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# UNRAVELING INDIA'S FEDERAL GOVERNANCE : A CIRCUMSTANTIAL EXPLORATION

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## I. ABSTRACT

Federalism is an apparatus where the powers are shared between several layers of government. This form of government acknowledges for the compromise of heterogeneity and topographical sovereignty within the diplomatical system. Our country is said to follow federalism incorporated with few undivided characteristics. Cooperative federalism is a form of government where the powers are shared among the elemental states and the central government, which is in implementation in our country. But India is in fact said to be a quasi-federal government due to the diluted distribution of power to the constituent states. One of the most unadulterated advantages of federalism is the decentralisation of power within the constituency. Now, the popular debate is whether the central wields so much power that it undue influences the states and confiscate their independence?

This study particularly endeavours to unearth the discrepancies in the federal governance in India which is said to be a “**federation without federalism**”. The main finding of the study is the deep-rooted conception of political democracy in the form of federalism. Under the perpetual substitute of political dynamics, our country has witnessed persistent variation in the functioning of the federal system which is the core of this paper. The relentless issue in the federal governance of our country is the unequivocal power of the central government over the constituent states which is in contradiction with the fundamental objective of the federal system but is it really against the objective of federalism? this paper endeavours to answer that in its findings. Thus, this study finds it peremptory to analyse the functioning of federal governance in India

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and appraise its influence on the democracy of India. The study also has analysed the compact relationship between the centre and the state.

## II. KEY WORDS

Federalism, politics, domination, government, democracy

## III. INTRODUCTION:

India is said to be quasi federal country where even though the powers are divided among the centre and the states, the centre holds the dominant and the decision-making power<sup>2</sup>. What is federalism? This is the most rudimentary question that arises in the pestering minds of people when the concept of governance and democracy are involved in a debate. Federalism is a form of system where the union and the state governments share equal amount of powers and responsibilities and work together without any subservience for the better governance of the country. India is a country with diverse cultures, languages, religions and regions. The governing bodies begin from the local regions in the name of local self governments such as panchayat raj systems and municipalities and then comes the state governments with chief ministers as the head of the government and the governors as the executive head of the states and then the central government for the whole of the nation with president as the executive head and the Prime Minister as the head of the government<sup>3</sup>. These several forms of governments help in **decentralising the powers** that may otherwise accumulate in the hands of the centre which will in turn convert the democratic government into a dictatorship government.

Now, **the main point of convergence of this paper is** whether, these forms of government in India has succeeded in achieving their objective, that is if the decentralisation and federation has indeed been implemented and in effect in our country? **Schedule VII** of the Indian constitution provides with three lists namely union

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<sup>2</sup> DR. NARENDRA KUMAR, CONSTITUTIONAL LAW OF INDIA (Allahabad Law Agency 2016)

<sup>3</sup> Id.

list, state list and concurrent list<sup>4</sup>. The subject matters constituted in the **union list** will be legislated by the parliament or the central government, the subject matters enlisted in the **list II** shall be legislated by the state governments and the subject matters comprised upon the **list III** shall be legislated by both the state and the central government<sup>5</sup>. The frontier perspective of this schedule shall provide with the illusion of splitting of powers between the states and the centre. But when you actually delve into the intricacies of this schedule, you'll come to realise the preeminence of the centre, where the Indian constitution provides that, in certain circumstances parliament has the power to legislate on the subject matters enlisted in the list II and also, when both the centre and the state makes legislature on the same subject matter constituted in the concurrent list, then the legislature made by the parliament prevails. So the question here is, **whether the powers inclined upon the state governments are absolute or under the constructive criticism of the centre?** This paper endeavours to answer that question.

#### IV. CONSTITUTIONAL DEMOCRACY IN INDIA:

India is a secular country with people professing different religions, languages, cultures and so on. India constitutes of states with linguistic majority such as Tamil Nadu, Andhra Pradesh etc. also our constitution provides with the freedom for the people to profess any religion and manage their religious affairs without any restrictions under the **articles 25 and 26**<sup>6</sup>. The recent conundrum of our country is whether our country is slowly losing its federalism and secularism under the alleged tyranny of the central government. This wave of exhilaration aroused after the subsequent ideologies posted by the central government inclusive of the repealing of the **article 370** of the Indian constitution and the enforcement of the Citizenship Amendment Act even after the relentless attacks of dissent from the state governments.

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<sup>4</sup> V.N. SHUKLA, CONSTITUTION OF INDIA (Eastern Book Company 2019)

<sup>5</sup> Id.

