



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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.

Federalism: Examining the Division of Powers between Central and Regional Governments

Abstract:

The concept of federalism in India has its roots in British colonial rule, where the British government introduced federalization as a means to control the vast and diverse subcontinent. This approach aimed to divide power between different levels of government, allowing for more effective governance while serving British interests. When India's Constituent Assembly convened to draft the Indian Constitution, they drew inspiration from the British federal system and the principles outlined in the Government of India Act of 1935¹. However, they made necessary modifications to suit India's unique needs and circumstances. This paper delves into the background of federalism in India, exploring its historical origins and the influences of British colonial governance. It examines how the division of powers between the central and regional governments operates within the framework of federalism. Federalism, as a system of governance, entails the distribution of authority between a central governing body and regional entities. Each level possesses distinct powers and responsibilities, intending to promote autonomy and effective administration at both the national and local levels. Through an analysis of constitutional provisions, judicial interpretations, and legislative frameworks, this paper seeks to uncover the underlying principles guiding the allocation of powers and the mechanisms for resolving disputes between the central and regional governments. Furthermore, by drawing on comparative analysis and case studies, this paper aims to evaluate the practical implications of the division of powers for governance and administration in India. It examines how federalism shapes decision-making processes, policy implementation, and intergovernmental relations, highlighting both its strengths and challenges.

¹ Government of India Act, 1935, 26 Geo. 5 & 1 Edw. 8, c. 2, Acts of Parliament, 1935 (U.K.).

Key Words: Federalism, Constituent Assembly, Distribution of Power, Concurrent

Introduction:

“Federalism is the best antidote to the challenge of keeping diversity from becoming division.”

- Tony Snow

Federalism is a system of government that has been adopted by many nations across the world, including India. It is a mechanism that helps to balance power between the central authority and regional entities. The federal system was first adopted by the U.S. constitution-makers in 1787, and since then, it has become a popular pattern of governance. Currently, more than 25 countries have a federal system, such as the US, Brazil, and Germany, while some others have certain federal arrangements.

Federalism is an important subject of academic study and has practical significance to an even greater extent. Essentially, it distributes authority between a central governing body and regional entities, with each level having distinct powers and responsibilities. This means that the central government has control over matters that affect the entire country, while regional entities have the power to make decisions that are specific to their region. The main advantage of federalism is that it allows for a more balanced distribution of power, which can prevent the abuse of power by the central government and promote regional autonomy.

At the core of federalism lies a fundamental question: how can a nation accommodate the diverse interests, identities, and aspirations of its states while preserving the integrity of the state? This question is particularly pertinent in India—a vast and heterogeneous democracy where unity is sustained amidst a myriad of linguistic, cultural, and regional differences. This research will delve into the very mechanism of India's federalism, how it works, and how is it different from the others. This research paper delves into how responsibilities and authorities are divided between the central and state governments. It also explores the shared responsibilities between both levels of authority and analyzes prominent issues revolving

around Indian federalism. Additionally, the paper examines how the union seeks to exert control over the states through various means.

Research Methodology: This research utilizes both qualitative and quantitative methods, drawing on secondary data to support views and citing relevant research papers and books. Qualitative analysis involves examining constitutional provisions and judicial interpretations to understand the principles of federalism in India. Quantitative analysis may involve statistical data on governance and administration in federal systems. By combining these approaches, the research offers a comprehensive understanding of federalism's implications for governance, providing theoretical insights alongside empirical evidence to inform discussions on intergovernmental relations and policy outcomes.

Research Objective:

1. To investigate the historical origins and influences of federalism in India, tracing its development from British colonial rule to the drafting of the Indian Constitution.
2. To understand the true nature of Indian federalism.
3. To analyze the constitutional provisions, judicial interpretations, and legislative frameworks governing the distribution of powers between the central and regional governments.
4. To explore the practical implications of federalism for governance, decision-making processes, policy implementation, and intergovernmental relations in India.

