitution.<sup>1</sup> The three official records separately identified the powers vested in the Parliament, the state lawmaking body, and to the two of them simultaneously. The guideline kept by these sorts of governments is "Division of Power". India follows the rule of federalism wherein the power is divided between two levels, i.e., Central Government and State Government.

According to K. C. Where,<sup>2</sup> *"...the systems of Government embody predominantly the division of powers between Centre and regional authority each of which in its sphere is coordinating with the other independent as of them, and if so is that Government federal?"*

Encyclopaedia Britannica defines federalism as:<sup>3</sup> *"...mode of political organisation that unites separate states or other politics within an overarching political system in such a way as to allow each to maintain its fundamental political integrity. Federal systems do this by requiring that basic policies be made and implemented through negotiation in some form so that all the members can share in making and executing decisions. The political principles that animate federal systems emphasise the primacy of bargaining and negotiated coordination among several power centers; they stress the virtues of dispersed power centers as a means for safeguarding individual and local liberties."*

According to A.V Dicey,<sup>4</sup> *"...identified the three leading characteristics of a "completely developed federalism" as including the distribution of powers among governmental bodies (each with limited and coordinated powers), along with the supremacy of the constitution and the authority of the courts as the interpreters of the constitution."*

## FEATURES OF FEDERALISM

**Written Constitution:** India has the longest written constitution in the world which was adopted by the Constituent Assembly of India on 26 November 1949 and came into effect on 26 January 1950.

---

<sup>1</sup> Prof (Dr.) Mahendra Pal Singh, *V. N. Shukla's Constitution of India* (13<sup>th</sup> Edition, Eastern Book Company 2017) 794

<sup>2</sup> K.C. Wheare, *Federal Government* (Oxford University Press, London, 1963) 33

<sup>3</sup> *Govt. (NCT of Delhi) v Union of India* (2018) 8 SCC 501 at para 92

<sup>4</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (7<sup>th</sup> edition, London: Macmillan 1908) 140

**Supremacy of Constitution:** Constitution of India is the supreme law that must be adhered to and this is the component that makes India a sovereign country. It gets its position from the case *Minerva Mills Ltd. & Ors v Union of India and Ors*<sup>5</sup>. This case not just fortified the “Doctrine of Basic structure” which was presented in *Kesavananda Bharati vs the State of Kerala*<sup>6</sup> but also established that all the three levels of government were bound by the constitution, the constitution was the supreme authority and all citizens were subordinate to it.

**Supremacy of Judiciary:** The constitution states that the Judiciary is the supreme authority that can take decisions for the welfare of the citizens of the country. The Supreme Court’s judgment is final in any dispute and it's a powerful binding result on alternative courts. The Judiciary has the power to declare any law passed by the parliament as null and void if it is against the fundamentals of the constitution. But the Judiciary is restricted to the powers laid down in the constitution. Judicial Activism and Judicial Overreach are popular phenomena in today’s times. Judicial Activism is encouraged but no democracy prefers Judicial Overreach.

**Bicameral Legislature:** India consists of a bi-cameral assembly which intends that there are two houses present in the Parliament of India i.e Upper House (Rajya Sabha) and the lower house (Lok Sabha). For any change in the constitution or for passing any new regulations, a bill is required to have been passed in both the Houses of Parliament.

## NEED FOR FEDERALISM IN INDIA

**Decentralisation of Power:** The progression of force in the nation is from top to bottom, i.e., the power flows from the Central Government to the State Government and native bodies. Decentralization is vital with the goal that the center may not hold all powers in the country which is not liked in an administrative type of Government.

**Maintaining Diversity:** India comprises a populace from an assortment of races and religions. The word ‘secular’ was included in the Preamble through the 42nd Amendment Act, 1976.

---

<sup>5</sup> *Minerva Mills Ltd. & Ors v Union of India and Ors* (1980), AIR 1789

<sup>6</sup> *Kesavananda Bharti v State of Kerala* AIR 1973, SC 1461

Secularism in the constitution implies that the constitution safeguards all religions. India is a secular country which implies it cannot advance any one religion or race.

**Easy Governance:** For a country as large and as diverse as India, federalism helps the overburdened administration. It is difficult for the central authorities to reach the native areas to deal with the problems of the citizens. In such cases, the local bodies lend a helping hand by assisting in the administration and for timely and proper assistance to every citizen of the country.

## JUDICIAL TRENDS TOWARDS FEDERALISM IN INDIA

The independent and supreme nature of the judiciary in the country has made way for various landmark judgments that highlight the meaning of federalism, the nature of federalism in the country, and how federalism has evolved over the years. Even though there have been various instances where the courts have talked about federalism, there is still a lot of uncertainty regarding the nature of federalism practiced in the country.

