

FEDERALISM IN INDIA: A POST INDEPENDENCE ANALYSIS

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Abstract

India got its independence in 1947. India afterwards needed its own constitutional setup. It was not simple though a very complex phenomenon. It later on shaped itself to the Union and State Concept. The main concept of Federalism was "Distribution of Powers." Union as a whole that deemed to be central power administered its constituent States. It is only after that it became necessary to shape up the Federal structure of India. The Supreme courts and the High Courts of several states helped in developing Indian Federalism. As time passed by the States started Forming up. Certain regional parties also bloomed up which in a way created a negative impulse on the Federal structures functionality. This research article shortly examines the major issues post Independence with reference to Keshavanand Bharti case and S.R. Bommai case along with Article 368 of the Constitution of India. The active role of Supreme Court of India in both the cases will be ascertained with short review.

Keywords: *Constitution of India, Federalism, Supreme Court of India.*

INTRODUCTION

India became free from the British colonial rule in the year 1947. It had to proceed as an independent Nation after all. It was now an independent India and the British parliament in a way had to transfer its powers to the Constituent Assembly that was none other than elected by the provincial legislatures those were originally established by the government of India act 1935. Under the Independence of India Act 1947, the British Parliament transferred power to the Constituent Assembly of India elected indirectly by the provincial legislatures originally established by the Government of India Act 1935. After independence the next task for India was to determine how it would function in terms of administration. For this very reason it introduced the concept of Union and the State. Union on one hand became the central power whereas states became its subsidiaries to be administered. As a result more and more states started forming up. The 1950s nevertheless saw the reorganization of south India, followed by the reorganization of states in western and northern India in the 1960s and of the northeast in the 1970s by the Parliament of India using its power to redraw the boundaries of the states under Article 3 of the Constitution. This is how a new federation was formed by the division of Union and States. As time passed by this federation grew into multiplicity of States which then gave rise to several regional parties. Each regional parties had their own issues that in a sense started to hamper the functioning of this Federal character of the Constitution of India. It in true sense created a negative impulse. Even after all this we still do not see any change in the federal character of the constitution.

Apart from these far-reaching reorganizations of the states, and despite over 100 amendments to the Constitution, there have been no major structural or constitutional changes in the federal system. Even after all this we still do not see any change in the federal character of the constitution. The main characteristics of Federal form was to take control over people by granting them the right to vote and elect their elected leader who they wish to follow in order to bring out a harmony led peaceful State.

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This was done just in order to bring out a balance between Center and the state in the political scenario. Federalism has come to be generally valued by the political actors and general public as a means of finding a balance between national unity and regional diversity. The then result of federalism was also the rise of multicultural institutions. Now, these multicultural institutions again generated problems to be faced by India. The main motto of federal character was to create a balance but on the other hands these multicultural institutions started giving rise to inequality. Multicultural institutions often provide unequal rights to citizens, violate individual rights, impede policy change, and restrict cultural exchange. In support of the above mentioned statement I would like to say that in true sense individual rights were violated as rules for one section or community differed from that of the another say for example Hindu and Muslim. Even cultural exchanges were restricted to new policies for different community. Federalism was introduced with the concept of three separate bodies functioning independently that is The Legislature, The Executive and The Judiciary. The Legislature made laws wherein The Executive implemented them and The Judiciary interpreted them. Of these bodies functioning separately it was after all Judiciary that was assigned the highest power. It gave rise to Judicial Activism where Courts had the power to review. The constitutional courts in India have, on the whole, gradually moved away from strict legalism and restraint to judicial activism in the post-Nehru era. Family laws as a result underwent so many changes as a result. The major family laws underwent greater change over the last generation than its critics suggest. The changes came primarily through judicial initiative and secondarily through legislation. Instantly a growth in regional conflicts gave rise to intergovernmental jurisdictional conflicts whereby courts needed to exercise its power to determine the rightful on the grounds of equality as that was the only gist of the constitutional federal structure. In this way the courts had to adjudicate on matters where fundamental rights have been violated. Arguably, these developments have increased the probability of intergovernmental jurisdictional conflicts creating a fertile ground for adjudication. For instance Islamic jurisprudence was purely based on law of shari'a which in a way clearly shows that it does not follow uniformity rather it is very much ethically coded. Islamic jurisprudence then is better described as an ethical code rather than a uniform legal system. Shah Bano case is one of the most important examples that shows us clearly what the situation was as far as communal diversity is concerned at that point of time when Federalism was thriving. After the 1986 Shah Bano case, and the enactment of the Muslim Women (Protection of Rights on Divorce) Act thereafter, the debate has assumed a central position, and majority identity politics has gained mileage, evident in the weakening of centrist secular parties like the Congress. It was only after this case when the concerned court exercising its Judicial review had to cancel Shah Bano's maintenance verdict which again makes our concept very clear about what Judicial Activism was really all about. At the beginning of the twentieth century, the fact that women had fewer rights under Muslim customary law than under shari'a became evident, thereby making uniform acceptance of shari'a a way of improving the status and treatment of women.

