



INDIAN FEDERALISM UNDER THE LIGHT OF JUDICIARY

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ABSTRACT

Federalism or federal governmental is a structure in which there is division of power between union and state government and those component units among which the power has been divided should be sovereign or independent in nature. The constitution of India do have federal feature such as supremacy of the constitution, division or decentralization of power, written and rigid constitution, bicameral legislation. The Indian judiciary has given interpretation to constitution of India after considering the legislative intent and inherent features of federalism from government of India Act, 1935. Through various cases the constitution has been considered as not so truly federal or amphibian constitution or federal with strong center or federal inkling towards unitary features. A famous debate which has been discussed in the judgement is the use of term *union* in article 1 of the constitution which describes the motive of the framers of Indian constitution that India that is *bharat* is not a result of any agreement, though it is a product of the unity which was furnished among different provinces at that period of time. However, India is now considered as federal country due to decentralization of power,

supremacy of the constitution and bicameral legislation.

Keywords: *Federalism, decentralization, supremacy of the constitution, bicameral legislation, sovereign.*

I. INTRODUCTION

Federalism can be defined as the method of dividing powers so that the general and regional governments are each within a sphere co-ordinate and independent.¹ It put emphasis on the separation of power between the central and state government so that they work accordingly in a coordinated manner to serve the citizen. It can also be defined as the distribution of powers among governmental bodies (each with limited and coordinate powers), along with the supremacy of the constitution and the authority of the courts as the interpreters of the constitution.² It suggests distribution of power according to the constitution. The term federalism is derived from the Latin root *foedus*,³ which means "formal agreement or covenant." It includes the interrelationships between the states as well as between the states and the federal government. "Federation is a political contrivance intended to reconcile national unity with the maintenance of State Rights."⁴

It is the device for dividing decisions and functions of government.⁵ It is the process of federalizing a political community, that is to say, the process by which a number of separate political communities enter into

¹ K.C. WHEARE, FEDERAL GOVERNMENT, 11 (4th ed. London: Oxford University Press, 1963).

² A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION, 140 (7th ed. London: Macmillan, 1908).

³ C. MEISSNER, LATIN PHRASE BOOK, 456 (Macmillan, London, 1894)

⁴ PAL, CHANDRA, STATE AUTONOMY IN INDIAN FEDERATION, 18 (Deep and Deep Publications, New Delhi, 1984).

⁵ GRODZINS & MORTON, THE FEDERAL SYSTEM: REPORT OF THE PRESIDENT'S COMMISSION ON NATIONAL GOALS, 265 (Goals of Americans 1960).



arrangements for working out solutions, adopting joint policies, and making joint decisions on joint problems and conversely, is also the process by which a unitary political community becomes differentiated into a federally organized whole.⁶ The constitution provides for the basic division of powers, but the dynamic nature of the federal system is illustrated by the judicial and political interpretations.⁷ Federal government is a device by which the federal qualities of the society are articulated and protected.⁸

According to EA Freeman, two requisites seem necessary to constitute a federal government in its most perfect form. On the one hand, each of the members of the Union must be “wholly independent” in those matters which concern each member only. On the other hand, all must be subject to a common power in those matters which concern the whole body of members collectively.⁹ C. J. Friedrich’s description of federation as, “a union of groups, united by one or more common objectives, but retaining their distinctive group character for other purposes.”¹⁰ Federalism thus is a process of federalizing that is, the process of achieving a union of groups which retain their identity.¹¹ And according to Ernst B.

Haas, “federalism may be operating in both the directions of integration and differentiation, for both the transformation of the British Empire into the Commonwealth of Nations and that of European states into a United States of Europe are federalizing processes.”¹²

Federalism is “a form of government in which sovereignty or political power is divided between the central and local governments, so that each of them within its own sphere is independent of the other.”¹³ According to Garner, “Federal government, as contradistinguished from unitary government, is a system in which the totality of governmental power is divided and distributed by the national constitution on the organic act of Parliament creating it between the central government and the governments of the individual states or other territorial sub-division of which the federation is composed.”¹⁴ Federal systems operate best in societies with sufficient homogeneity of fundamental interests or consensus to allow a great deal of attitude in political operations and to place primary reliance upon voluntary collaboration.¹⁵ The state is one single entity, only its government is dual and from that state receives its federal character.¹⁶

⁶ Phul & Chand, *Federalism and the Indian Political Parties*, 5, Journal of Constitutional and Parliamentary Studies, 147, 1972.

