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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

A LONG HARD LOOK OF FRACTURED FEDERALISM

AUTHORED BY – ANJU R V

ABSTRACT

India is a vast country with many linguistic, cultural, and religious groups. These very natural inclinations drive India to choose federalism as the foundation of its administration. Only some countries have been as diverse in ethnicity, religion, and culture as India. In historical terms, the process of merging these identities occurred concurrently with the introduction of new forces and pressures. During the British era, both fission and fusion occurred. On the one hand, identities began to blend, but on the other, each became more unique. The Indian Federation should be seen in light of its democratic style of administration at the national, state, and local levels, as well as the diversity of its culture in terms of ethnic, linguistic, religious, and other differences throughout the States. India is the world's biggest democracy and the most significant federal and pluralistic country. While democracy provides everyone with freedom, federation ensures that governance is distributed spatially, and a solid central government enables the 'unity amidst diversity' to be maintained, and the country mobilizes all its resources to support its harmony and integrity and marches ahead to progress.

Key words: Federation, democracy, integrity, pluralistic country, central government

Federal dimensions in India

Federalism originates from the Latin foedus, which means treaty or covenant. Federalism is a system of government of a country under which a federal or central government and several state legislatures simultaneously exist. Both are supreme in the particular sphere and operate directly on the people. In the words of Prof. K C, “Federalism means there is a single independent authority for the whole area concerning some matters, and there are independent regional authorities for other issues. “

India is a democratic country. A unitary constitution vests all the powers of the state in one government, whereas a federal constitution divides those powers between a government for the whole country and several governments for its constituent regions. Despite initial

disagreements regarding whether the Indian constitution is unitary or federal, it has finally been decided that it is federal and that federalism constitutes a fundamental feature that any amendment cannot alter.¹

The commonly accepted features of the constitution are

- The existence of two levels of government, namely a general government for the country as a whole and two or more regional governments for different regions within the country
- Legislative, executive, judicial, and financial competencies or powers are divided between the central and regional governments.
- Supremacy of the Constitution - in other words, the preceding arrangement is not only incorporated into the Constitution but also beyond the reach of either government in the sense that neither one can unilaterally change or breach it.
- Dispute resolution mechanism for determining the competence of two governments for exercising any power or for performing any function

There has been occasional friction between the Union and the States due to the implementation of federalism. The idea that ex-ante, a specific function will be carried out more effectively at a particular level of government is implicit in the discussions around federalism, both at the time of its establishment and currently. This idea is taken into consideration while allocating and reallocating powers. Like judicial and executive authorities, legislative authority is subject to specific limits. The first restriction is that fundamental rights cannot be violated by legislation. The second requirement is that it must belong on the proper list and be under the purview of the relevant legislature, which might be the state legislature or the union legislature².

The Indian Constitution offers several examples of asymmetric federalism. These qualities are an essential aspect of the architecture that governs the expression and capacity of the promise of differentiated membership within the Indian Union as a method of recognizing the many identities and nationalities that exist across its territory. Asymmetry is a crucial feature of Indian federalism, as is its response to ethnic diversity. Asymmetry is critical to India's ability to cohere as a state country rather than a nation-state since it recognizes many modes of

¹ Mahendra P. Singh, *Indian Federalism: An Introduction* 25 (Oxford University Press 2021)

² M.P. Singh & Rekha Saxena, *Federalism in India: Time for a Relook?* 103 (Orient Blackswan 2021)

membership in India and provides constitutional protection to varying levels of autonomy within the federal government.³ On the other hand, fractured federalism refers to a scenario in which there is substantial disagreement, dysfunction, or lack of collaboration across different levels of government (federal, state). This notion emphasizes the challenges and conflicts that might occur in federal systems.

Critical aspects of fractured federalism include:

- Conflict between federal and state governments
- Inconsistent policies across different states
- Disputes over jurisdiction and authority
- Ineffective intergovernmental cooperation
- Challenges in implementing national policies at state and local levels

The Indian federal system, like many other federal systems across the world, experiences a variety of tensions between the central (federal) government and the states.⁴ Here's a quick overview of the critical region of conflict.

In terms of legislative relations, the Constitution divides authority in three ways. We have used a system with two lists of legislative authorities, one for the center and one for each state, known as the union and the state lists, respectively. A new list called the concurrent list has been added. The union list, which includes 100 topics of national importance, is the largest of the three lists. Some of the critical issues mentioned in this list include. Defense Railways, Post, and Telegraph. Income Tax, Customs. The parliament has the only authority to adopt legislation on issues covered in the union list for the entire country.