Federalism in India:

Federalism, like many other concepts, is rooted in the past; it is not a novel idea. Its origins can be traced back to the early 19th century and also during India's struggle for independence. Federalism was, in a sense, a precursor to independence. The journey of India's common government began in 1773 with the Regulating Act². This government became stronger over time, gradually reducing the power of the provinces. From the late 17th to the 19th century, the British Parliament experimented with two different ideas: one where power was more centralized and one where it was more decentralized, to figure out how the government of India and the provinces should work together. Finally, in 1919, the Government of India Act³

² Regulating Act of 1773, 13 Geo. 3, c. 63, Acts of Parliament, 1773 (U.K.).

³ Government of India Act of 1919, 9 & 10 Geo. 5, c. 101, Acts of Parliament, 1919 (U.K.)

introduced what people call a federal government, even though India was still mostly governed as one unit. The Government of India Act of 1919 didn't completely introduce the federal type of government system, but it's worth noting that the act laid some foundational work for federalism in India. Through this act, the provinces gained some autonomy over areas such as finance and revenue, although they remained under the control of the center.

Between 1930 and 1932, three Round Table Conferences were convened, aiming to establish a federal government. While these conferences did not yield immediate success in achieving federalism, they laid the groundwork for such a system. The notion of federalism gained attention with the publication of a White Paper by the Indian National Congress in 1933, advocating for a new constitution and a responsible government at both the provincial and central levels. Following the publication of this white paper, a joint select committee was formed to discuss the proposals of the White Paper. The committee identified the division of authority between the Centre and the States as the primary obstacle to be addressed⁴. Subsequently, the recommendations of the joint select committee were codified into law through the Government of India Act, 1935⁵.

The Government of India Act of 1935 was a significant legislative milestone that shaped the future governance of India. It introduced the federal system, which later formed the basis of the country's governance structure as adopted and developed by the constituent assembly. One notable outcome of this Act was the expansion of the number of provinces from ten to eleven. This Act established a federal framework wherein provinces derived their powers from the Central Government, as outlined in its provisions. The distribution of powers was structured into three lists: the Federal List, the Provincial List, and the Concurrent List. The Central Legislature was responsible for legislating on matters outlined in the Federal List, while Provincial Legislatures dealt with subjects on the Provincial List. Both Central and Provincial Legislatures had the authority to make laws on topics specified in the Concurrent List. Under this Act, the Indian Centre was vested with the authority to enact laws on fifty-nine subjects listed in the Federal List. Provincial governments, on the other hand, were empowered to legislate on fifty-four subjects delineated in the Provincial List. Additionally, both the federal

⁴ Benjamin N. Schoenfeld, *Federalism in India*, 20 *Indian J. Pol. Sci.* 52 (1959)

⁵ Government of India Act, 1935, 26 Geo. 5 & 1 Edw. 8, c. 2, Acts of Parliament, 1935 (U.K.).

and provincial governments had the jurisdiction to legislate on thirty-six subjects identified in the Concurrent List.

The Government of India Act of 1935 was never fully implemented due to the outbreak of the Second World War and opposition from influential figures in India at that time. Certain provisions of the Act were abolished, leading to the idea of federalism not being achieved or put into operation. After gaining independence and facing partition, the Constituent Assembly of India convened in August 1947 to draft a new Constitution. A Drafting Committee, chaired by Dr. B.R. Ambedkar and consisting of seven members, was formed on August 29, 1947. This committee prepared a draft Constitution based on decisions made by the Constituent Assembly and the Government of India Act of 1935⁶. The draft Constitution was published in February 1948 and circulated for public discussion. It was introduced in the Constituent Assembly on November 5, 1948, and after amendments, was substantially adopted on November 26, 1949. It became operative in January 1950.

The Constituent Assembly officially endorsed the principle of provincial autonomy, stating that "the said territories shall possess a federal structure, together with residuary powers." However, the idea of strong autonomous provinces was altered upon the recommendation of the committee. This change, advocated by Nehru, emphasized a strong Centre to accommodate minority protection. Debates in the Constituent Assembly reflected differing opinions regarding the powers of the Centre versus those of the States. While some members expressed concerns about excessive centralization, others argued for a strong Centre to maintain national unity⁷. Despite opposition, the Constitution was adopted on November 26, 1949⁸.

Is India's Constitution Truly Federal?

