



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FEDERALISM IN INDIA: NATURE OF DEMOCRATIC POLITICS

AUTHORED BY – DR. ARUN SHRIVASTAVA
(Dean & Director In Bihar Institute Of Law, Patna)

CO-AUTHOR- DR. FARHAT JABEEN
(Asst. Professor, Professor Incharge In Bihar Institute Of Law, Patna)

INTRODUCTION

Federalism refers to the distribution of power within an organization or a government system in which authority is not solely concentrated in a central government but is divided or shared among various governmental units. In the context of India, federalism illustrates the relationship between the Union and the States. This arrangement ensures that sovereignty is divided between two levels of government, promoting their independence and a balanced power distribution. Both the national government and political subdivisions have the power to make laws. Federalism is the system of government in which the same territory is controlled by two level of government. The Constitution of India establishes this federal structure by defining the country as a "Union of States" in Article 1.

The Indian model of federalism is referred to as a quasi-federal system, as it incorporates key characteristics of both federal and unitary governments. The Constitution outlines the distribution of legislative, administrative, and executive powers between the central government and the state governments. These legislative powers are divided into three categories: the Union List, the State List, and the Concurrent List. The Union List contains powers assigned to the central government, the State List includes powers designated for state governments, and the Concurrent List encompasses powers that are shared by both.

The Constitution establishes a multilayered federation that facilitates various methods of distributing political power. Indian federalism is unique because it evolved from a unitary system under British rule to a federal system after independence. Over time, Indian federalism has faced several challenges, including the integration of princely states, the linguistic reorganization of states, regional movements and demands for autonomy, issues related to

centre-state relations and conflicts, fiscal federalism and resource sharing, as well as the promotion of cooperative federalism and inter-state coordination.

What fundamental characteristics particularly define federalism?

The general features of federalism include:

1. **Division¹ of Power:** Federalism separates power between a central government and regional governments. Each level of government has specific responsibilities and areas of authority.
 2. **Supremacy of the Constitution:** Federalism is founded on a written Constitution that defines the powers and responsibilities of both the central and regional governments. It establishes a system of checks and balances to prevent either level of government from becoming too powerful.
 3. **Independent Judiciary:** Federal systems usually have an independent judiciary that interprets the Constitution and resolves disputes between various levels of government.
 4. **Bicameral Legislature:** Federalism often features a bicameral legislature. One chamber typically represents the populace, while the other represents regional governments.
 5. **Flexibility:** Federalism allows for flexibility in how powers are shared between central and regional governments and accommodates adjustments as circumstances evolve.
- The Indian federal system of government exhibits a power imbalance in favor of the central authority.

Some Key points include:

Central Authority Strengthened: The central government possesses more powers than the states, with a larger number of subjects listed in the Union List compared to the State List.

Indestructible Union of Fragile States. In India, states do not have the right to territorial integrity, emphasizing the primacy of the central government.

Flexible Constitution: A significant portion of the Constitution can be amended through unilateral action by Parliament, either by a simple majority or a special majority. Moreover, only the central government can initiate amendments to the Constitution.

Unequal Representation in the Upper House: States are equally represented in the Rajya Sabha, the upper house of Parliament.

Emergency Provisions: The Constitution includes provisions that allow the central government

¹Dr. Ashok k. jain, Delhi 2017

to impose emergencies, which can significantly alter the distribution of powers.

Parliamentary Authority over State Subjects: Parliament can exercise authority over subjects in the State List if the Rajya Sabha passes a resolution stating it's in the national interest.

Veto Power over State Bills: The central government has the power to veto legislation passed by state assemblies.

Appointment of Governors: The President appoints governors in the states, further centralizing control.

These characteristics indicate that the Indian Constitution does not fully embody the principles of a true federation.

Regardless of whether it is federal or not:

Many political scientists express doubts about the federal principles of the Indian Constitution.

²**K.M. Munshi** stated that the Constitution created India as "a quasi-federal union endowed with several important features of a unitary government."

K.C. Wheare argued that the Indian Constitution has a quasi-federal nature, describing India as "a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles."

Former Chief Justice of India **K. Subba Rao** asserted that while there are definitely some unitary principles present, they do not fundamentally undermine the federal principles outlined in the Indian Constitution. Granville Austin characterizes the Constitution as promoting "co-operative federalism," which generally results in a strong central government without necessarily weakening the states.