⁷ Hathorn, B. Guy, Peuniman R. Howard, & Zink. Harrold, *Government and Politics in the United States*, D.Vannostrand Inc, 147, New York, 1963.

⁸ Phul & Chand, *Federalism and the Indian Political Parties*, 5, Journal of Constitutional and Parliamentary Studies, 148, 1972.

⁹ E.A. FREEMAN, THE HISTORY OF FEDERAL GOVERNMENT, 3, 1863.

¹⁰ Friedrich, C. J., *New Tendencies in Federal Theory and Practice*, (mimeographed, 1964).

¹¹ Birch, A. H., *Political Studies*, Clarendon, London, 18-38, 1966.

¹² HAAS, ERNST B., THE UNITING OF EUROPE, 125, (Stanford University Press, London, 1958).

¹³ GAMER, J. W., POLITICAL SCIENCE AND GOVERNMENT, 349 (II Indian Edition, World Press, Calcutta, 1955).

¹⁴ K.C. WHEARE, FEDERAL GOVERNMENT, 33 (4th ed. London: Oxford University Press, 1963).

¹⁵ VERMA, S.L., FEDERAL AUTHORITY IN THE INDIAN POLITICAL SYSTEM: A COMPARATIVE STUDY, 33, (R.B.S.A. Publisher, Jaipur, 1987).

¹⁶ SINGH, M.M., THE CONSTITUTION OF INDIA: STUDIES IN PERSPECTIVE, 87 (The World Press Private, Calcutta, 1970).



Federalism is, therefore, a concept which unites separate States into a Union without sacrificing their own fundamental political integrity.¹⁷ The source of the present federal system in India lies in the Simon Report of May 1930 which supported the idea of a federal government in India. This support for the federal form of government for the India of the future was further affirmed in the First Round Table Conference of 1930.¹⁸ Through Government of India Act, 1935 federalism was introduced in India. This act for the first time introduced the federal concept and used the expression '**Federation of India**'. The act established a Federation of India made up of British Indian provinces and Indian states which might accede to be united.¹⁹ The framer of the constitution while drafting the Indian Constitution wanted India to be federal in nature after taking into consideration its pluralistic characteristics which was there at the colonial time. Indian constitution contain various integral federal features such as separation of power, supremacy of the constitution, independent judiciary, bicameralism etc. it has been said that India is not a 'coming-together' federation of the traditional type (such as the US, Australia or Switzerland). Rather, a centralized 'union' was meant to 'hold India together.'²⁰ Federalism is the basic feature of the constitution.²¹ The establishment of

federalism has not been stated anywhere in the Constitution, including its Preamble, but it is reflected not only in the division of the Union of India and its 29 states but also at the grassroots levels of villages and municipalities. Like democracy, federalism is also one of the unamendable basic features of the Constitution.²²

The Indian federalism was not a result of a compact between several sovereign units but a result of conversion of a unitary system into a federal system. Here the movement has been from unity to union, from unitarism to federalism, unlike other countries where the historical process has been for separate units to come together to form the federal union.²³ The Supreme Court took note of this process and rejected the claim of the States that they shared sovereignty with the Centre.²⁴ The Drafting Committee described the Constitution as "federal in structure"²⁵ but they preferred to call it a "Union"²⁶ to indicate two essential features of Indian federalism, namely, (a) that the Indian federation is not the result of an agreement by the units and (b) that the component units have freedom to secede from it. It would not be proper to describe the Indian Constitution as *quasi* federal²⁷ unless one is prepared to classify the Canadian Constitution, too, as *quasi*-federal.

¹⁷ S R Bommai v. Union of India (1994) 3 SCC 1.