In the *Automobile Transport v State of Rajasthan*<sup>7</sup> case, Supreme Court interpreted the impact of article 301 of the Constitution and observed that:<sup>8</sup>

*“The evolution of a federal structure or a quasi-federal structure necessarily involves, in the context of the conditions then prevailing, distribution of powers, and a basic part of our constitution relates to that distribution with the three legislative lists in the Seventh Schedule. The constitution itself says by Art. 1 that India is a Union of States and in interpreting the constitution one must keep in view the essential structure of a federal or quasi-federal constitution, namely, that the units of the Union have also certain powers as has the Union itself.”*

In *S.R. Bommai v Union of India*<sup>9</sup>, a nine-judge bench had clearly expressed that the Indian Constitution is federal.<sup>10</sup> The court held that:<sup>11</sup>

---

<sup>7</sup> *Automobile Transport v State of Rajasthan* AIR 1962, SC 1406

<sup>8</sup> Constitution of India, 1950, art. 301

<sup>9</sup> *S.R. Bommai v Union of India* AIR 1994, SC 1918

<sup>10</sup> *Ibid*

*“.....The constitution provides more power to the Central government but the state is also supreme within its spheres...The constitution of India is differently described, more appropriately as ‘quasi-federal’ because it is a mixture of the federal and unitary elements, leaning more towards the latter but then what is there in a name, what is important to bear in mind is the thrust and implications of the various provisions of the Constitution bearing on the controversy regarding scope and ambit of the Presidential power under Article 356 and related provisions.”*

In *Kuldip Nayar v Union of India*,<sup>12</sup> Parliament in 2003 amended the Representative of People Act, 1951 where it deleted the requirement of “domicile” in the State concerned for getting elected to the Council of States. The issue, in this case, was whether the 2003 amendment Act violated the principle of Federalism, a basic structure of the constitution. The petitioner contended that the amendment to section 3<sup>13</sup> of the Representative of People Act 1951 offended the principle of federalism.<sup>14</sup> The court rejected the petitioner’s claim and held that:<sup>15</sup>

*“....India is a federal state of its kind and it is not part of the federal principle that representatives of a state must belong to that state. Hence, if the Indian Parliament in its wisdom had chosen not to require residential qualification, it would not violate basic features of federalism.”*

In the *State of West Bengal v The Committee for Protection of Democratic Rights, West Bengal*,<sup>16</sup> a case regarding the exercise of power under article 226<sup>17</sup> of the constitution, the high court had handed over the investigation to CBI. The state questioned the jurisdiction of the high court wherein the counsel representing the state argued that it is a violation of the federal structure because CBI is a central agency and cannot investigate without the consent of the state. But the argument made by the state was not accepted and the court held that:<sup>18</sup>

---

<sup>11</sup> *Ibid*

<sup>12</sup> *Kuldip Nayar v Union of India* AIR 2006, SC 3127

<sup>13</sup> Representative of People Act, 1951, s 3

<sup>14</sup> *Kuldip Nayar* (n 12)

<sup>15</sup> *Ibid*

<sup>16</sup> *State of West Bengal v The Committee for Protection of Democratic Rights* AIR 2010, SC 1476

<sup>17</sup> Constitution of India, 1950, art. 226

<sup>18</sup> *Ibid*

*".....Any direction issued by the Supreme Court or the High Court in the exercise of power under Article 32 or 226<sup>19</sup> to uphold the constitution and maintain the rule of law cannot violate the federal structure. Being protectors of the civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21<sup>20</sup> of the constitution in particular, zealously and vigilantly."*

In *State Bank of India v Santosh Gupta*,<sup>21</sup> the court held that:

*"The Constitution of India is a mosaic drawn from the experience of nations worldwide. The federal structure of this constitution is largely reflected in Part XI which is largely drawn from the Government of India Act, 1935. The State of Jammu & Kashmir is a part of this federal structure. Due to historical reasons, it is a State which is accorded special treatment within the framework of the constitution of India. The findings of the court in this judgment now have been diluted concerning the special status of Jammu and Kashmir by the Presidential order 2019."*

In *M.C. Mehta v Union of India*,<sup>22</sup> the Supreme Court while hearing a request about the difficulties that individuals living in Delhi go through because of serious contamination in the city, guided the Central Pollution Control Board to work in participating with different authorities to set up an adequate number of control rooms in the capital city to screen the air and make the necessary move. The court likewise asked the Centre and the Kejriwal government to keep aside their disparities and devise a "common minimum program" for finding ways to manage the pollution menace in the capital. This decision shows that both the public authority at the center and state level should cooperate for saving the existence of individuals by making appropriate strides for controlling pollution. It can only be possible when both governments will work in cooperation and collaboration with each other along with the municipal corporation.

