

Nature of Indian Federal system. Paper - III

The constitution of India describes India as a "Union of States," not a federal union. However the system of government introduced by the constitution is federal.

The essence of federalism lies in a constitutionally guaranteed ~~sharing~~ sharing of power by levels of government and the existence of an independent judiciary to guard the guarantee. The key elements of a federation are thus —

- ① Division of powers
- ② Supremacy of the constitution
- ③ an independent judiciary

all the three elements are very much present in our constitution.

In the 1st Place, our constitution has made an elaborate and exhaustive division of powers between the Union and the states through three lists: the Union list with items of national importance,

The State list with subject of regional importance, the concurrent list with item of common importance;

The central Government has exclusive jurisdiction over the Union list and the State Governments over the state list, while both have concurrent jurisdiction over the Concurrent list.

In the Second Place, our constitution is the "Supreme organic ~~law~~ law of the land". Both the Union and the states derive their powers from the constitution and both are subject to it. The constitution is rigid in the sense that no provision relating to the federal structure can be amended without the consent of the states.

In the Third Place, there is the Supreme Court vested with the power to guard the distribution of powers and maintain supremacy of the constitution.

Unitary and Centralist features

Though India is, in constitutional theory, a federation; there are some important unitary features in it.

- ① Supremacy of the centre in the legislative & power field
 - (a) There is the size and importance of the Union list relative to the state list;
 - (b) The centre has priority in the concurrent list.

(c) the residuary powers are vested with the centre and not, as in America, with the states. In addition and, more importantly, the Centre can legislate on subjects in the state list —

(a) If Rajya Sabha by two-third majority passes a resolution to the effect that Parliament should make such a legislation in "national interest" (art 249)

(b) If the President makes a proclamation of national emergency" Arts (352-354 and 359)

(c) If the President proclaims emergency in a state under (Art 356.)

Such provisions are not found in the constitution of the USA or Australia.

(2) Central dominance in financial matters. The centre has control over the most important and growing sources of taxation and authority to collect certain taxes on behalf of the states and to distribute the revenues among them.

(3) Centres power over the states - Barring emergency the centre can exercise control both over the administration and legislation of the states in nominal items.

(1) a state govt must comply with the central laws and all central directions (Art 256, 257)

(2) the governor who is appointed by the centre without the state's consent must see that state is carried out properly and send reports to the centre from time to time.

(3) even if a bill is passed by the state legislature, the governor may not give his assent and send the bill to the President for his consideration.

(4) Constituent power of the Centre - The bulk of the constitutions, except the federal provisions, can be amended by the union Parliament without consent of the states. But no part of the American constitution can be amended without the consent of the states.

Assessment - Summing up, the Indian federal system has three necessary ingredients of a federation namely, the division of power, the supremacy of the constitution and a powerful Supreme Court to maintain the federal structure. At the same time there are various sub features of a unitary system and wide powers of the centre in relation to the states. And through the exercise of emergency powers the centre can convert the federal system into a unitary one.

Combating the view that the Indian constitution is "quasi federal",