¹⁸ 2 SETHI, R. R. & MAHAJAN, V. D., CONSTITUTIONAL HISTORY OF INDIA, 136 (S. Chand & Co., Delhi 1956).

¹⁹ Government of India Act of 1935.

²⁰ STEPAN (A.), LINZ (J.J.) AND YADAV (Y.) (EDS.), STATE-NATIONS. INDIA AND OTHER MULTINATIONAL STATES, (Baltimore, Johns Hopkins, 2011).

²¹ Keshvananda Bharti v. State of Kerala (1973) 4 SCC 225.

²² Government of NCT of Delhi v. Union of India & Anr. LNIND 2018 SC 308.

²³ JUSTICE JASTI CHELAMESWAR, JUSTICE DAMA SESHADRI NAIDU, M P JAIN THE INDIAN CONSTITUTIONAL LAW 1147 (8th ed. LexisNexis 2018).

²⁴ State of West Bengal v. Union of India AIR 1963 SC 1241.

²⁵ Draft Constitution (21 February 1948), p 4.

²⁶ Constituent Assembly Debates, vol. VII, p 43.

²⁷ K.C. WHEARE, FEDERAL GOVERNMENT, 21 (4th ed. London: Oxford University Press, 1963).



Strictly speaking, any deviation from the American model of pure federation would make a system *quasi-federal*, and, if so, the Canadian system, too, can hardly escape being branded *quasi-federal*. The difference between the Canadian and the Indian systems lies in the degree and extent of the unitary emphasis. The real test of the federal character of a political structure is, as PROF. WHEARE has himself observed—*that, however, is what appears on paper only. It remains to be seen whether in actual practice the federal features entrench or strengthen themselves as they have in Canada, or whether the strong trend towards centralization which is a feature of most Western Governments in a world of crises, will compel these federal aspects of the Constitution to wither away.*²⁸

Union of India is a federal union having a distribution of powers of which the Judiciary is the interpreter was also acknowledged by the Supreme Court in the Special Reference case of 1964.²⁹ The foundation for a federal, set up for the nation was laid in Government off India Act, 1935. Though in every respect the distribution of legislative power between the Union and State as envisaged in 1935 Act has not been adopted in Indian constitution, but the basic framework is same.³⁰ The Supreme Court in 2001 held that the Indian

constitution is basically federal in form and is marked by traditional characteristics of a federal system, namely, supremacy of the constitution, division of power between the Union and States and existence of an independent judiciary.³¹

The essential characteristics of federalism is the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other.³² federal concept is meant the idea of organization of state whereby a compromise is achieved between concurrent demands for union and for territorial diversity within a society, by the establishment of a single political system, within which, general (Central) and regional (State) governments are assigned coordinate authority so that neither level of government is legally or politically subordinate to the others.³³ There is a state authority and powers of the state are divided between the central and regional governments.³⁴ Both levels of government operate through their own agents and exercise power directly over individuals.³⁵ The natural and literal interpretation of the word confines its application to cases in which these states, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions.³⁶

²⁸ Id.

²⁹ Keshav Singh v. Speaker, legislative Assembly AIR 1965 SC 745.

³⁰ Prof. Yashpal v. State of Chhattisgarh (2005) 5 SCC 420.

³¹ Ganga Ram Moolchandani v. State of Rajasthan, AIR 2001 SC 2616.

³² Keshav Singh v. Speaker, legislative Assembly AIR 1965 SC 745.

³³ Balveer, Arora., *Federalism and Inter-Governmental Relation in India: A Bibliographical*

Essay, 45 - 46 (Bhatnagar,S., and Pradeep Kumar (Ed.), ESS Publication, New Delhi, 1997).

³⁴ PAL, CHANDRA, STATE AUTONOMY IN INDIAN FEDERATION, 15 (Deep and Deep Publications, New Delhi, 1984).

³⁵ Burns, Macgrayor. James, and Pettason, Walter. Jack., *Government by the People: The Dynamics of American National State and Local Government*, Prentice Hall, England, 1960, P.83.