IN KESHAVANAND BHARTI CASE REFERENCE

In Keshavanand Bharti case the judgment revealed a sharply divided court and, by a wafer-thin majority of 7:6, it was held that Parliament could amend any part of the Constitution so long as it did not alter or amend "the basic structure or essential features of the Constitution." This was the inherent and implied limitation on the amending power of Parliament. This basic structure doctrine, as future events showed, saved Indian democracy and Kesavananda Bharati will always occupy a hallowed place in our constitutional history. The main question that arose as a matter of debate was whether the parliament of India post Federalism had the power to amend the constitution. All this

effort was to answer just one main question: was the power of Parliament to amend the Constitution unlimited? In other words, could Parliament alter, amend, abrogate any part of the Constitution even to the extent of taking away all fundamental rights? TEWARI & SAXENA, (2017) in his article “The Supreme Court of India: The Rise of Judicial Power and the Protection of Federalism” has said that “the Supreme Court has extended its power of judicial review beyond legislative and executive acts to include constitutional amendments, arguably making it the most powerful constitutional court in the world.” This case thus is a landmark case when it comes to the Parliament power to amend the Constitution and to what extent.

ARTICLE 368 IN THE CONSTITUTION OF INDIA 1949

Power of Parliament to amend the Constitution and procedure therefor

1. Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article
2. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in
 - (a) Article 54, Article 55, Article 73, Article 162 or Article 241, or
 - (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
 - (c) any of the Lists in the Seventh Schedule, or
 - (d) the representation of States in Parliament, or
 - (e) the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent
3. Nothing in Article 13 shall apply to any amendment made under this article
4. No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground
5. For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

IN S.R. BOMMAI CASE REFERENCE

This case basically restraint the misuse of President’s rule in accordance with the Article 356 of the constitution of India. This case was a landmark judgement case when it comes to the matter of length provisions as discussed precisely under article 356 of the constitution of India and the issues

those were related to it. The main concern of the case was basically based on the subject of Center and State relationships. According to Article 356 of the Constitution of India there is a provision of emergency whereby President's rule is established over a State. After that President's rule is established the Governor of the State starts heading in matters of administration as the powers of Chief Minister of that State and his Council of Ministers cease to operate as a matter of fact they become suspended. Article 356 on the other hand provides clearly that it violates the Federal character of the constitution. This can be said because Federalism clearly means co-ordination between center and state whereas Article 356 mentions about emergency provisions that in a way violates the basic principles of Federalism. And because of this reason Article 356 was challenged in the court and further court exercised its power of Judicial review. As Justice K. Jayachandra Reddy (speaking for himself) and Justice Rajesh Kumar Agarwal (concurring with Justices P.b. Sawant and Kamal Narain Singh) observed, "The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that the States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States."

CONCLUSION

The basic concept of Federalism lies in "Distribution of Powers." Federalism is something that is mainly concerned with the co-ordination between Center and State in a way that administration of justice could be done with equity maintaining the peace and sanctity in the society. Even though it was observed after the Federalism model that this perspective, it could not be achieved. It was basically because as Federalism thrived so did Communalism and as such many Social, Religious and Cultural groups started to operate inclusive of their own issues. As a result things like agitation and riots started which further led to a situation like proclamation of emergency. Proclamation of emergency diminished the basic structure of Federalism model which in a way puts forward a question that is "What is the real situation regarding the constitutional provisions?" Is there a constitution? Is what is written is followed? If yes, then up to what extent? For instance cases like that of Keshavanand Bharti clearly shows us that Parliament of India is itself confused when it comes to the question of ascertaining that whether it has the power to amend the constitution or not? No matter how many cases do we discuss the result procured will be the same and that is whether Constitution is rigid or flexible? If there is Constitution then do we follow its provisions? Why the courts have the provision of Judicial review and in true sense what is the real meaning of Judicial Activism? Is Judicial Activism priority based or is it based on the principles of Equality? All these questions needs to get answered. On the other hand in this complex phenomenon of thoughts we the citizens of India are in a confused state. At last I would like to conclude hereby by saying that it is true that there is Federalism in India which exclusively provides us with the distribution of powers between the Center and State but then there are certain other things that keeps on disturbing this model of Federalism. Simply we can say that when it comes to the Center the States should not intervene demanding separate laws for them and similarly when it comes to States the Center should also not intervene or rather tamper with its powers.

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