People often wonder whether India's constitution is federal because it doesn't use the word "federalism." But if we look closely, we can see federal-like features in it. For instance, Article 1 of the Constitution⁹ describes India as a "Union of States." This means that the states are crucial to the country's identity and existence; they are the components that form the nation.

⁶ Government of India Act, 1935, 26 Geo. 5 & 1 Edw. 8, c. 2, Acts of Parliament, 1935 (U.K.).

⁷ Constitution of India.net, <https://www.constitutionofindia.net/debates/13-dec-1946/> (last visited Apr. 8, 2024).

⁸ Constitution of India, 1950.

⁹ Constitution of India, art. 1.

However, unlike in some federal systems, states in India can't just decide to leave the Union or change their names or territories. They also can't create new states on their own. Even though the word "federal" isn't used, India's constitution has some key federal characteristics. It's a written constitution, Power is shared between the central government (Union) and the state governments, which is another hallmark of federalism. Plus, India has an independent judiciary. So, while India's constitution might not explicitly emphasize "federalism," it does have features that are typical of federal systems.

India's Constitution is like a mixtape, pulling the best from different sources, just like how Sikhism embraces teachings from various faiths. It combines features of both unitary and federal systems of government. While it's not a strict federal setup, it still divides power among different levels of government. Even though there's a clear sharing of legislative powers between the central government and the states through different lists, the Constitution gives the center the authority to make laws on state matters in certain situations. Plus, the president can appoint state governors, and there's a single court system and citizenship for the whole country. Because of this blend of features, Indian federalism is unique, kind of like it's in its league. It borrows ideas from the UK's system, federal principles, and the US's separation of powers. The framers of the Constitution were inspired by the Government of India Act, of 1935¹⁰, which tried to introduce federalism after earlier attempts at a unified administration didn't work out.

According to K.C. Wheare, a true federal state isn't just about having a federal government; it's about the entire system working federally¹¹. This means that while a country might have a constitution that looks federal, it might not operate that way in practice, or it could be the other way around. In India, different scholars have different views on whether it's truly federal. However, the Supreme Court sees it as fundamentally federal, as shown in the S.R. Bommai case¹². This means that states have their authority in their areas, similar to how the central government has authority over national matters. When the Constitution lets states make laws about things like peace and order, it's saying that no one—whether it's the central government or outside forces—should interfere.

¹⁰ Government of India Act, 1935, 26 Geo. 5 & 1 Edw. 8, c. 2, Acts of Parliament, 1935 (U.K.).

¹¹ C. B. Robson, *The Journal of Politics* 9, no. 3 (1947): 453–55, <https://doi.org/10.2307/2125807>.

¹² S.R. Bommai v. Union Of India, 1994 AIR 1918 (India), 1994 SCC (3) 1 (India).

In some cases, though, the Supreme Court has acknowledged that India's federalism isn't strict. For example, in the State of West Bengal case, it was noted that certain powers needed to keep the economy and industry running smoothly are given to the central government¹³. But in the State of Rajasthan case, the court recognized that India does operate under a federal system, even if it's not always straightforward. It said that federalism in India can change as needed to make sure the country keeps moving forward and coordinating nationwide, especially when it comes to planned development by the central government¹⁴.

So, Indian federalism can be best described as a blend of both federal and unitary elements. It operates with the characteristics of both systems, adapting as needed depending on the situation. Therefore, it wouldn't be incorrect to label India's constitution as semi-federal or quasi-federal. This means it's not purely federal nor purely unitary; instead, it's a mixture of both. In simpler terms, it's like having two flavors mixed rather than just one. So, India's way of governing is a unique combination, borrowing the best from both federal and unitary systems.

Constitutional Framework of Federalism in India:

Part XI of the Indian Constitution is dedicated to "Relations Between the Union and the States." This part is divided into two chapters: Chapter I of Part XI deals with Legislative Relations between the Union (central government) and the States (state governments), and Chapter II of Part XI addresses Administrative Relations between the Union and the States. Articles in Part XI of the Indian Constitution outline the framework of federalism in India, defining the division of legislative powers between the central government (Union) and the state governments. These articles of the constitution establish boundaries and responsibilities, ensuring cooperation and coordination between the different levels of government. They serve as the cornerstone of India's federal system, specifying areas of authority and jurisdiction for each level of government, thus facilitating the smooth functioning of the federal structure.