³⁶ SINGH, M.M., THE CONSTITUTION OF INDIA: STUDIES IN PERSPECTIVE, 89 (The World Press Private, Calcutta, 1970).



II. NATURE OF INDIAN FEDERAL SYSTEM

British authority on federalism, says, “the Constitution is quasi-federal,”³⁷ and classifies India as “a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles.”³⁸ Sir. Ivor. Jennings holds that India is a federation, with a strong centralizing tendency.³⁹ According to K.M.Munshi, the constitution made India “a quasi-federal union invested with several important features of a unitary government.”⁴⁰ Prof. P.K.Tripathi, formerly member of the Law Commission of India, finds “federalism in India a myth and not reality.”⁴¹

III. FEDERAL FEATURES IN INDIAN CONSTITUTION

The main features of Indian Federal system are as follows:

- 1. Division of Power:** The division of powers between two levels of governments is an essential feature of federalism. The basis of such distribution of power is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the centre and matters of local concern remain with the states.⁴² The Seventh schedule contains three

legislative lists which enumerate subjects of administration viz., Union, State and Concurrent lists.⁴³

- 2. Supremacy of the Law:** The Supremacy of the Constitution is essential if the government is to be federal; the written constitution is essential if the federal government is to work well.⁴⁴
- 3. A Written Constitution:** the Indian constitution is a written document containing 395 Articles and 12 Schedules, and therefore fulfills this basic requirement of a federal government. In fact the Indian constitution is the most elaborate constitution of the world.⁴⁵
- 4. Rigid Constitution:** In a rigid constitution the procedure of amendment is complicated and difficult. But this does not mean that the constitution should be legally unalterable. A Rigid constitution, as we know, is one which cannot be changed easily. The Indian constitution is largely a rigid constitution. , in India the constitution prescribes three different methods for amending the different provisions of the constitution.
- 5. Independent Judiciary:** A Federal court is indispensable to a federation. It acts as the guardian of the constitution. Especially, this principle has been playing an important and key role in the working of federal government. In order to ensure the impartiality of the judiciary, our judges are not removable by the executive and their

³⁷ SINGH, M.M., THE CONSTITUTION OF INDIA: STUDIES IN PERSPECTIVE, 25 (The World Press Private, Calcutta, 1970).

³⁸ STEPAN (A.), LINZ (J.J.) AND YADAV (Y.) (EDS.), STATE-NATIONS. INDIA AND OTHER MULTINATIONAL STATES, (Baltimore, Johns Hopkins, 2011).

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Balveer, Arora., *Federalism and Inter-Governmental Relation in India: A Bibliographical Essay*, 45 - 46 (Bhatnagar,S., and Pradeep Kumar (Ed.), ESS Publication, New Delhi, 1997).

⁴³ Id.

⁴⁴ K.C. WHEARE, FEDERAL GOVERNMENT, 56 (4th ed. London: Oxford University Press, 1963).

⁴⁵ STEPAN (A.), LINZ (J.J.) AND YADAV (Y.) (EDS.), STATE-NATIONS. INDIA AND OTHER MULTINATIONAL STATES, (Baltimore, Johns Hopkins, 2011).



salaries cannot be curtailed by the Parliament.⁴⁶

- 6. Bicameral Legislation:** A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. Constitution of India also provides for a bicameral legislature at the Centre consisting of the Lok Sabha and the Rajya Sabha. While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by State Legislative Assemblies. "Legislatures are bicameral for two broad and different reasons as a part of federalism and as the result of a desire to check the popular principle in the Constitution."⁴⁷

IV. JUDICIAL TRENDS

STATE OF WEST BENGAL V. UNION OF INDIA⁴⁸

Facts: Acquisition and Development Act, 1957 was enacted by the parliament and as per this act the Union of India can acquire any land or any right in or over land, in any part of India. By notification issued under the West Bengal Estates Acquisition Act, 1954, as amended, all estates and rights of intermediaries and Ryots vested in the State for the purposes of Government, free from encumbrances, together with rights in the sub-soil, including mines and minerals.