In the case of **Sat Pal v. State of Punjab and Others**³, the Supreme Court held that the Constitution of India is more quasi-federal than either federal or unitary.

CRITICAL ANALYSIS

Federalism in India refers to the division of powers between the central and state governments as defined by the Constitution. While modelled after traditional federal systems like that of the United States, India's structure is often seen as "quasi-federal" or "cooperative federalism." The Indian Constitution establishes a strong Centre, with states deriving their powers from it. Central authority is evident in Articles 3 and 356, which allow for state reorganization and

²<http://doi.org/10.22214/ijraset>

³ State Of Punjab vs Satpal and Anr. on 24 November, 1969

imposition of President's Rule. The Union List, with subjects of national importance, is larger than the State List, reinforcing central dominance. This centralization has been both beneficial and detrimental. It helped maintain national unity during the early years post-Independence amid challenges like partition and communal violence. However, it has sometimes alienated regional identities, as seen in the misuse of Article 356 in the 1970s and 1980s, highlighting the vulnerabilities of Indian federalism. The concept of "cooperative federalism," advocated by bodies like the NITI Aayog, aims to foster partnerships between the Centre and states. However, critics argue this often remains rhetoric, especially when the Centre seeks dominance over opposition-led states.

In conclusion, Indian federalism is an evolving structure that must balance unity and diversity. Strengthening states' powers and promoting true cooperation are essential for good governance and preserving the nation's democratic and pluralistic fabric.

What makes federalism in India so crucial and impactful?

Indian federalism is important for several reasons:

1. **Accommodation of Diversity:** Federalism in India accommodates diversity by granting states the autonomy to manage their affairs. This allows them to address their unique needs and concerns effectively.
2. **Effective Governance:** A strong federal structure is essential for delivering effective governance. It ensures that the diverse needs and interests of the states are represented in the decision-making process.
3. **Promotion of Democracy:** Federalism enhances democracy by decentralizing power and distributing it among different levels of government. This decentralization fosters greater citizen participation and representation in the decision-making process.
4. **Protection of Rights:** Federalism strengthens the protection of individual and minority rights. State governments are more capable of addressing the specific needs and concerns of their diverse populations, allowing them to tailor policies and legislation accordingly.

What are the federal provisions outlined in the Indian Constitution?

The Indian Constitution establishes a dual polity, as outlined in **Article 1**, along with **Parts V and VI**. It also defines the division of powers between the central and state governments,

according to **Article 246** and the Seventh Schedule. During ordinary times, states have the same authority over matters in the State List as the Union has over those in the Union List. Part VI of the Constitution grants states of the Indian Union independent constitutional status.

Article 1⁴: "India, that is Bharat, shall be a union of states."

Article 79: "Parliament is constituted with two chambers, namely the Lok Sabha and the Rajya Sabha. The Rajya Sabha functions as a representative body for the states within the Indian federal system."

Article 131: "The Supreme Court of India operates independently and serves as the sole arbitrator in disputes between the central government and the states."

Article 246: "This article details the distribution of legislative subjects among the Union and State governments, which are categorized into the Union List, the State List, and the Concurrent List."

Article 368: "This article outlines two types of amendment processes, making the Constitution of India a unique blend of rigidity and flexibility. Additionally, federal provisions of the Constitution can be amended with the agreement of at least half of the state legislatures."

What are the unitary features of the Indian constitution?

The Constitution of India incorporates several provisions that exhibit a unitary bias, despite the country's overall federal structure. Some of these provisions include:

Article 3: This article empowers Parliament to create a new state by:

1. Separating or merging two or more states or parts of states.
2. Incorporating any territory into a part of an existing state.
3. Altering the boundaries and names of states.

Emergency Provisions

Article 352: The President can declare a national emergency if the security of the country or any part of it is threatened by war, external aggression, or armed rebellion.

Article 356: This article allows for President's Rule in a state when the federal relationship between the centre and the state becomes unitary.

⁴ <http://indiankanoon.org>>doc

Legislative Powers

Article 248: The residuary powers of legislation rest with Parliament.

Article 249: Parliament can legislate on matters in the State List if the Rajya Sabha declares it necessary for national interest.

Article 254: If there is a conflict between state law and Parliament law on a subject in the Concurrent List, the law passed by Parliament takes precedence, rendering the state law invalid in the areas of conflict, regardless of which law was enacted first.