Distribution of powers:

The government serves as the mechanism through which a state's decisions are made, expressed, and carried out. It's the entity responsible for wielding power on behalf of the state.

¹³ State of West Bengal v. Union of India, 1963 AIR 1241 (India), 1964 SCR (1) 371 (India).

¹⁴ State of Rajasthan & Ors. v. Union of India, 1977 AIR 1361 (India), 1978 SCR (1) 1 (India).

However, it's important to remember the adage that "power corrupts, and absolute power corrupts absolutely." This applies not only to individuals but also to institutions, regardless of the period or era. When power becomes concentrated in one entity, whether it's an individual or an institution, it often leads to tyranny, corruption, and the misuse of power. That's why all levels of government must have equal significance and functionality. No level should dominate or control others; each should operate independently. This is where the distribution of powers comes into play. It ensures that power isn't consolidated in a single person or group. If all powers are vested in one branch of government, tyranny becomes almost inevitable. By dividing powers among different branches or levels of government, power is diffused, and functions are allocated based on their respective areas of expertise or responsibility. This division acts as a safeguard against abuse of power and promotes a system where each branch or level can act as a check on the others, maintaining a balance of power within the government.

Distribution of Territorial Jurisdiction to Legislate and Legislative Powers: Article 245¹⁵ of the Indian Constitution outlines the territorial jurisdiction for legislating purposes. According to Article 245(1)¹⁶, the Parliament has the authority to make laws for the entire country or any part of it, while the state legislature has the power to make laws for the entire state or any part of it. However, Article 245(2)¹⁷ specifies that a law enacted by Parliament is not considered invalid just because it has an extraterritorial effect. This means that Parliament can make laws that apply beyond India's borders if necessary. However, there's a crucial point to note here: while Parliament can enact laws with extraterritorial effects, state legislatures cannot extend their laws to other states' territories. A state's legislative authority is limited to its territory. This was confirmed in the case of *Khyerbari Tea Co. Ltd. & Anr vs The State Of Assam*¹⁸, where it was ruled that a state can only impose taxes on goods passing through its territory, even if those goods belong to people outside the state and the tax is payable by them. This ensures that each state retains its legislative autonomy within its boundaries.

The Three Lists: The Indian Constitution provides a clear framework for dividing powers and responsibilities between the central government (Union) and the state governments. This division is detailed in the Seventh Schedule of the Constitution, which consists of three lists:

¹⁵ Constitution of India, art. 245.

¹⁶ Constitution of India, art. 245(1).

¹⁷ Constitution of India, art. 245(2).

¹⁸ *Khyerbari Tea Co. Ltd. & Anr v. State Of Assam*, 1964 AIR 925, 1964 SCR (5) 975.

the Union List, the State List, and the Concurrent List. Additionally, Article 246 of the Constitution reinforces this division¹⁹. The purpose of this division is to establish three distinct functional areas:

I) The Union List: This is an exclusive domain for the central government, where only the central government has the authority to make laws and decisions. Article 246(1)²⁰ emphasizes this exclusive jurisdiction of the central government. This list comprises a total of 97 subjects. Entries 1 to 81, 93 to 95, and 97 pertain to general legislative powers, while entries 82 to 92, 96, and 97 cover the authority to impose taxes and fees. Some of the key subjects included in the Union List are Defense, Foreign affairs, Transportation and communication, Financial powers, Cultural and educational functions, Union services, Elections, Parliamentary affairs, Judicial powers, Navy, military, and air forces, Atomic energy, Citizenship, Piracies and crimes committed on the high seas, National highways, Management of Union debt, Currency, coinage, Banking and stock exchanges, Patents, inventions, and designs, Election to Parliament, Taxation, customs, and duties. Regulation of mines and mineral development, Development of inter-state rivers and river valleys, Additionally, any matter not listed in List II or List III, including any tax-related issue, also falls within the purview of the Union List.