Issues:

1. Whether Parliament has legislative competence to enact a law for compulsory acquisition by the Union

of land and other properties vested in or owned by the State as alleged in para 8 of the plaint ?

2. Whether the State of West Bengal is a sovereign authority as alleged in para 8 of the plaint?
3. Whether assuming that the State of West Bengal is a sovereign authority, Parliament is entitled to enact a law for compulsory acquisition of its lands and properties?
4. Whether the Act or any of its provisions are ultra vires the legislative competence of Parliament?
5. Whether the plaintiff is entitled to any relief and if so, what relief?

Judgement: J. Sinha delivered the judgement for majority discussing the competence of parliament for making law for compulsory acquisition and sovereign function of State at length.

Analysis: The main issue involved in this case was the exercise of sovereign power by the India states. The legislative competence of the Parliament to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the State and the sovereign authority of states as distinct entities was also examined. The apex Court has held that the Indian Constitution accepts federal concept and distribute the sovereign power between the Union and State. This concept implies that one cannot encroach upon the governmental functions or instrumentalities of the other,

⁴⁶ Balveer, Arora., *Federalism and Inter-Governmental Relation in India: A Bibliographical Essay*, .45 - 46 (Bhatnagar,S., and Pradeep Kumar (Ed.), ESS Publication, New Delhi, 1997).

⁴⁷ Quoted in: Tilwalli, P. A., *Coalition Politics and Federal Process in India Since 1967*, Ph.D. Thesis, 105, Kamatak University, Dharwad, 2002.

⁴⁸ State of West Bengal v. Union of India AIR 1963 SC 1241.



unless the Constitution expressly provides for such interference. The legislative work allotted to individual unit is within the framework prescribed by the constitution and it is mentioned nowhere in the constitution that one can overstep its boundary and step into the shoes of state. *The Constitution of India is not truly Federal in character. The basis of the distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue, especially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union.*⁴⁹

STATE OF RAJASTHAN & ORS. V. UNION OF INDIA⁵⁰

Facts: There were various suits and three writ petition filed by the petitioners. The Union Minister, Mr. Charan Singh had written to the state chief minister to advise the Governor to dissolve the state assembly as the ruling party of the state had forfeited people's mandate, therefore to seek fresh mandate.

Issues: Whether the letter dated 18th April 1977 given by Union Minister is ultravirous, unconstitutional, and illegal.

Judgement: The judgment was delivered by CJ Beg and J. Faizal Ali unanimously for the bench. The judges dismissed the suit and petition as Art. 356 confers the power given to the Governor by Art. 174 (2) it would be a proper exercise of the discretion of the

President to prorogue the Assembly instead of taking the extreme course of dissolving it. This, however, is purely a matter which lies within the domain of politics. The Court cannot substitute its discretion for that of the President nor is it for the Court to play the role of an Advisor as to what the President or the Council of Ministers should do in a particular event.

Analysis: The principle postulated for the existence of federalism by Dicey are that the bodies are so closely connected and there exist a state of sentiment among the inhabitants of the countries. He pointed out that the basis requirement of federalism is desire to unite. Therefore, the Indian Union is federal and the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually up-lifted.⁵¹ The members of our Constituent assembly believed that India had unique problems which had not 'confronted other federations in history'. Terms such as 'quasi-federal' and 'statutory decentralization' were not found by the learned author to be illuminating.⁵²

Constitution creates a Central Government which is amphibian", in the sense that it can move either on the federal or unitary plane, according to the needs of the situation and circumstances of a case, the question which we are driven back to consider is whether an assessment of the "situation" in which the Union Government should move either on the federal or unitary plane are matters for the

⁴⁹ State of West Bengal v. Union of India AIR 1963 SC 1241.

⁵⁰ State of Rajasthan & Ors. v. Union of India 1977 3 SCC 592.

⁵¹ Id.