---

<sup>19</sup> Constitution of India, 1950, art. 32 and art. 226

<sup>20</sup> Constitution of India, 1950, art. 21

<sup>21</sup> *State Bank of India v Santosh Gupta* (2016)

<sup>22</sup> *M.C. Mehta v Union of India* (2015) SCC Online SC 1327

## CRITICAL ANALYSIS OF FEDERALISM IN INDIA

Indian Federalism is a “federation of its type”. Even though the Indian Constitution highlights the division of power through which neither the center nor the state government has outright sway, many arrangements are existing in the Indian Constitution that conflict with the standard of separation of power. The President of India under Articles 352, 356, and 360<sup>23</sup> has the ability to pronounce an emergency in the country. Article 200<sup>24</sup> of the Indian Constitution states that the Governor might save specific bills passed by the assembly of the State for the thought of the President. The Central Government has more power than the State Government in the case of a crisis. Power is not equally split between the Center and State. Parliament might change the constitution without endorsement from the state law making body. The nation is represented by just a single constitution for the two levels of government. In the event of contention of regulations in the Concurrent List, which is made by the two levels of government, regulations made by the Central government generally prevail. Under Article 2 to 4<sup>25</sup> and Schedule-I of the Indian Constitution, the central government has the ability to make another state. Thus, the creation of a new state exclusively relies on the center. The two houses in the Indian Parliament do not have equivalent portrayals. The states that do not have their members represented in Parliament lack various opportunities, which harms the federal character of the country. India showcases the nature of federalism with a unitary character which makes it quasi-federal. Quasi federalism is a mixed form of government that consists of a federal structure along with certain unitary features. In such a form of government, there is a distribution of power between the Central Government and State Government, but major power lies in the hands of the central government. Federal regimes also guarantee multiple identities and thus help resist the mobilization of the majority based on a single, exclusive identity. Reduction to union territory in Jam and Kashmir, reduction of state government taxation power, new education policies denying the role of state government, arbitrary imposition of taxes which are not shared with the state, and financial and political power to direct policy-making by strengthening state government has taken on a more systematic

---

<sup>23</sup> Constitution of India, 1950, art. 352, 356, and 360

<sup>24</sup> Constitution of India, 1950, art. 200

<sup>25</sup> Constitution of India, 1950, art. 2 and 4

intent. This change also seems to be inspired by the belief that a strong center is needed to make India strong. But history tells us that this is not the case. It must be remembered that it was the strengthening of the federal regime and the recognition of diversity that contributed to the vitality of India's democracy. Indeed, the states that demanded quasi-national autonomy in most principles have helped to uphold India's constitutional commitment to multiple traditions and spirits. Efforts to learn from such diverse traditions, rather than homogenization, have so far supported our democracy.

### CHALLENGES TO INDIAN FEDERALISM

**Regionalism:** Federalism results in the distribution of powers among the different states. The Centre might start to focus on bigger states which may lead to the smaller states feeling neglected and left out.

**Language Conflict:** Part XVII of the Constitution of India speaks about "Official Language" from Articles 343 to 351<sup>26</sup>. Schedule VIII of the Indian Constitution states 22 dialects. There are thousands of different languages spoken in various regions of the country. There is a tussle in India for one official language. Hindi is always opposed as an official language by the majority of Southern States.

**Role of Governor:** In India, the Governor of State is delegated by the President of India and he holds office to the delight of the president. Though the Governor is the State Executive head, he is supplanted by the President on various issues. The infliction of the President's rule in any state under Article 356<sup>27</sup> on the report of the Governor, questions the federal nature of the country when there is a chosen Government in the State.

**Economic Incompatibility:** In India, the financial compatibility of all states is not equivalent. Some states are financially backward whereas some states are economically strong and the people can afford to live luxuriously. Whenever there is a financial contrast and monetary contrariness, it poses a threat to the federation in the country.

---

<sup>26</sup> Constitution of India, 1950, art. 343-351

<sup>27</sup> Constitution of India, 1950, art. 356



**Centralisation in Planning:** India has a Planning Commission which works for both, the Centre and the State Governments. The states are monetarily subject to the Center which implies they need to initially pass a financial plan in their council for any work and improvement in the particular State.

**Religious Conflicts:** India is a secular state and it has incorporated the concept of secularism in the Constitution through the 42nd Amendment. India is a diverse country with people from different religions. The country does not advance or give an extraordinary status to any one religion. A battle between two religions and feeling of neglect by one religion makes Indian federalism frail.

## CONCLUSION

Based on the research and discussion, it can be inferred that the constitution of India has all the features of a federal constitution, the center and states are free to make regulations in their separate circles as assigned by the constitution. However, the center has supremacy in certain situations that are mentioned in the Constitution itself. If either government attempts to abuse its power, an independent judiciary plays an important role as it is viewed as the defender of the Constitution. The idea of federalism in India is dynamic and has experienced multiple changes since the commencement of the Constitution. Following the ascent of regional parties and alliance-based governments, the federation has to become more adaptable and accommodating, particularly in its financial aspects. The GST is a model where States equally have the ability to force burdens so they can appreciate independence, which has been one of the greatest tax reforms in the fiscal history of India. Both the central and state governments should work with one another in an agreeable manner as opposed to being associated with a contention. The government at each level is responsible for its separate electorates and it is the constitutional commitment of each administration to work for the welfare of the people. So, keeping in mind, the progressions in the economy and society in terms of globalisation, technology, and the composition of the society, the central and states government must cooperate and collaborate along with local bodies to address the common needs of the people and work in a way as to maximize the satisfaction of the citizens of the country.