<sup>6</sup> INDIA CONST. art 25, art 26

Article 370<sup>7</sup> of the Indian Constitution provided **special privileges to Jammu and Kashmir**. This provision was included in the Indian constitution in 1949 albeit it was a temporary provision due to the regional dispute between India and its neighbouring countries. This temporary provision enabled Jammu and Kashmir to enforce and enact its own laws except in the cases of external affairs, finances and other corporeal matters<sup>8</sup>. Recently, on the date of **December 11, 2023**<sup>9</sup>, a five bench judge of the Supreme Court condoned that the abrogation of the temporary provision of the Indian Constitution that is article 370 was completely constitutional despite the fortified sentiments of dissent from the various constituent elements of our country. Also, the **Citizenship Amendment Act** was enacted to provide citizenship to the religious minority groups of the India's Muslim neighbour countries<sup>10</sup>. This act also encountered several contraventions from the various state governments claiming that the secularistic nature of our country is being destroyed. Despite the severe contention, this act came into enforcement on the date **11<sup>th</sup> March 2024**<sup>11</sup>. These undisputed display of the power of the union government has created a major drift in the constitutional federalism of the country.

## V. SWELTERING THE FEDERALISM:

### A. Stifling the independence of the states:

The opinions of the state governments have been stifled since a very long time. To be precise, the parliamentary provision of **article 352** where the president has the power to impose "national emergency" and **Article 356** which enables the president to declare the "failure of state constitutional machinery"<sup>12</sup> has been embezzled during the period of **Indira Gandhi government**. During her period, she invoked the article 356

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<sup>7</sup> INDIA CONST. art 370

<sup>8</sup> Supreme Court's Article 370 judgment leaves crucial questions unanswered on federalism and sovereignty, THE HINDU (April 15, 8.30 pm): <https://frontline.thehindu.com/>

<sup>9</sup> Id.

<sup>10</sup> Can federalism save India's constitutional democracy?, THE SPRINGER ( April 14, 11.00 am) <https://link.springer.com/article/>

<sup>11</sup> Id.

<sup>12</sup> INDIA CONST. art 352, art 356

approximately **3 times** a year dismissing the state governments left and right which were not ruled by her party<sup>13</sup>. Also in the year, 1975, Indira Gandhi declared National Emergency professing the reasons to be imminent danger to the country due to internal disturbances as response to the letter of Raj Narain who propounded that the election of Indira Gandhi is invalid<sup>14</sup>. These incidents are examples of the tyrannical use of power vested in the heads of our nation's governments, subverting federalism, disrespecting the constitutional democracy of the states, and destroying the integral relationship between the state and the centre.

**B. Position of the state government if it is not in alliance with the ruling central government:**

In the recent times, though the evoking of the article 356 has been significantly reduced, the question of swelting of federalism still remained. Many of the major decisions, policies and acts were enacted without brainstorming the state constituencies and also while disregarding the contention of the state constituencies. What is federalism when the opinions and ideologies of the states and the centre were not brainstormed together before the enforcement of any acts within the ambit of the state legislature such as the subject matters in the state list and the concurrent list. In the first general elections after the independence in the year 1952, the **National Congress Party** became evident as the presiding party. Most if not all of the state constituencies were also presided by the congress party. This system did not provide any space for the concept of federalism. This undisputed model of the inner party federalism<sup>15</sup> was observed to be the result of the great leadership and popularity of **Pandit Jawaharlal Nehru**<sup>16</sup>. "The total domination of the single party was due to the presence of the eminent political leader Jawaharlal Nehru", this was observed by political analysts **Suhas Palshikar and Yogendra Yadav**<sup>17</sup>.

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<sup>13</sup> Stifling the states, THE TELEGRAPH ONLINE (April 16, 10.00 am) <https://www.telegraphindia.com/>

<sup>14</sup> Id.

<sup>15</sup> Indian Federalism, TIMES OF INDIA ( April 14, 3.00 pm) <https://times of India forum.in/>

<sup>16</sup> Indian Federalism, TIMES OF INDIA ( April 14, 3.00 pm) <https://times of India forum.in/>

<sup>17</sup> Indian Federalism, TIMES OF INDIA ( April 14, 3.00 pm) <https://times of India forum.in/>

Once after the death of the face of the party that is Pandit Jawaharlal Nehru, it was evident that the influential party federalism in all realms ceased to exist. During the era of Indira Gandhi, the communist government in Kerala was dissolved by the prowess of the union government which marked the bench for the erosion of federalism in India<sup>18</sup>. This exposed the position of the state constituencies with government formed by the opposition parties to the centre, which was alarming.

## VI. CIRCUMSTANTIAL EXISTENCE AND NON-EXISTENCE OF FEDERALISM:

### A. Federalism and democracy in the parliament:

Though federalism and democracy is a basic structure of the constitution of India, is it possible to exercise the concept of federalism in all circumstances? In the cases of political democracy, the constitutional amendment of the **10<sup>th</sup> schedule** which provided with the disqualification grounds of the MPs and MLAs for defection in the form of **Anti - Defection Law**<sup>19</sup> faced with several contentions of unconstitutionality claiming the act violated the fundamental rights of the parliamentarian that is the freedom of speech and expression provided under Article 19(1)(a)<sup>20</sup> and also the parliamentary privilege enshrined upon the **Articles 105 and 194** where the parliamentarians are provided with absolute freedom of speech and vote without being subjected to court proceedings<sup>21</sup>. The 10<sup>th</sup> schedule of the constitution provided with the provisions that enabled a party president or the chief whip, the power to issue whips (directions) to their party members, directing them, in which manner they have to cast vote in the parliament and the party members should abide by the whip and if not they will be subjected to disciplinary actions. The Anti - Defection Law, disqualified members who defied the party