Article 256: The executive power of each state must be exercised to ensure compliance with laws made by Parliament. Additionally, the executive power of the Union extends to issuing directions to the states.

Single Citizenship: The Indian Constitution establishes a system of single citizenship, meaning that all citizens have equal rights throughout the country, regardless of their state of birth or residence.

All-India Services: The All-India Services, which include the Indian Administrative Service, Indian Police Service, and Indian Forest Service, facilitate the involvement of the Union government in the state executive machinery.

Integrated Judiciary: India has an integrated judiciary with the Supreme Court at its apex. The laws declared by the Supreme Court are binding on all courts in the country.

Why is Indian federalism considered Quasi-federal?

Indian federalism is often described as a quasi-federal structure because it incorporates elements of both federal and unitary systems of government. The Constitution of India establishes a federal framework by dividing powers between the central government and the state governments. However, it also includes certain unitary features that grant the central government greater authority in specific situations. This combination of characteristics makes the Indian federal structure more flexible and adaptable to changing needs. Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, stated that "Our Constitution would be both unitary and federal according to the requirements of time and circumstances."

The Impact of Central Investigative Agencies on Maintaining Federal Harmony in India

The role of India's central investigative agencies, such as the National Investigation Agency (NIA), the Enforcement Directorate (ED), and the Central Bureau of Investigation (CBI), has

sparked significant debate, particularly regarding its impact on federalism in India. These agencies operate under the jurisdiction of the central government and play a crucial role in investigating various crimes, including terrorism, financial fraud, corruption, and other high-profile cases.

Key concerns about the role of these agencies to federalism include:

Erosion of State Autonomy: The increasing involvement of central agencies in state-level investigations can undermine the sovereignty of individual states.

Misuse for Political Gains: There are allegations that some investigations are initiated or prolonged to target opposition parties or state governments.

Specific Issues with the Agencies: The requirement for "general consent" from states for CBI investigations has become a contentious issue. The Enforcement Directorate has faced criticism for targeting scholars, activists, and opposition leaders, raising concerns about the potential misuse of its powers for political benefits.

Impact on State Police: When central agencies take over cases, it often sidelines state police forces. This shift can lead to several issues:

Resource Allocation and Priorities: The emphasis on high-profile cases diverts resources from state-level investigations, impacting their effectiveness.

Public Perception and Trust: Citizens may perceive state governments as powerless or ineffective when central agencies dominate law enforcement. While investigative agencies play a crucial role in maintaining law and order, their influence on federalism in India is complex. It is essential to balance their powers and ensure cooperation between central and state agencies for a robust federal system.

Aggressive Regionalism and Its Impact on Federalism

Aggressive regionalism in India refers to intense loyalty to a specific region, which often prioritizes local interests, culture, and identity over national unity. This sentiment can lead to demands for greater autonomy, protection of local jobs from outside competition, and even calls for the creation of new states. Examples of aggressive regionalism include movements for separate statehood, such as the demand for Telangana and the ongoing agitation for Gorkhaland in West Bengal.

The challenges posed by aggressive regionalism include:

1. Strained relations between central and state governments,
2. Hindered economic integration,
3. Increased administrative complexity,
4. Situations where states assert more autonomy than is constitutionally provided,
5. Fuelling inter-state disputes, particularly over natural resources, and exacerbating regional inequalities.

To address these issues, potential solutions could involve promoting inclusive development policies that ensure equitable growth across all regions, fostering intercultural dialogue to build mutual understanding, and creating more effective mechanisms for dispute resolution between states.

Governor and Centre-state Relations

The role of Governors in India's federal structure has been a topic of ongoing debate and tension between the central government and the states. This issue exemplifies the delicate balance of power within India's federal system and highlights the potential for political conflicts.

Issues related to centre and state relations

Discretionary Powers - Governors possess significant discretionary powers, particularly concerning government formation and dismissal, which can lead to controversy.

Appointment and Removal - Governors are appointed by the President on the advice of the central government, raising concerns about their neutrality.

Interference in State Affairs - There have been allegations that Governors overstep their constitutional roles and interfere in the day-to-day governance of states.

Delay in Decision-Making - Instances have been noted where Governor delayed assent to bills passed by state legislatures or withheld nominations to legislative councils.