⁵² MR. GRANVILLE AUSTIN, THE INDIAN CONSTITUTION- CORNERSTONE, OF A NATION, 186,



Union Government itself or for this Court to consider and determine.⁵³

SHAMSHER SINGH V. STATE OF PUNJAB⁵⁴

Facts: These appeal arises from the judgement given by Punjab and Haryana High Court. The services of two judges were terminated by the Governor as per his discretion at the time of their probation period. The same order was challenged before the court.

Issues: Whether Governor as the constitutional or formal head of the State exercise his power given under constitution personally or as per aid and advice of the council of minister?

Judgement: Justice Ray gave the judgement of setting aside the termination of the appellants. President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally, without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers.⁵⁵

Analysis: The term "Union" and "State," mentioned in Articles 53(1) and 154(1) respectively to bring about the federal principles embodied in the Constitution. The

law of our Constitution, any student of Indian political history and of comparative constitutional systems will agree, is partly eclectic but primarily an Indo-Anglian version of the Westminster model with quasi-federal adaptations, historical modifications, geopolitical mutations and homespun traditions-basically a blended brew of the British parliamentary system, and the Government of India Act, 1935 and near-American, nomenclature-wise and in some other respects.⁵⁶

Justice Krishna Iyer clearly points out that *"So far as the relationship of the President with the Cabinet is concerned, I must say that we have, so to say, completely copied the system of responsible government that is functioning in Britain today; we have made no deviation from it and the deviations that we have made are only such as are necessary because our Constitution is federal in structure."*⁵⁷

He also quoted the case of *Rai Sahib Ram Jwaja Kapur v. State of Punjab*⁵⁸ *"Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State."*⁵⁹

SR BOMMAI V. UNION OF INDIA⁶⁰

⁵³ State of Rajasthan & Ors. v. Union of India (1977) 3 SCC 592.

⁵⁴ Shamsheer Singh v. State of Punjab (1974) 2 SCC 831.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Justice Krishna Iyer in Shamsheer Singh v. State of Punjab (1974) 2 SCC 831.

⁵⁸ Rai Sahib Ram Jwaja Kapur v. State of Punjab (1955) 2 SCR 225.

⁵⁹ Id.

⁶⁰ SR Bommai v Union of India (1994) 3 SCC 1.



Facts: S R Bommai was the CM of Janta Dal government in Karnataka. His government was dismissed under article 356 of the constitution and President rule was imposed. The dismissal was on grounds that Bommai government has lost majority and governor refused to give chance to Bommai to test his majority.

Issues: The case of Bommai not only comprised of the issue of Proclamation of emergency by the President but it also has different types of issues relating to secularism and federalism of the Constitution in the Indian context.⁶¹ It also enhances in the matter of judicial review of Article 365 of the Constitution which is capable of exercise in testing invalidating proclamation.⁶²

Judgement: The judgement concluded that the power of the president to dismiss a state government is not absolute. The president should exercise the power only after his proclamation is approved by both the houses.⁶³ The judges also discussed the concept of federalism and secularism at length. Various opinion of the judges speaking for the bench are as follows:

1. **Justice Ahmadi:** Because of no mention of the words like 'federal' he declared it to be a quasi-federal constitution.
2. **Justice Sawant & Kuldip Singh:** Federalism is an essential feature of the constitution.
3. **Justice Ramaswamy:** Declared India to be an "Organic Federation"

designed to suit the needs of the parliament.

4. **Justice Jeevan Reddy and Justice Agarwal:** Federalism in the constitution has a different meaning in accordance with the context. This case posed restrictions on the arbitrary use of article 356.

Analysis: Justice Ahmedi suggests that to form an opinion about the federal structure of India, it is important to note certain points regarding the same. Federalism is a concept, according to which the separate states unite to form a union without compromising their independent fundamental sovereignty.⁶⁴ The essence of federalism is the distribution of power between the Union and the State. Constitution empowers Parliament to admit into the Union, or establish, new States on such terms and conditions as it thinks fit.⁶⁵ Parliament can by law form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; increasing the area of any State; diminishing the area of any State; altering the boundaries of any State; or altering the name of any State.⁶⁶ According to article 2 of the constitution, it is left to the parliament to consider the terms and condition on which new states or Union territories can be added. In doing so, there is no say of the state whose boundary is likely to be effected by such proposal of addition of new states. The only condition under article 3 is that President shall refer the bill to the legislature of the state which is likely to get effected to express

⁶¹ PROF. M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 12, (Wadhwa, 5th edition, 2007, Nagpur).