The state list includes "subjects of local interest." This list includes significant themes such as trade and business inside the state. The State Legislatures have been given the authority to pass legislation on the topics on the state list⁵. The concurrent list includes 47 topics of mutual interest to the union and the state. The Parliament and the State Legislatures have the authority to pass legislation on the issues. However, if the union and state laws clash on the same

³ Louise Tillin, *Indian Federalism* 56 (Oxford University Press 2019)

⁴ Ajay Kumar Singh, *Centre-State Financial Relations in India* 138 (Sage Publications 2020)

⁵ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 215 (Oxford University Press 1999)

problem, the union law takes precedence over the state law. The Parliament has the authority to enact laws on any topic not on any of the three lists. Furthermore, the Parliament may pass laws on any topic on the state list under specific circumstances. India's federal system is the source of a complicated and continuous problem involving disputes between the federal and state administrations. India's federal system, which divides authority between the federal government (the Union) and the state governments, has been fraught with strife and discord over the years.

The Constitution, which outlines the duties and authority of the federal and state governments, is one of the many factors that cause these conflicts. In some instances, their respective purviews intersect, giving rise to conflicting interests. For example, jurisdiction disagreements frequently arise from resource management, environmental approvals, and property acquisition. State governments have expressed worry about the Union government's propensity for power concentration and infringement on state sovereignty. States contend that centralizing policies and programs has strengthened the Union administration's power and weakened the federal system.⁶

States have often wanted more financial autonomy and a larger share of tax revenue from the Union administration. The allocation of economic resources and the criterion for devolution of cash have been sensitive topics, resulting in disagreements between the national and state governments. While law and order are generally the responsibility of states, the Union government has the authority to act in specific situations, such as when a state's constitutional apparatus fails. The scope and rationale of such interventions have been the source of discussion and contention. Conflicts can emerge when various political parties hold power at the federal and state levels due to opposing beliefs, objectives, and political goals. This can strain center-state ties and spark power battles. States have often challenged or resisted the execution of specific central laws and policies, claiming they violate their sovereignty or are inappropriate for their local settings. Conflicts can also occur between state governments over matters like resource sharing (e.g., water, minerals), boundary disputes, and inter-state migration, which may necessitate action from the Union government.

⁶ M. Govinda Rao & Nirvikar Singh, *The Political Economy of Federalism in India* 62 (Oxford University Press 2020)

The Constitution provides various mechanisms to resolve these conflicts, such as the Inter-State Council, Zonal Councils, and the Finance Commission. However, these mechanisms have only sometimes been effective in resolving all disputes, and conflicts continue to arise, reflecting the ongoing tension between the principles of national unity and state autonomy in India's federal setup.⁷

Inconsistent policies across different states

When power is split between a central government and state/provincial administrations in a federal system, it is usual to see contradictory policies on numerous topics between states or provinces. This is because federalism grants states and provinces some autonomy and decision-making power, resulting in policy and regulatory variances. Here are some reasons why conflicting rules may emerge across various states under a federal system. One of the essential ideas of federalism is the separation of powers between the federal and state/provincial administrations. According to the constitutional separation of powers, states/provinces can enact and execute policies in specific fields like education, healthcare, taxes, and law enforcement. This autonomy enables states/provinces to adjust policies to their requirements, goals, and conditions. Distinct states/provinces may be controlled by different political parties or coalitions, each with ideological beliefs and policy priorities. These contrasting ideas can lead to varied responses to social welfare programs, environmental regulations, labor legislation, and civil rights. States and provinces may have distinct geographical, demographic, economic, and cultural qualities that need alternative policy approaches.⁸

For example, agricultural policies in rural states may differ from those in metropolitan or industrialized states. Similarly, states with large minority populations may have diverse language, education, and cultural preservation laws. Federalism enables states and provinces to act as "laboratories of democracy," experimenting with different policies and learning from one another's triumphs and mistakes. This rivalry among states/provinces might result in policy changes and other methods for tackling comparable challenges. Existing laws, judicial judgments, and historical precedents within a state or province can shape and affect present policy, causing variances among jurisdictions.

⁷ Supra n 1

⁸ Anirudh Prasad, Centre-State Relations in India: The Federal Imperatives 73 (Deep & Deep Publications 2021)

While inconsistent rules between states/provinces might complicate coordination, consistency, and compliance, they show federalism's diversity and flexibility. In other circumstances, policies are coordinated by federal guidelines, interstate compacts, or constitutional changes. However, a degree of policy variety is typically viewed as a virtue of the federal system, allowing for local responsiveness and adaptability to individual situations.⁹

Disputes over jurisdiction and authority

On a few occasions, India's federal system has resulted in disagreements over jurisdiction and power between the national and state administrations. Here are some crucial things about this. The Indian Constitution distributes legislative, executive, and financial functions between the Centre and the States into three lists: Union, State, and Concurrent. However, there have been cases in which jurisdiction over specific issues has been questioned. States have expressed worries about the Centre's centralizing tendencies, notably in education, law enforcement, and resource allocation sectors. States have accused the Centre of intruding on their constitutional authority. The function of the Governor, whom the Centre appoints, has long been a source of dispute. States have accused governors of acting at the Centre's request, undermining elected state governments. The ability of the Centre to impose the President's Rule in states under Article 356 of the Constitution has proven to be disputed. States have accused the Centre of misusing this prerogative for political benefit. The allocation of financial resources and the Centre's authority over borrowing and taxation have raised concerns about states' financial autonomy. Disputes between states over matters like sharing of river water, border disputes, and resource allocation have occasionally needed the Centre's attention.