II) The State List: This is another exclusive domain but for the state governments. Here, only state governments have the power to legislate and govern, as mentioned in Article 246(3)²¹. The State List in the Indian Constitution consists of 61 subjects, and its primary focus is on matters related to the maintenance of law and order within the respective states. Some of the key subjects included in the State List are Law and Order, Justice, Health, Local Government, Relief of the disabled, Libraries, Communications, Land and Agriculture, Trade and commerce within the state, Industry State Property, Intoxicants, Elections and legislative privileges, State Public Services, Etc.

III) The Concurrent List: This area allows both the Centre and the States to operate simultaneously, sharing authority and responsibility. Article 246(2)²² clarifies this shared

¹⁹ Constitution of India, art. 246.

²⁰ Constitution of India, art. 246(1).

²¹ Constitution of India, art. 246(3)

²² Constitution of India, art. 246(2)

jurisdiction. The concurrent list comprises 52 subjects: Basic Laws, Public Welfare, Forests, Labour, Education, Economics, Communication, Etc.

However, it's important to note that as per article 246(4)²³, the central government holds overall supremacy. This means that the central government has the authority to make laws on any matter listed in any list, for any territory not included in a state. This usually refers to the Union territories.

Repugnancy and Residuary Power:

Both the Union and State Governments possess the authority to administer the Concurrent List and enact laws concerning its subjects. However, Article 254²⁴ of the Indian Constitution dictates that if there's any inconsistency between laws crafted by the Parliament and those formulated by the State Legislatures on matters within the Concurrent List, the central legislation will take precedence over the state law, regardless of when it was enacted. Clause (2)²⁵ of the same Article provides an exception to this rule. It states that if a state law has been reserved for the President's consideration and has received his assent, then it will prevail in that specific state. Nonetheless, even in such instances, Parliament retains the power to amend or override the state law if necessary. This establishes the primacy of the Union over matters in the Concurrent List. In practice, most items on this list are governed by existing federal laws or laws enacted by the Union Government. Judicial precedent, such as in the case of *ITC Limited v. Agriculture Produce Market Committee*²⁶, confirms the supremacy of central legislation over state laws in legal matters about the Concurrent List.

Additionally, the Indian Constitution through article 248 confers residuary powers upon the Union²⁷, which means that any subject not specifically allocated to the central or state

²³ Constitution of India, art. 246(4)

²⁴ Constitution of India, art. 254.

²⁵ Constitution of India, art. 254(2).

²⁶ *I. T. C. Limited v. Agricultural Produce Market Committee*, 2002 AIR 175, 2002 SCC (1) 319.

²⁷ Constitution of India, art. 248.

governments falls under the jurisdiction of the Union government. This distribution of powers reflects a principle laid down by the framers of the Constitution. They aimed to assign subjects of national importance to the central government for reasons of national security and administrative efficiency, while matters of local significance were entrusted to the state governments. Recognizing that situations would arise necessitating federal laws, the central government has designated the responsibility to take legal action if required.

Conclusion:

The framers of the Indian Constitution drew inspiration from federations like the USA, Canada, and Australia, seeking to understand both their successes and failures. They aimed to adopt the best practices while avoiding potential pitfalls. However, they didn't merely replicate existing models; instead, they adapted and enhanced them to suit India's unique circumstances. While Indian federalism took cues from other federations, it also introduced innovative ideas and approaches. The framers didn't just copy; they refined and improved, tailoring the system to India's specific needs and challenges. Yet, despite careful planning, Indian federalism requires ongoing reforms and updates. Several issues have arisen, such as demands for autonomy from various states and challenges in the realm of taxes and finances. These issues must be addressed promptly to prevent escalation. For instance, the implementation of GST (Goods and Services Tax) has faced criticism, highlighting the need to strike a balance and take corrective measures to prevent further harm. States must operate within their designated boundaries while fostering cooperation. They should avoid becoming overly dominant or coercive. Federalism can only succeed when there's mutual respect and cooperation among all levels of government. It serves as a mechanism for accommodating diverse regional interests and providing a framework for representation and participation. Therefore, continuous efforts to refine and strengthen Indian federalism are essential for its effective functioning and the overall well-being of the nation.