⁶² Id.

⁶³ KUMAR NARENDRA, CONSTITUTION OF INDIA, 541, (Allahabad Law Agency, 4th edition, 2004, Haryana).

⁶⁴ SR Bommai v Union of India (1994) 3 SCC 1 para 13.

⁶⁵ INDIA CONST. art. 2.

⁶⁶ INDIA CONST. art. 3.



their views and once they mention their view, it is upto the parliament to decide upon such proposal. The setup is completely different from the American setup as the American states and their boundaries cannot be touched by the federal government. It is these independent sovereign units which together decided to form into a federation unlike in India where the States were not independent sovereign units but they were formed by article 1⁶⁷ of the Constitution and their areas and boundaries could, therefore, be altered, without their concurrence, by Parliament.⁶⁸

The Preamble of our Constitution shows that the people of India had resolved to constitute India into a Sovereign Secular Democratic Republic and promised to secure to all its citizens Justice, Liberty and Equality and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.⁶⁹ The legal sovereignty vests in the people of India while the political sovereignty is distributed, between the Union and the States. States depend for financial assistance upon the Union since their power to raise resources is limited.⁷⁰

Also the power to amend the constitution is with the parliament.⁷¹ A strong Central Government may not find it difficult to secure the requisite majority as well as ratification by one half of the legislatures if

one goes by past experience.⁷² Justice Ahmedi concluded that the Indian constitution has pragmatic federalism which is overridden by unitary features.

Justice Kuldip Singh J. observed that democracy and federalism are the essential features of the Indian Constitution and part of its Basic Structure. It is concluded that federalism is the basic feature of the constitution in which Union of India is permanent and is indestructible. State is the creation of the constitution and therefore being a creation it has no right to claim its sovereignty. Union and State are coordinating institution and should exercise their power accordingly with adjustment and understanding.⁷³ The Constitution of India has created a federation but with a bias in favour of the Centre. Within the sphere allotted to the States, they are supreme.⁷⁴ The executive power of the President is different from the executive power of the Union and that this principle has not expressly been overruled in any of the cases.⁷⁵ Federal and secular structure is an essential feature of the Constitution of India.⁷⁶

V. CONCLUSION

A federation is a type of polity operating a constitution which works on two levels of government, namely, one at central level and another at state level. In real sense of the term, the federal government works under the democratic set up. In the light of cases

⁶⁷ INDIA CONST. art. 1.

⁶⁸ SR Bommai v. Union of India (1994) 3 SCC 1 para 16.

⁶⁹ INDIA CONST. Preamble.

⁷⁰ INDIA CONST. art. 275.

⁷¹ INDIA CONST. art. 368.

⁷² SR Bommai v. Union of India (1994) 3 SCC 1 para 19.

⁷³ SR Bommai v. Union of India (1994) 3 SCC 1 para 247.

⁷⁴ SR Bommai v. Union of India (1994) 3 SCC 1 para 434 (9).

⁷⁵ KUMAR NARENDRA, CONSTITUTION OF INDIA, 543, (Allahabad Law Agency, 4th edition, 2004, Haryana).

⁷⁶ ARVIND P. DATAR, DATAR ON CONSTITUTION, 1157, (Wadhwa and Company, 2001, New Delhi).



discussed, it can be said that India is not truly federal in nature as it moves upon unitary or federal platform according to need and circumstances. But, it can be very well inferred that India is federal with strong center as in various instances judiciary has tried to keep the center strong and follow the approach of drafter of the constitution. The judiciary very well tried to secure the aim of the drafter of the constitution and gave the reason accordingly that why the framers of the constitution mentioned the term union in article 1 of the constitution. Constitution of India has been described as amphibian or organic constitution because the constitution is federal with more power in the hand of center government.