Ineffective intergovernmental cooperation

Ineffective intergovernmental collaboration in a federal arrangement in India can occur for various reasons, with severe consequences for governance and policy execution. Here's an examination of this issue. First, India has a quasi-federal system in which the Union (central) and state governments share powers and duties. The Union, State, and Concurrent lists of the Seventh Schedule of the Constitution explain the allocation of functions between the central and state governments. However, sometimes, the center's and the states' jurisdictions overlap, resulting in possible conflicts and coordination issues. Second, India's political dynamics are multi-party, with multiple political parties in power at the national and state levels. Divergent

⁹ ibid

political views and agendas can cause conflicts and a breakdown in cooperation between the central and the states. Coalition governments, whether at the national or state levels, can complicate decision-making and coordinating procedures. Third, the notion of fiscal federalism. Fiscal Federalism is the division of financial resources and tax revenues between the central government and the states, which has long been a cause of contention. States frequently desire greater fiscal autonomy and a larger share of resources, resulting in disagreements. Fourth, the administrative and institutional challenges, which are effective coordination procedures and institutional frameworks, are required to promote collaboration between the central and state governments. Lack of clear communication routes, bureaucratic inefficiencies, and overlapping roles can all inhibit international cooperation. Capacity restrictions, such as a lack of competent workers and poor infrastructure, can exacerbate the issues at the state level. Fifth is policy implementation, an ineffective collaboration that can cause delays or inadequate implementation of national policies and initiatives at the state level. States may need help adjusting central policies to local settings and goals, resulting in unsatisfactory outcomes. A lack of coordination can lead to duplication of efforts, resource waste, and variations in policy implementation between states. Practical intergovernmental cooperation is crucial for ensuring efficient governance, balanced regional development, and the successful implementation of policies and programs in India's federal setup.

Challenges in implementing national policies at state and local levels

Implementing national policy at the state and local levels under a federal system like India can be difficult for various reasons. India is an extensive and varied country with substantial regional differences in culture, language, socioeconomic status, and political beliefs. Policies that work well in one state or region may need to be more successful or acceptable in another, making universal implementation challenging. India's states enjoy significant autonomy regarding their different State Lists. They may have their objectives, agendas, and beliefs, which can lead to opposition or unwillingness to adopt some national policies, particularly those believed to infringe on their autonomy. States frequently confront resource restrictions, such as financial, human, and physical limitations, which can impede the efficient execution of national programs, particularly those requiring significant investments or administrative capability. Political considerations, such as the state-level party in power and its connection with the federal government, can impact the desire and commitment to implementing national goals. Inter-party rivalry or ideological disagreements might cause opposition or delays in

adoption. Inefficient administrative structures, a lack of cooperation between central and state agencies, corruption, and ineffective monitoring and evaluation processes can make it difficult to implement national programs at the state and local levels effectively. Specific national policies may receive opposition from various stakeholders, including interest groups, civil society organizations, and local communities, because of perceived negative consequences or competing interests. This can make implementation challenging, especially in a varied and democratic environment like India.¹⁰

Overall, successful implementation of national policies in a federal setup like India requires a delicate balance between national priorities and state autonomy, effective coordination, resource allocation, and sensitivity to regional diversity and stakeholder concerns.

Conclusion

Fractured federalism in India reflects the complex interplay between centralization and decentralization in the world's largest democracy. While the Indian Constitution established a federal structure, the practical implementation has led to tensions and imbalances between the Union government and the states. Uneven distribution of financial resources and taxing powers between the centre and states. Overlapping jurisdictions and disputes over the division of powers. The rise of regional parties and coalition politics at the national level. Debates over the role of centrally appointed governors and the use of President's rule. Special provisions for certain states lead to unequal treatment perceptions. These fractures have both positive and negative implications. On one hand, they allow for flexibility and accommodation of India's diverse regional interests. Conversely, they can lead to inefficiencies, conflicts, and challenges in implementing nationwide policies. Moving forward, the key challenge for India lies in striking a balance between maintaining national unity and allowing for regional autonomy. This may require ongoing negotiations, constitutional reforms, and a commitment to cooperative federalism from both the Union and state governments. Ultimately, the evolution of Indian federalism will play a crucial role in shaping the country's governance, economic development, and social harmony in the coming decades.

¹⁰ Supra n 1