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<sup>18</sup> The Paradox of 'centralized federalism' OBSERVER RESEARCH FOUNDATION ONLINE ( April 17, 6.00 pm) <https://www.orfonline.org/research/>

<sup>19</sup> REUBEN Y HAZAN, PARLIAMENT AND GOVERNMENT TERMINATION: A NEW PERSPECTIVE OF PARLIAMENTARY DEMOCRACY (Rout-ledge publishers 2023)

<sup>20</sup> INDIA CONST. art 19 cl (1) (a)

<sup>21</sup> INDIA CONST. art 105, art 194.

directives<sup>22</sup>. This stirred the controversy of destruction of parliamentary democracy. But the apex court in the case of **Kihoto Hollohan v. Zachillu and Ors**<sup>23</sup>, declared the 10<sup>th</sup> schedule of the constitution to be completely valid as the motive of the the act itself is to retain the parliamentary democracy by preventing cross footing of the members. The court also held that, in order to maintain the party reputation and the public confidence on the party, it is necessary for the party members to have unified manifestations and so as to retain that the party members in some instances shall have to agree with the directives of the party to which they belong<sup>24</sup>. This does not imply that the members are slave to the parties and should not have individual opinions, no, it simply provides that it is necessary to let go of individual opinions in certain cases to reinstate the party democracy.

#### **B. Can federalism exist in all circumstances?**

In a very similar fashion, though federalism might be **basic structure doctrine** of the constitution of India<sup>25</sup>, it is necessary to sacrifice such principles in certain instances to ensure the development of the nation. It is not possible to brainstorm the principles with all the state constituencies in emergency situations such as corona pandemic where the central government imposed a lockdown without consulting the state governments. The political parties in all hierarchies are formed and work for the people and for the development of the nation. So when the people at large are in danger, there shall be no time to discuss among the states to decide upon the matter and in such instances the concept of federalism can be set aside. Also, the opposition parties should not just dissent to all forms of ideas and principles brought about by the ruling party without any base. The simple reason that the act or the bill is brought by the ruling party shall not be the sole reason for the contention of that particular bill. That is the case that happens in most

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<sup>22</sup> REUBEN Y HAZAN, PARLIAMENT AND GOVERNMENT TERMINATION: A NEW PERSPECTIVE OF PARLIAMENTARY DEMOCRACY (Rout-ledge publishers 2023).

<sup>23</sup>Kihoto Hollohan v. Zachillu and Ors 1992 Supp (2) SCC 651.

<sup>24</sup> Kihoto Hollohan v. Zachillu and Ors 1992 Supp (2) SCC 651.

<sup>25</sup> Kesavananda Bharathi v. State of Kerala 1974 (4) SCC 225.



scenarios and when the national welfare has been prioritised and the bill is passed surpassing all the dissent, people start questioning federalism. Is it true form federalism and democracy if the values of nation and public welfare is not even considered due to the party politics? It is necessary to understand that the true form federalism and democracy and all the other basic structures of the Indian constitution have all been established for the nations and the peoples' development and welfare and not for the sake of the political parties. Considering this, federalism can be set aside in exceptional cases.

## **VII. CONCLUSION :**

The federal governance in India is in existence but there are fluctuations in the concept. Since India is a diverse country, with several states and constituencies, there will be several forms of opinions on each and every ideology which makes it difficult to enact a law. There are also other party politics, which leads to disregarding the motive of any of the legislations and simply dissenting it to show their dominance. This in itself destroys the very essence of the concept of federalism which was established for the welfare of the people and the nation. Federalism is a very essential concept for the development of the nation and the restoration of democracy in the country. But our country follows quasi - federalism for the very reason due to the several regional provinces in our country. It is necessary to give power to a central authority for the efficient management of the country in whole. That does not mean the whole power and authority should be vested in the hands of the central government. The states shall be given exclusive powers to govern their territory but on the whole when an act or bill or any idea for the betterment of the nation is proposed it is necessary for the states to aid the central government in the implementation of such acts considering the welfare of the state. At the same time, the central government shall not be given exclusive power to enact any legislation on their whim which will be very dangerous.

Thus, in all, like any other concepts, federalism has also got both advantages and disadvantages, too much power to the centre and too little power to the states can be very dangerous but also, a central power should be in existence for the effective functioning

of the government. India, although have several discrepancies in the functioning of the federalism, it cannot be denied that federalism is not in existence in our country. Our country follows federalism but as we all know our government is not a completely federal country. It is for a reason, that our country is said to be quasi federal which implies uneven distribution of power between the states and the centre. The central government does wield more power, but it does not undue influence the states and confiscate their powers and smother their independence. Despite all the short comings, both the centre and the state governments also endeavour to cling on to the concept of federalism and democracy for the welfare of the people and the development of the nation. However, this study aims to enhance the comprehensive research on similar subjects to come to a more understanding on the federal governance of our country.