Judicial Perspective - In *S.R. Bommai*⁵ v. Union of India (1994), the Supreme Court emphasized that Governors should act impartially and not merely follow the wishes of the central government.

Debate on Federalism in the Constitution

During British rule, the administrative process in India was highly centralized for the

⁵*S.R. Bommai vs Union of India* on 11 March, AIR 1918, 1994 SCC (3)

convenience of colonial governance. The British realigned various provincial and regional territories arbitrarily, without the consent of the Indian people, leading to a loss of autonomy, rights, and privileges among Indian states. To achieve full autonomy and freedom, there were demands for the reorganization of state boundaries across the country.

Initially, the British adopted a federal system in India to prevent political chaos and maintain administrative control. However, they realized that a centralized administrative system could not effectively govern the Indian subcontinent. The Government of India Acts from 1917 to 1935 played significant roles in incorporating federal principles into governance (Rath, 1984).

In the early 1920s, the Indian National Congress, as the dominant political party, committed to reorganizing Indian states after independence. The formation of Andhra Pradesh in 1953 prompted various social movements to demand new states that recognized their unique identities. Such demands emerged to honour the sociocultural values and norms of diverse groups within society. Movements like Gorkhaland in West Bengal (Pradhan, 2012), the Bodo Movement in Assam, the Coorg Movement in the Hyderabad-Karnataka region (Assadi, 1977), and the Tribal Movement in Jharkhand advocating for local languages as mediums of education (Singh, 2014) showcased these aspirations.

Before the Constitution was established, extensive debate occurred over using the terms 'federal' and 'union' during the Constituent Assembly discussions. The discussion involved the Union Constitution Committee, chaired by then Prime Minister Jawaharlal Nehru, and the Drafting Committee, led by Dr. B.R. Ambedkar. Ultimately, the term 'union' was included in the Indian Constitution as suggested by Ambedkar. He clarified that 'Union of States' implies a federal constitution based on a dual polity, which can express regional goals alongside national objectives. This framework aims to accommodate the diverse aspirations and sovereign interests of various provinces, each with its unique ethnic and linguistic characteristics.

CONCLUSION

The presence or absence of federal flexibility significantly influences democracy. While our Constitution establishes a federal system in terms of government structure, it operates with a unitary character in its functions. It is crucial to understand that whether the Constitution and

the resulting government are federal, quasi-federal, or unitary depends on the spirit of 'co-operative federalism' or 'unitary centralism.'

Since the inception of federalism in India, it has largely followed the 'Westminster Model,' which combines elements of both parliamentary and presidential governance. This approach primarily aims to maintain unity among the constituent parts or princely states of the country without their separation from the Indian Union. For instance, in 1903, Bengal was divided from Madras and the Bombay Presidency but was later re-united on a linguistic basis. This division triggered a movement among Indian states to unite people who spoke the same language, leading to the first demand for a state based on language, which originated from Andhra Pradesh. As a result, similar demands emerged across the country for states to be formed on a linguistic basis.

However, the nature of state demands has evolved over time. Currently, these demands are largely driven by concerns over political representation, socio-economic development, and the importance of cultural values. In this context, it is essential to highlight the processes and principles guiding the formation of Indian states within a federal setup following independence.

Today, the federal process faces numerous challenges regarding the methods of creating or separating states based on grassroots demands. In earlier times, state divisions were often based on cultural and linguistic identities. Now, however, the demand for new states is becoming increasingly vibrant, focusing on local development, equal opportunities, and fair representation. This shift has become a major concern for development practitioners and policymakers.

India's diverse society necessitates a study of the sociocultural, economic, and political aspirations of its people. Understanding their daily lifestyles and standards of living is vital, along with grasping the specific demands arising within states. More importantly, it is essential to know how citizens access their rights, freedoms, and resources in their regions. Thus, it is important to study both the problems and driving factors related to federalism.

One of the strengths of the Indian Constitution is its relative flexibility, allowing for either a federal or unitary approach depending on the socio-political context. Dr. B.R. Ambedkar, one of the architects of the Indian Constitution, aptly stated, "Our Constitution would be both

unitary as well as federal according to the requirements of time and circumstances."

However, despite provisions aimed at balancing national unity with state autonomy, the union government must invest resources to facilitate effective consultation with the states during the lawmaking process. Establishing a system where citizens and states are treated as partners rather than subjects is crucial for a functioning democracy.

